



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

Case Reference : LON/00BB/OC9/2015/0268

Property : 49 Lawson Close
London E16 3JS

Applicant : East Homes Ltd

Representative : Winckworth Sherwood LLP

Respondent : Salina Akhtar

Type of Application : Costs on extension of lease

Tribunal : Judge Nicol

Date of Decision : 5th August 2015

DECISION

Decision of the Tribunal

- 1) The Tribunal has determined that the following costs, inclusive of VAT, are payable by the Respondent to the Applicant in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993:
 - i) Legal costs of £927; and
 - ii) Valuation costs of £144.
- 2) There shall be no order for the costs of this application.

Reasons for Decision

1. The Applicant seeks to recover costs incurred in responding to the Respondent's request for a new lease in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993. In accordance with the Tribunal's directions, the Applicant has filed a bundle containing their submissions and relevant documents and the Tribunal has proceeded to determine the application on those papers, without an oral hearing.
2. Unfortunately, the Respondent failed to comply with the directions in that she did not file or serve a statement of her case. Her main objection to the application, as set out in a letter dated 20th July 2015 to the Tribunal, is that the Applicant gave the wrong address for service and she claims that, as a result, the proceedings are invalid. In a further letter dated 24th July 2015 she claimed not to have received the Tribunal's directions but confirmed she had received the bundle prepared by the Applicant (which includes those directions).
3. Late notice of relevant matters is concerning to the Tribunal, whether caused by the provision of a wrong address or not. However, it doesn't by itself invalidate proceedings. The Tribunal's primary concern is always to ensure that cases are dealt with fairly and justly, in accordance with the overriding objective in rule 3(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Dismissing a case entirely is a disproportionate response to an error which can be corrected in other less draconian ways.
4. If the Respondent felt that she had been genuinely prejudiced by the alleged late notice of the Tribunal's directions or the Applicant's case she could have said so and sought appropriate directions, including adjournment of the Tribunal's consideration. She has not done so, despite being in full possession of all the necessary information by 24th July 2015, 12 days ago, at the very latest. The Tribunal is satisfied that she has had a sufficient opportunity to put her case and that justice and fairness require the Tribunal to proceed to a decision now.
5. The Respondent confirmed on 12th March 2015 that she both accepted her Notice of Claim was invalid and that she would no longer pursue her claim for an extended lease. The Applicant claims legal and valuer costs prior to that date in the total sum of £1,071. A full breakdown of these costs was provided with the application. The Respondent mentioned that the Applicant had earlier sought a smaller sum but that does not prevent them making a larger claim after the issue of proceedings, if they can justify it.
6. The Tribunal has examined the costs breakdown carefully and is satisfied that the claim is not just reasonable, but modest. In accordance with section 60(2) of the Act, the costs are those which

might reasonably be expected to have been incurred by the Applicant if the circumstances had been such that they were personally liable for all such costs.

7. By letter dated 13th July 2015 the Applicant further sought “any costs you feel are justified under rule 13 of the ... Rules”. There are two significant problems with this application:-
 - (a) The Tribunal only has a power to order such costs if satisfied that the Respondent has acted unreasonably in defending or conducting these proceedings. That is a high test and the Tribunal is not satisfied that it has been passed in this case.
 - (b) Under rule 13(4)(b), it is not compulsory to send a schedule of costs claimed in sufficient detail to allow summary assessment but, in the absence of a schedule, the party claiming costs must provide at least some evidence of quantum. In the absence of such evidence, the Respondent had no opportunity to comment and the Tribunal had no basis on which to award any particular sum of money.
8. In the circumstances, the application for costs under rule 13 must be rejected.

Name: NK Nicol

Date: 5th August 2015

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993

Section 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.