2864

ee

FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAY/OC9/2014/0016**
Property	:	**8, Macaulay Court, Macaulay Road, London SW4 OQU**
Applicants	:	**Deritend Investments (Birkdale) Limited (landlords)**
Representatives	:	**Wallace LLP (solicitors)**
Respondent	:	**Ms E. Lutekort (leaseholder)**
Representative	:	**Sherrards LLP (solicitors)**
Type of Application	:	**Applications for the determination of the costs payable following a deemed withdrawal of a claim for a new lease made under Part I, Leasehold Reform, Housing and Urban Development Act 1993 ('the Act')**
Tribunal Members	:	**Professor James Driscoll, solicitor (Tribunal Judge)**
Date and venue of Hearing	:	**The Tribunal met on 22 April 2014 and considered the application on the basis of the papers filed by the parties, neither party having sought an oral hearing.**

© CROWN COPYRIGHT 2013

Date of Decision : **22 April 2014**

DECISION

Summary of the decision

1. This tribunal determines that under section 60 of the Act the leaseholder is to pay the landlord the sums of £1,332.60 for the legal costs and £924 for the valuer's fees. (Both sums are inclusive of VAT). The total fees amount to the sum of £2,256.60.

2. As the landlord is holding a deposit of £1,670.00 the net sum recoverable from the leaseholder is £586.60 which should be paid by 15 May 2014.

Introduction

3. This application is made on behalf of Deritend Investments (Birkdale) Limited landlords who are the landlords under a long residential lease now held by Ms E. Lutekort as the leaseholder.

4. The landlords have applied for a determination of their costs following a deemed withdrawal of the leaseholder's claim for a new lease under the provisions in Part I of the Act. It is made under section 91(2)(d) of the Act.

5. The background to the application may be summarised in the following way.

6. On or about 6 December 2012 the then leaseholders gave a notice under section 42 of the Act seeking the grant of a new lease. In response, the landlord's solicitors gave a counter-notice on or about 12 February 2013 under section 45 of the Act. This counter-notice admitted the entitlement to a new lease but it disputed both the premium proposed and the proposals for the terms of the new lease. The landlords proposed a higher premium and they appended a copy of the proposed new lease to their counter-notice. They were paid a deposit of £1,670 in accordance with paragraph 3(3) of the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993.

7. It appears that the benefit of the claim was assigned by the then leaseholders to Ms Luterkort on or about 16 April 2013 in connection with her purchase of the subject flat. However, Wallace LLP were not informed of this and they were only alerted to this later.

8. Under section 48 of the Act either party may apply to this tribunal for a determination of the premium payable and for a determination of the terms of the new lease. No such application having been made in time the landlord's solicitors corresponded first with the former leaseholder's solicitors and then with the current leaseholder's solicitors; they suggesting that as a result of the failure to make the application that the claim notice is treated as having been withdrawn. As a result they are entitled to claim their professional costs incurred up to that point. They also informed them that an application was being made to the tribunal for a determination of the costs under section 91 of the Act.

The application

9. An application under section 91 was made on or about 4 March 2014. It named Ms Lutekort as the respondent and it included the contact details of her solicitors. Directions were given on 6 March 2014. Neither party having sought an oral hearing I dealt with the application on 22 April 2014 by considering the papers filed. The landlord's solicitors filed copies of a bundle of documents in support of the application. The tribunal has no record of receiving any representations either from the leaseholder or her solicitors. The bundle was carefully assembled and we are grateful to the landlord's solicitors for completing this task so thoroughly.

10. The bundle includes a schedule of the landlord's professional costs with supporting invoices. Wallace LLP, the landlord's solicitors, claim the sum of £1,518 and VAT on their fees of £302.00. Most of this is based on an hourly rate of £375 as the work was undertaken by a partner. A different partner dealt with the drafting of the proposed lease charging at the hourly rate of £400. A paralegal was used to obtain a copy of the lease and to obtain office copy entries at an hourly rate of £150.00. Wallace LLP also claim a disbursement of £8 for Land Registry fees. As to the valuer's fees Wallace LLP include the invoice of Mr R. Sharp BSc, FRICS who has charged for 3.08 hours at an hourly rate of £295. The total costs claimed is the sum of £2,900 inclusive of VAT.

11. Wallace LLP set out the justification for their costs claim in a statement dated 10 April 2014. Appended to this statement are various documents including previous costs decisions of this tribunal which they rely on in support of their submissions.

