



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

Case Reference : LON/00AZ/LCP/2018/0009

Property : 81 Benwell Road, London, N7 7BW

Applicant : Assethold Limited

Representative : Scott Cohen

Respondent : 81a Benwell Road RTM Co Limited

Representative : In person

Type of Application : Costs to be paid by a RTM Company

Tribunal Members : Judge Robert Latham

**Venue of paper
Determination** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 13 November 2018

DECISION

(1) The Tribunal determines that the Respondent is to pay the Applicant's costs under section 88(4) of the Commonhold and Leasehold Reform Act 2002 in the following sums:

(i) Solicitor's Fees of £1,234.74 (inclusive of VAT and disbursements of postage and Land Registry fees totalling £12.45);

(ii) Solicitor's Fees of £1,254.00 (inclusive of VAT) for time spent on proceedings before the FTT;

(iii) Management Fees of Eagerstates Limited in the sum of £300 + VAT for work undertaken both in response to the RTM claim notice and in connection with the Tribunal proceedings.

(2) The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

Introduction

1. The Applicant seeks a determination pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) in respect of the costs incurred by the Applicant landlord in relation to a claim notice, dated 9 December 2017, which was dismissed on 21 May 2018 in Case No. LON/00AU/LRM/2018/0005 by Judge Vance.
2. On 29 August, the Tribunal gave Directions. Pursuant to those Directions the Applicant provided its Statement of Case (at p.32), dated 20 September. The following costs are claimed:
 - (i) Solicitor’s Fees of £1,234.74 (inclusive of VAT and disbursements of postage and Land Registry fees totalling £12.45);
 - (ii) Management Fees of Eagerstates Limited in the sum of £300 + VAT for work undertaken in response to the RTM claim notice;
 - (iii) Solicitor’s Fees of £1,254.00 (inclusive of VAT) for time spent on proceedings before the FTT;
 - (iv) Management Fees of Eagerstates Limited in the sum of £300 + VAT for work undertaken in connection with the Tribunal proceedings.
3. Thereafter, the Respondent provided its Statement of Case (at p.63). The Respondent only takes issue with the claim for the two management fees of £300 + VAT. The Respondent concludes their statement by stating that they: “have consistently offered to settle the account, less the invalid management fees”.
4. On 18 October, the Applicant filed a Statement in Response (at p.64).

The Background

5. On 9 September 2017, the RTM Company served its Notice of Claim to acquire the Right to Manage pursuant to Section 79 of the Act in respect of 81a Benwell Road, London, N7 7BW.
6. On 11 January 2018, the landlord served a counter notice contending that the claim was fatally flawed. The landlord had no interest in the premises at 81a Benwell Road which were owned by London Metropolitan University. They rather own five flats at 81 Benwell Road. The RTM Company had until 11 March to make their application to the Tribunal.

7. On 7 February, the RTM Company issued their application to the Tribunal. The landlord asserts that this was premature, and the RTM Company should rather have sought to resolve the matter without litigation.
8. On 15 March, the landlord filed its Statement of Case in which it elaborated upon its grounds for contending that the claim was doomed.
9. On 26 March, Canonbury Management, the RTM Company's then representation, notified the Tribunal that the RTM Company wanted to withdraw its application and discontinue the application. This letter was copied to the landlord.
10. On 5 April, the Case Officer wrote to Canonbury Management stating that the request would be considered by a judge. On 16 April, Judge Vance consented to the withdrawal.
11. On 19 April, the landlord wrote to the Tribunal requesting a formal dismissal as this was a prerequisite to it claiming its statutory costs. The landlord relied upon the Upper Tribunal decision in *Post Box Ground Rent Ltd v The Post Box RTM Company Ltd* [2015] LR/83/2015.
12. On 1 May, the Tribunal sought representations from the parties on the application. On the same day, Canonbury Management wrote to the tribunal notifying it that they were no longer action for the RTM Company. On 21 May, Judge Vance formally dismissed the application.

The Statutory Provisions

13. Section 88 of the Act:

“(1) A RTM company is liable for reasonable costs incurred by a person who is—

(a) landlord under a lease of the whole or any part of any premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, in consequence of a claim notice given by the company in relation to the premises.

(2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only 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) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal

only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

(4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by the appropriate tribunal.”

