4446

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMC/OLR/2017/0008-12**
Property	:	**Flats 6, 11, 14 and 23 Regents Court, Great Knollys Street, Reading RG1 7HW**
Applicant	:	**Mr K Kontopoulos and Ms Y Zhang (6)** **Mr D and Mrs A Foster (11)** **Mr P and Mrs K Kelly (14)** **Mr P and Mrs P Glass (23)**
Representative	:	**Mr Glass**
Respondent	:	**G & O Rents Limited**
Representative	:	**GSL Administration**
Type of Application	:	**Determination of costs under s60 and s91 Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs H C Bowers BSc (Econ) MSc MRICS** **Mrs S F Redmond BSc (Econ) MRICS**
Date determination	:	**12th May 2017**

DECISION

DECISION

The Tribunal determines that the sum payable by each of the Applicants in respect of the Respondent's costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £1,000 together with the valuation fees of £350 plus VAT. (See below for VAT on the legal costs).The claim for the administration fee of £250 plus VAT is disallowed

BACKGROUND

1. This is an application for the determination of the costs payable by the Applicants to the Respondent under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The costs arise from a conjoined set of four applications all seeking lease extensions on terms set out in notices sent to the Respondent in June 2016.
2. The Respondent, replying by way of 4 Counter-notices under section 45 of the Act admitted the Applicants' rights to seek a lease extension, put forward a different premium and lease terms and indicated what the costs of the Respondent would be under s60 of the Act.
3. Those costs were recorded as being a valuation and administration fee of £425 plus VAT; Legal fees in connection with the notices of £750 plus VAT; Legal fees for dealing with the conveyancing of £750 plus VAT and finally an administration fee for Urbanpoint Property Management Limited of £250 plus VAT. So far as we are aware this is the extent of the evidence before us in respect of the Respondent's costs. Such costs are sought for each application.
4. On the respective applications for a determination of the costs under s60 all Applicants offered valuation fees of £325 plus VAT, legal and conveyancing fee of £1,000 plus VAT, in total and no offer in respect of the administration fee of Urbanpoint
5. Directions were issued by the Tribunal on 3rd February 2017, requiring details of costs to be provided by the Respondent by 17th February 2017 with a response on 3rd March 2017. Neither party provided such information.
6. We were in possession of a bundle of papers which included the applications and directions but little else of any assistance to us.
7. We have gleaned from the bundle and from subsequent correspondence that the premiums have been agreed as follows:
    - for flat 6 £12,750
    - for flat 11 £12,750
    - for flat 14 £12,750 and
    - for flat 23 £14,400.
8. These are the figures set out on an email from the Respondent's valuer , Mr Hobman dated 31st October 2016 and confirmed on 28th February 2017 and Mr Glass, by email to the Tribunal dated 8th May 2017.

9. In so far as the lease terms are concerned these also appear to have been agreed and indeed we had copies of the proposed leases in the bundle, which we would find no issue with.
10. As a result of these agreements the parties requested that the determination of the s60 costs be dealt with on the papers before us and that the hearing scheduled for 10th May 2017 be vacated.
11. As we have indicated above we have little to go on. A document headed "Points of Dispute served by the Applicants" seems to be irrelevant to this case, referring to matters that have no bearing on this application. We have therefore ignored it. Our decision is based on our knowledge and experience of costs cases over the years, the figures included in the Counter-notices and the proposals contained in the applications, from which neither party has resiled.

THE LAW

12. The provisions of section 60 are set out in the appendix and have been applied by us in reaching this decision.

FINDINGS

13. Let us deal firstly with the administration charge of Urbanpoint. We can see no basis for the inclusion of this in respect of the costs payable under s60. It does not, on what little we have, fall into any of the parameters of the section. Accordingly it is disallowed in each case.
14. We are left to assume that the costs of the Respondent are those generated by GSL Administration legal department, Mr O'Dell. It is accepted that in-house solicitors can recover costs. It is suggested by reference to the Counter-notice that these costs are £750 for dealing with the notices and a further £750 for dealing with the new leases. The Applicants offer £1,000 for both limbs combined, to include any disbursements. We agree with that assessment. There must be some allowance for the fact that the Respondent was dealing with four nearly identical cases at the same time. We accept that the notices would need to be considered separately but the terms of one lease should be the same for the others. An appropriate discount would, we find, lead to a figure of £1,000 being payable for legal costs. We have no evidence that VAT is payable. If it is, the fee of £1,000 is subject to VAT. The Respondent is required to produce a valid VAT invoice to substantiate this tax within 7 days of the date of this decision, failing which the sum is to be paid without a VAT element.
15. As to the valuers fees we have seen what had been said about the time spent on the inspections. Given that there are four flats to deal with and that flat 23 appears to have generated a larger premium we find that a total fee of £1,400 plus VAT is not unreasonable, to be divided between each case. This gives valuation costs on a case by case basis of £350 plus VAT.
16. We are not wholly clear whether the Applicants seem to be suggesting that there is some cost liability on the part of the Respondent. If this is a claim under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 a proper application has to be

made within the time limits provided for in the Rule. At the moment it is not possible for us to take that matter further. The Applicants' attention is drawn to the case of ***Willow Court Management Company Limited and Alexander [2016] UKUT 0290 (LC).***

Andrew Dutton

Tribunal Judge Dutton 12th May 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).

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.