2952

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAC/OC9/2014/0035**
Property	:	**9, Quadrant Close, the Burroughs, London NW4 3BU**
Applicant	:	**Brickfield Properties Limited**
Representative	:	**Ms S Bone of Wallace LLP solicitors for he Applicant**
Respondent	:	**Robert Blum**
Representative	:	**Maurice Hackenbroch & Co solicitors for the Respondent**
Type of Application	:	**S60 and 91 Leasehold Reform, Housing and Urban Development Act 1993 (the Act)**
Tribunal Members	:	**Tribunal Judge Dutton** **Miss M Krisko BSc (Est Man) BA FRICS**
Date and Venue of hearing	:	**20th August 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**20th August 2014**

DECISION

DECISION

The Tribunal determines that the sum payable by the Respondent shall be £2,674.84 as representing the costs payable under the provisions of section 60 of the Act.

REASONS

1. This application was made by the long leaseholder Brickfield Properties Limited, for a determination of the costs payable by the Respondent, Mr Robert Blum pursuant to section 60 of the Act.

2. The chronology surrounding the service of no less than three initial notices is relevant to our consideration of the claim for costs by the Landlord.
   - On 22nd July 2013 the first initial notice was served on behalf of the respondent showing Daejan Properties Limited as the Landlord. This resulted in Wallace LLP (W) writing to the Respondent's solicitors Maurice Hackenbroch & Co (MH) on 30th July 2013. Part of this letter says as follows "*We refer to your Notice dated 22nd July 2013, of your claim to acquire a new Lease of the above mentioned premises. On behalf of the Competent Landlord, we here by give you notice requiring you:*" and went on to request a deposit of £1,200 and that title was deduced. The letter went on to say that it did not constitute acknowledgement on behalf of the Competent Landlord nor obviate the need for a counter-notice. The letter did not indicate the identity of the Competent Landlord.
   - On 7th August 2013 a second initial notice was sent this time adding Actionleague Limited but maintaining Daejan as the Landlord. This second notice elicited a response dated 12th August 2013 from W in essence asking for confirmation that the first notice was withdrawn but making no further comment on the identity of the Competent Landlord. On 13th August 2013 by email MH confirmed that they were withdrawing the first notice of 22nd July 2013 as they had failed to include Actionleague and that they relied only on the second notice dated 7th August 2013. By a letter dated 15th August 2013 W wrote to MH stating that the second notice was invalid as it did not cite Brickfield Properties Limited as the Competent Landlord.
   - On 14th August 2013 a third initial notice was sent which did include Brickfield Properties Limited but still maintained that Daejan was a party and did not include Actionleague. On 19th August 2013 MH wrote by email to W thanking them for their letter of 15th August 2013 and indicating that this third notice was valid.
   - There then followed correspondence, which it seems is not before us, which appears to have resulted in production of an assignment of the third Notice which was dated the same day as Mr Blum transferred his registered leasehold interest to Vered Properties Limited (VP). On 24th October 2013 W provided chapter and verse of the various titles which confirmed that Daejan were the freeholders, Brickfield were the long leaseholders under a lease with a term of 999 years from 10th August

2012, thus the Competent Landlord, Actionleague held a lease of 99 years and one day from 25th December 1980 and Mr Blum held a lease, before assignment to VP for a term of 99 years from 25th December 1980.

- On 28th November 2013 MH withdrew the notice of claim and requested the return of the deposit.

3. The Applicant has requested that the matter be considered at a hearing largely as a result of issues raised by MH. Those issues are set out in further directions issued by the Tribunal on 30th July 2014, which were to be considered in advance of the issue of costs.

4. The matters we were required to consider are:
(a) The Applicant's application to join VP as a second respondent; and
(b) The Respondent's application to dismiss or strike out the originating application; and
(c) Any application for costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

5. MH did not attend the hearing but had sent in written submissions dated 29th July and 5th August 2014, which we noted. They can be summarised as follows. In the letter of 29th July 2104, on the strike out it was said that W had not complied with directions in particular had not served a statement of case by 16th July but instead had included the statement in the bundle which was received by MH on 25th July, two days after the due date. They relied on the judgment in Mitchell v Newsgroup for the striking out. As to the request to join VP it was said that it should be refused because they had know of VP's involvement since 21st October 2013 and that no notice had been served by VP. As to costs, it was said that they should be disallowed because there was no invoice to the client nor evidence that the costs had been paid. In the later letter of 5th August 2014, in which MH confirms they will not be attending the hearing, they ask us to rely on earlier submissions on costs, the Mitchell judgment, prejudice and lack of professional courtesy on the part of W.

6. We noted the written submissions made by W dated 23rd July 2014 and heard from Ms Bone a partner with W. She dealt firstly with the preliminary issues. She said that she wished to join in VP as she considered some costs would rest with them and that it would be expensive to start a fresh application. She was not able to explain why the application was being made so late and when told that to do justice to VP's position we would need to adjourn the hearing, with possible costs consequences she withdrew the application to join VP. On the strike out she did not think the delay warranted such a step. It was a short period of time and no prejudice was caused to the Respondent as MH had been able to submit two further letters, dated 29th July and 5th August 2014. She confirmed that she was not aware of any application for costs under rule 13.

7. Without prejudice to our findings in respect of the strike out, this being the only matter upon which we were required to make a finding in

respect of the preliminary matters, we moved on to consider the costs. Ms Bone explained the various entries on a time sheet produced which sought costs totalling some £4,543.74. For the sake of brevity we will set out in the findings section the relevant submissions. Ms Bone did concede that the costs for considering the initial notices could, in each case be reduced and that the Land Registry fees should be only £49. She told us that she believed that registration of the purchase by VP was concluded on 28th October 2013.