The Principles

14. The Act confers rights on tenants of leasehold flats to acquire the Right to Manage their flats without the need to show any fault by their landlord. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising their statutory right should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made and in completing the formal steps required by the Act.
15. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees. Section 88 (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. Section 88(2) provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to surrender the right to manage and for tenants against being required to pay more than is reasonable.
16. Section 88(3) makes express provision where disputes arise over the Right to Manage. A RTM company is liable for the costs incurred by the landlord before the tribunal only if the tribunal dismisses the application.

The Tribunal's Determination

17. The sole issue in dispute is the claim for two sets of management fees of £300 + VAT. Eagerstates Limited have submitted two invoices, dated 25 April 2018:
 - (i) The 1st Invoice (at p.39) specifies work totalling 3.5 hours: (a) notifying the freeholder and solicitor that the notice had been served; (b) providing the solicitor with information on the property; (c) instructing the accounts and management teams to review the accounts and prepare for the transfer of management; and (d) meeting the freeholder to inform him of the ramifications of the TRM.
 - (ii) The 2nd Invoice (at p.41) merely refers to the “admin costs for assisting with dealings in front of FIT as per management agreement”. No time engaged is specified.

18. The Respondent suggest that the Applicant has not shown any agreement that entitles the managing agent to charge the landlord for RTM work. Further, the management agreement is invalid because:
- (a) It shows the wrong address for the property at Section 18. The Applicant responds that this is incorrect. It is apparent that the correct address is specified (see p.49).
 - (b) The agreement had expired as it was for the period of 12 months starting on 24 March 2017. The Applicant responds that this was the agreement that was relevant when the work was done. Further, a new agreement came into effect on 24 March 2018.
19. The Respondent complains that in correspondence, Scott Cohen have wrongly referred to the 2nd, rather than the 3rd edition, of the RICS Service Charges and Residential Management Code. This does not seem to be relevant as the current Code recommends “a ‘menu’ of charges for duties outside the scope of the annual fee”.
20. The Management Agreement (at p.43) is dated 15 February 2017. There is a basic management fee of £240 + VAT per flat for the services specified in Appendix 2. Appendix 3 specifies additional charges for work outside the scope of the annual fee. This includes “Providing any form of service to the client over and above the Management Agency agreement in relation to ... the Right to Manage...”. The charging basis is stated to be “Minimum £300 + VAT plus £150 + VAT per hour for court appearance”.
21. The Respondent takes a number of technical points relating to the invoices. The wrong address is specified. They are both dated after the expiry of the management agreement. The 2nd invoice has no number. These criticisms have no merit.
22. The Applicant refers to the Upper Tribunal in *Columbia House Properties (No.3) Ltd v Imperial Hall RTM Company Limited* [2014] UKUT 30 (LC) in which HHJ Alice Robinson held that managing agents may reasonably charge additional fees in respect of RTM applications.
23. The real issue is whether the sums claims are reasonable. The Respondent questions whether the work specified in the 1st invoice was done, given that the notice was invalid. The 2nd Invoice refers to “dealings in front of the FTT” when there was no hearing.
24. The Tribunal is satisfied that the managing agent was justified in charging an additional fee for the work on the RTM outside the scope of the annual fee. Albeit that the landlord had served a counter notice contending that the claim notice was invalid, the landlord was entitled to require the managing agent to take some steps in the eventuality that that contention failed. However, this is a case where there was a clear error in the claim notice. Once the RTM Company had issued the application to this Tribunal, it was largely a legal issue, namely the invalidity of the claim because it was

premised on the wrong address. In its 2nd Invoice, the managing agent has not specified what additional work it was required to do. It seems to have been no more than to reinforce the argument that the claim notice had specified the wrong address. Thereafter, it was a matter for the Solicitor. The Tribunal therefore restricts the costs of the managing agents to £300 + VAT.

25. Tribunal therefore allows the following costs:

(i) Solicitor's Fees of £1,234.74 (inclusive of VAT and disbursements of postage and Land Registry fees totalling £12.45);

(ii) Solicitor's Fees of £1,254.00 (inclusive of VAT) for time spent on proceedings before the FTT;

(iii) Management Fees of Eagerstates Limited in the sum of £300 + VAT for work undertaken both in response to the RTM claim notice and in connection with the Tribunal proceedings.

26. The Applicant applies for a refund of the fee of £100 that it has paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In the light of the above determinations, the Tribunal orders the Respondent to refund the fees of £100 paid by the Applicant within 28 days of the date of this decision.

**Judge Robert Latham,
13 November 2018**

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).