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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AW/OC9/2017/0175**

Property : **Flat 3 6 Cheyne Gardens, London
SW3 5QU**

Applicant : **BDG Properties Inc**

Representative : **Wilson Barca LLP soliciotrs**

Respondent : **Drisnol Investments Inc**

Representative : **Taylor Wessing LLP solicitors**

Type of Application : **Costs under section 60 and 91(2)(d)
Leasehold Reform, Housing and
Urban Development Act 1993 (the
Act)**

Tribunal Members : **Tribunal Judge Dutton**

**Date and venue of
Hearing** : **29th August 2017 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **29th August 2017 and amended 27th
September 2017**

AMENDED DECISION

DECISION

1. **The tribunal determines that the costs payable under s60 of the Act total £9,019.90, which includes VAT in the sum of £893.55 in respect of the legal fees of £4,467.75. Surveyors fees of £3,600 and disbursements in the sum of £58.60 as set out below.**

BACKGROUND

2. This is an application for the assessment of costs under s60 of the Act payable by the Applicant BDG Properties Inc in respect of the lease extension for the property flat 3, 6 Cheyne Gardens, London SW3 5QU.
3. Prior to the assessment, which was undertaken as a paper determination on 29th August 2017, I had before me a bundle of papers prepared by the solicitors for the Applicant, Wilson Barca LLP (WB). The bundle included the application dated 25th June 2017, the initial notice dated 27th January 2016 and the counter-notice dated 31st March 2016. I was also provided with the Respondents schedule of costs and statement prepared by Taylor Wessing LLP (TW) with a number of exhibits, the Applicants statement of case and legal submissions and finally a statement in response from the Respondent with further legal submissions. This statement also had a number of exhibits attached.
4. I have considered these papers in making my decision. The total sum claimed for legal fees, including Counsels fees is £13,618.44. In addition the valuers fees are in dispute but total £3,000 plus VAT.
5. Consideration of the Applicant's response indicates that the hourly rates are challenged as is the time spent. An offer of £830 is made in respect of the costs in considering the initial notices, of which there were two, and £1,660 in respect of the approval of the lease. In so far as the costs associated with a Notice in Default, relating to a deposit, under s92 of the Act, nothing is offered for the reasons stated.

THE LAW

6. The law relating to this matter is set out below. In particular s60 of the Act applies.

FINDINGS

7. In so far as the costs associated with the Notice of Default under s92 of the Act is concerned I find that they do not fall within the provisions of s60. It seems to me that it has nothing to do with the three matters set out at s60(1) which are as follows (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. Accordingly I disallow the sums claimed being solicitors costs of £3,013.95. It follows that Counsels fee of £450 plus VAT of £90 are also disallowed.

8. I turn then to the costs which do fall within the provisions of s60 and deal firstly with the investigation into the tenant's rights to a new lease. It is not wholly clear why two initial notices were served, but served they were. The Respondent claims that some 6.4 hours were spent. The charging rates, I was told, had been discounted by 10%. In the submissions document by the Respondent dated 15th August 2017 I am told that the Respondent has utilised the professional services of TW for some time. I accept that TW is the solicitor of choice for the Respondent. Further, the charging rates are not so much above that set out in the guidelines issued by HMCTS, albeit they have not been updated since 2010. In those circumstances I find that the hourly rate for, I assume Ms Dobson at £513 and for the senior associate £373.50 and associate at £301.50 are reasonable, given the complexities of this area of law.
9. It does seem to me however, that having viewed the initial notice and the counter-notice, the time spent of 6.4 hours seems excessive. I do accept that the Applicant was not a UK based company and some additional steps would have been needed to check the right to extend. However, having done so once, I cannot see that much time would need to have been spent on the second notice. Two hours has been offered. I propose to assess the time at 4 hours, considering all that is before me. There is little information in the schedule of costs as to which fee earner did what. I propose to allow the time of the partner and 1.5 hours of the associate. I note that the hourly rate of partner at £513 x 2.5 hours would be £1282.50. **This gives costs of £1,734.75 for this element.**
10. I turn then to the costs associated with the grant of the new lease. This is broken into two heads, the first the drafting of the lease in the sum of £4,505.85 and the second being, it is said, the engrossment and preparation for completion of £3,004.65. A total of £7,510.50, nearly 19 hours of work. The notices indicate that the lease should be in the form of the existing one subject to the terms of schedule attached. This schedule appears to be accepted in the counter notice. It is not therefore wholly clear what remained in dispute to give rise to such level of costs. I have noted what TW say about this but the Notice and Counter Notice appear to be in agreement. It is suggested that the terms were agreed at the Tribunal hearing but attendance at the Tribunal does not fall within s60. I note that the Applicant offers 4 hours, albeit at the lower rate of £415 per hour.
11. I find that the Applicant's offer of 4 hours work is perhaps somewhat parsimonious taking into account all that is said by the Respondent. Equally I think the Respondent has 'over egged the pudding'. With no real breakdown of the work done by the fee earner in the schedule I propose to deal with the matter in the round. I will allow the time spent

by the partner, associate and paralegal but at the rates which appear earlier in the schedule, which I have accepted are reasonable. This result in the **sum of £2,733** being payable. I do not consider the costs associated with the engrossment and preparation for completion to be recoverable as they do not fall within s60(1)(c). In respect of the sums shown at paragraph 10 and 14 I find that VAT should be added in the amount of £893.55.

12. At page 25 of the bundle, although not specifically referred to in any submissions before me there are paid disbursements listed in the sum of £58.60. No objection appears to be raised to this amount and I allow same.
13. Finally I must consider the valuation fee of £3,000 plus VAT. I accept what is said by the Respondent concerning the complexity of valuing shorter lease terms. The hourly rate of Mr Carelli seems reasonable for a partner in Knight Frank and I consider that the use of his services is reasonable. In those circumstances I find that a fee of £3,000 plus VAT is payable making the sum due **£3,600.00.**
14. **The total costs payable by the Applicant is therefore £9,019.90.**
15. I note that the Applicant asks me to order a refund of the balance of the deposit, see para 14 of the statement of case and submission. I do not consider it appropriate to do as I understand the matter is now before the County Court and the jurisdiction rest with them.

Andrew Dutton

Tribunal Judge Dutton

29th August 2017

Amended 27th September 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not

complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

S60 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.