12. They make several points including the fact that they have acted for their client for several years and they are the solicitors their clients use for claims such as this one. Leasehold new lease (and enfranchisement) claims, they argue are complicated and clients are entitled to seek expert legal and valuation advice. Wallace LLP also suggest that in the absence of comments from the leaseholder or her solicitor that they are entitled to treat their costs claim as unopposed.

Reasons for the decision

13. It is common ground that a leaseholder seeking the grant of a new lease is required to pay certain costs to reimburse the landlord for defined professional costs incurred in connection with the new lease claim. This is provided for in section 60(1) of the Act which provides as follows: *Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—(a) any investigation reasonably undertaken of the tenant's right to a new lease; (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56; and (c) the grant of a new lease under that section;*

14. There is an important caveat to this which is contained in section 60(2) of the Act which reads as follows: *For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*

15. Section 60 refers to the 'reasonable costs' and the caveat in section 60(2) of the Act has been described by the authors of Hague 'Leasehold Enfranchisement' (5th edition, 2009) in the following terms . *'This sensible measure is designed to prevent the landlord from inflating his costs merely because the tenants are paying them'* (paragraph 28-22 a comment relating to the corresponding costs provision for enfranchisement claims in section 33 of the Act). On costs payable under section 60 they comment *'..the landlord cannot instruct a professional person, or a more expensive professional person, simply because he will not be footing the bill'* (paragraph 32-18).

16. Having carefully considered the papers filed, including the written costs submissions, I have concluded that the costs claimed are too high and accordingly I have made a determination that costs on a lower scale are recoverable. I have reached these conclusions for the following reasons.

17. Few would dispute the landlord's comment that the world of leasehold enfranchisement and new lease claims is very complex. This view is widely held and understandably so. The very fact that there are so many decisions of the higher courts and the Upper Tribunal to consider is itself a demonstration that this area of law, valuation and practice can be very challenging.

18. It is, therefore, perfectly reasonable for a landlord to appoint an experienced and knowledgeable set of advisors as they have done here. That said, I can see few complications in this case that merit the attentions of partner. It appears from reading the papers that there were no legal complications as to the leaseholder's right to claim a new lease. In other words, they had a qualifying lease of premises to which Part I of the 1993

Act applies which they had held for the requisite period of years. There appeared to be no objections to the validity of the leaseholder's notice of claim. Nor were there any obvious complications in relation to preparing a draft new lease.

19. There may be many such cases where the involvement of a partner is fully justified but I do not think that this is such a claim. I conclude that a suitably qualified assistant could have been used to deal with this claim. On the basis of my professional experience and knowledge of this area of law and practice I conclude that an assistant solicitor (or a legal executive) could have been assigned to deal with this matter.

20. Applying the caveat to the section 60 costs provision, I doubt if a landlord would expect to be charged for the services of a partner in a case such as this. The hypothetical landlord would, in my opinion, expect to pay solicitor's costs in a relatively simple case such as this one at an hourly rate of £275. I calculate from reading the schedule of costs supplied by Wallace LLP that 3.9 hours were spent in advising on this claim (excluding the paralegals' work). This produces a figure of £1,072.50 to which is to added £38 for the work (and the fee) in ordering the office copy entries. With VAT I determine that legal costs in the sum of £1,332.60 are payable. (I have no criticisms of the number of hours claimed).

21. As to the various previous decisions of this tribunal on costs in enfranchisement or new lease claims that were cited, these are not precedents which bind the tribunal to a particular view. It is difficult to see how they could be as these decisions are reached by considering their own peculiar facts and circumstances.

22. Turning to the valuer's fees, again I entirely accept that the landlord is entitled to appoint an experienced valuer. But as with the claim for legal fees I consider relying on my own experience and knowledge that the hourly rate claimed in a relatively straight forward case such should be £250 per hour. This produces a fee of £770 which with VAT comes to the sum of £924.

23. I do not agree that the fact that no representations have been received from the leaseholder or her advisors means that they cannot be challenged. There may be several reasons for the leaseholder not responding to this application including costs considerations. As an expert tribunal we are required to scrutinise applications carefully whether a party challenge the application or not.

24. To summarise this tribunal determines that under section 60 of the Act the leaseholder is to pay the landlord the sums of £1,332.60 for the legal costs and £924 for the valuer's fees.

Professor James Driscoll, solicitor (Tribunal Judge)