FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00BG/OC9/2019/0066
Property	:	12A Drake House, Stepney Way, London, E1 3BE
Applicant	:	Dewan Syeda Ismat Reza Gofur
Representative	:	Thirsk Winton LLP
Respondent	:	Zerlan Estates Ltd
Representative	:	Bude Nathan Iwanier LLP
Type of Application	:	Enfranchisement - costs
Tribunal Members	:	Judge Robert Latham Luis Jarero BSc FRICS
Date and venue of paper determination	:	12 November 2019 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	15 November 2019

DECISION

The Tribunal determines the section 60 statutory costs in the sum of £1,970.25 + VAT for legal fees (including disbursements) and £1,216.30 + VAT for valuation fees. We disallow the sum claimed for Counsel's fees.

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The current application by the tenant for the determination of the costs payable by the tenants under section 60(1) of the Act.

2. The landlord claims the following costs:

   (i) Solicitor's Costs of £2,640 + VAT, a modest claim for disbursements and a further £195 + VAT to complete the grant of the new lease;

   (ii) Valuation Fees of £1,216.30 + VAT; and

   (iii) Counsel's Fees of £1,250 + VAT.

3. The tenant's response is as follows:

   (i) Solicitor's Costs should be reduced to £1,787.50 + VAT. The tenant contends that the time claimed is excessive, given that the work was carried out by an experienced Solicitor who was claiming and hourly rate of £300. The tenant does not address the additional claim of £195 + VAT to complete the grant of the new lease;

   (ii) Valuation Fees of £1,216.30 + VAT. These are not disputed by the tenant.

   (iii) Counsel's Fees of £1,250 + VAT. The tenant disputes her liability to pay this sum. In a letter dated 7 October, the tenant argues that these fees have nothing to do with the grant of the lease extension. The costs were rather incurred in connection with a dispute as to whether unauthorised works have been carried out to the property. The tenant also complains about the late stage at which this additional claim was raised, and seeks a wasted costs order in the sum of £30 + VAT under Rule 13 of the Tribunal Rules

The Background

4. On 29 October 2018, the tenant served her Notice of Claim proposing a premium of £29,000 and that the terms should be in accordance with the Act.

5. On 18 December 2018, the landlord served its Counter-Notice proposing a premium of £58,200, that the new lease should be as prescribed by the Act, save for three additions.

6. When the landlord's valuer had inspected the flat, he noticed that a number of alterations had been made. Some internal walls had been moved. On 19 December 2018, the landlord wrote to the tenant about these alterations.

Extensive correspondence has followed this. On 1 August 2019, the landlord obtained advice from Counsel on the effect of unauthorised alterations on whether the grant of a new lease would waive the breach and whether this would give grounds for opposing the grant of a new lease under s.48(3) of the Act.

7. On 13 March 2019, the tenant issued two applications to this tribunal: (i) to determine the premium or other terms of acquisition; and (ii) to determine the reasonable costs payable by the tenant in respect of the grant of the new lease.

8. The parties have subsequently agreed the term of the acquisition. We are told that the premium has been agreed in the sum of £45,405. We have not been informed whether any additional terms have been added to the lease. There is no suggestion that any amendments have been required to the lease in respect of the alterations.

9. On 15 August, the tenant informed the Tribunal that the issue of costs is outstanding. On 27 August, the Tribunal issued Directions for a paper determination of the costs. The Tribunal have had regard to the following: (i) The Landlord's Statement of Costs; (ii) The Tenant's Statement in Reply; (iii) The Landlord's Statement in Response. On 17 October, the Tribunal gave additional Directions in respect of the landlord's claim for Counsel's fees. The Tribunal have had regard to (iv) The landlord's letter of 29 October and (v) the Tenant's letter dated 8 November.

The Statutory Provisions

10. Section 60 provides, insofar as relevant for the purposes of this decision:

> "(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—
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> > (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;
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> 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.

.....