THE LAW see attached appendix

FINDINGS

8. We shall deal firstly with the strike out. Reference is made by MH to the case of Mitchelll v Newsgroup. This has been superseded by the Court of Appeal decision in *Denton v T.H. White and others ([2014] EWCA Civ 906)* which sets out three stages we should consider. The first is to identify and assess the seriousness or significance of the relevant failure. If it was considered that the breach was not serious or significant relief would usually be granted and it was not necessary to consider the other two steps. We find that the breach being the delay of 7 working days for the service of a statement which "may" be served, or two days for the supply of the bundle, is not serious or significant. It did not prevent the Respondent from responding on two occasions (29.7 and 5.8.14) or from attending the hearing on 20th August 2104 if he had chosen so to do. Accordingly the application to strike out is refused. There being no other issue to determine arising from the directions of 30th July we now consider the costs.

9. We bear in mind the provisions of s60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). We are surprised that W should write to MH as it did on 30th July 2013, purporting to act for the Competent Landlord when the first notice made no mention of Brickfield. The explanations given by Ms Bone were not compelling. We do not consider that they were entitled to ask for a deposit at this stage. The Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 Sch 2 provides that the deposit is payable upon the Landlord giving notice. Landlord is as defined in s40(1) of the 1993 Act. The initial notice makes no mention of Brickfield and the letter by W is, in our view, misleading in this regard. However, it is for the Applicant to identify the Competent Landlord and a search of the Land Registry should have revealed the existence of Brickfield as we were told they had acquired the 999 year lease in 2012 and that W had handled the registration of same at HM Land Registry before the first initial notice was served.

10. Turning to the specifics. We find no fault with the hourly charging rates. We were shown letters sent to the Freshwater Group, of which we are told Brickfield is a part, in July 2012 and July 2013 which support the rates utilised in this case. We accept that the Landlord is free to use his own solicitors of standing and long service. However, the high hourly

rates must bring expertise and with that perhaps less time spent than might be the case with less experienced and cheaper lawyers.

11. In respect of the first notice for which a fee of £375 is claimed we take the view that whilst sometime was spent the knowledge W had of the client and the fact that the wrong parties as Landlord were set out should not have required W to spend more than 3 units, that is to say 18 minutes on this task. We therefore reduce the costs of the consideration of the first notice to £118.50. This also reflects our disquiet at the letter of 30th July 2013. In addition, we can see no need for the valuer to be written to in the period to 2nd August and disallow the letter of 30th July to MH for the reasons stated above. Accordingly for the period up to and including 2nd August 2013 **we allow £319.50.**

12. We then turn to the period between the second and third notice, that is to say from 12th August to 15th August inclusive. Ms Bone agreed 6 units for the consideration of this initial notice, which we agree. Again we cannot see that a letter needs to be sent to the valuer on 12th August but we allow 14th August letter as a letter of instruction must be sent at some point. This reduces the costs for the period 12th August to 15th August **to £434.50.**

13. The last tranche covers the period 19th August to 25th October 2013. We have limited the period to 25th October as we were told that registration of the purchase had been completed on 28th October 2013. The assignment of the notice provides at paragraph [1] of the assignment dated 14th August 2013 that the assignment will take effect *"as and when the said transfer takes effect by registration"*. In this period we reduced the costs for considering the initial notice. Ms Bone said 8 units but we think given that this is the third attempt at an initial notice 6 units is sufficient. The costs relating to the preparation of the draft lease are excessive. Ms Bone said it was cheaper to the tenant if the draft was annexed to the counter-notice. The draft lease is, we are told in standard format with a short schedule including issues under s57 which would be open to negotiation. We think ½ hour is sufficient and reduce this cost to £142.50. We accept Ms Bone's contention that the Counter-notice had to be served to safeguard the client in the absence of any withdrawal, which did not occur until 28th November 2013, and the preparation of the draft lease was, at the time we have allowed, reasonable. The consideration of the valuation report is too much. It is a letter, which says the value is based on a similar flat at 25 Quadrant Close and attaches a valuation. It would take no time to consider this, the more so as the figure put forward by the Valuer starts at £19,994, rises to £26,614 but the figure in the Counter-notice is in fact £32,986. One wonders what notice was taken of the valuer's opinion. We consider one unit allowable giving a fee of £39.50. We consider that the time spent on preparing what is a short Counter-Notice is too high. Ms Bone is experienced and has had three initial notices sent. We consider that ½ hour in these circumstances is sufficient and allow £197.50. Finally in this period we disallow the letter to the valuer dated 18th October 2013 as we can see no need for this letter by a partner. We have removed the costs from 30th October 2013

onwards which total £237 including VAT. **The sum therefore payable for this period, that is to say from 19th August to 25th October, exclusive of VAT, is £1130.**

14. Land Registry fees are reduced, by agreement to £49. We find this recoverable. Searches of the Land Registry to obtain up to date details are essential. The valuers fees are, in our finding to high. The letter indicates that the valuation is based on another property and whilst it seems Mr Kotak attended we think that a fee of £300 plus travel and VAT, making a total of £365.04 is sufficient for the purposes of this report. The provisions of s60 (1) (b) refers to fixing the premium. It is stretching the point when the value he suggested appears to have been ignored for the purpose of the counter-notice, but we accept that the Landlord is entitled to charge for a valuation.

15. **The total profit costs are £1,884. To this must be added VAT at 20% of £376.80 giving a total of £2,260.80. With the addition of the Land Registry fees of £49 and the valuers fees of £365.04 the grand total is £2,674.84.**

Andrew Dutton 20th August 2014

Andrew Dutton - Tribunal Judge

The Relevant Law

60 Costs incurred in connection with new lease to be paid by tenant.

(1)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;

(c)the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2)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.

(3)Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4)A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5)A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6)In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.