(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... or any third party to the tenant's lease."

The Principles

11. In *Metropolitan Property Realisations v Moss [2013] UKUT 415*, Martin Rodger QC, the Deputy President, gave the following guidance on the approach to be adopted:

> "9. These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.
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> 10. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.

11. Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable."

The Tribunal's Determination

12. The substantive issue between the parties is whether the costs relating to the alleged breach of covenant in respect of the alterations are recoverable as being "incidental to" the grant of the new lease. If so, they would be recoverable under s.60(1)(c). Apart from this issue, this application for a new lease would seem to have been straight forward.

13. Schedule 12, paragraph 6 of the Act provides:

> "Where by a notice under section 42 a tenant makes a claim to acquire a new lease of a flat, then during the currency of the claim:
>
> (a) no proceedings to enforce any right of re-entry or forfeiture terminating the lease of the flat shall be brought in any court without the leave of that court, and
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> (b) leave shall only be granted if the court is satisfied that the notice was given solely or mainly for the purpose of avoiding the consequences of the breach of the terms of the tenant's lease in respect of which proceedings are proposed to be brought;
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> but where leave is granted, the notice shall cease to have effect."

14. The Tribunal is satisfied that the scheme of the Act is to freeze any proceedings to enforce a right of forfeiture pending the determination of any claim to acquire a new lease.

15. It is for the landlord to determine what action, if any, is required in respect of the alleged unauthorised alterations. This may include their costs in investigating any breach of covenant. It would seem that these alterations were carried out before the tenant acquired her interest in the flat. However, such action is outside the statutory framework for the acquisition of the new lease. There is no suggestion that the alleged unauthorised alterations affect the terms of the new lease which have been agreed.

16. The Tribunal does not accept the landlord's argument that the correspondence in respect of the alleged breach is "incidental" to the grant of the new lease. The correspondence rather relates to a separate issue, outside the acquisition of the new lease, namely the landlord's right to forfeit. The Tribunal is therefore satisfied that the costs of obtaining Counsel's advice are not recoverable under s.60(1)(c).

17. However, this finding is not restricted to Counsel's fees. Much of the Solicitor's costs which are claimed relate to the period after 18 December

2018, namely the date of the landlord's Counter-Notice. By this date, the landlord had investigated the tenant's right to a new lease and had obtained a valuation. These are the costs covered by s.60(1)(a) and (b). Thereafter, the landlord is only entitled to its cost of and incidental to the grant of the new lease (s.60(1)(c)).

18. The landlord claims £540 for emails out and £960 for e-mails in. However the majority of these relate to the period after 18 December and seem to relate to the forfeiture issue (E-mails out: 24 mins before and 84 mins after; E-mails out: 56mins before and 136 mins after).

19. Apart form the issue of forfeiture, there is no suggestion that there were any unusual features to this lease extension. If we exclude the costs relating to the forfeiture, the sum claimed by the landlord would be significantly reduced. We agree with the tenant that the time claimed is excessive. We therefore reduce the sum allowed for Solicitor's costs to £1,750 + VAT. We also allow disbursements of £19 and land registry fees of £6.25. We allow a further £195 + VAT for the costs to complete the grant of the new lease. We therefore allow £1,750 + £25.25 + £195: £1,970.25 + VAT.

20. In the letter dated 7 October 2019, the tenant claims wasted costs in the sum of £30 + VAT under Rule 13 of the Tribunal Rules. We disallow this claim. The landlord was entitled to pursue their claim for Counsel's fees which were incurred at late stage in the proceedings. The unreasonable conduct of which the tenant complains does not come close to meeting the high threshold for an award of penal costs (see *Willow Court Management Company* [2016] UKUT 290 (LC)).

21. The Tribunal has had regard to the five decisions to which the landlord has referred. The Tribunal concludes by noting that the parties seem to have expended a disproportionate amount of time and resources on this modest dispute about costs.

Judge Robert Latham,
15 November 2019

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).