

416



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

Case Reference **MAN/30UF/LUS/2013/0002**

Property **1-12 Elizabeth Court and 19-24 Bailey Avenue,
Lytham St Annes**

Applicant **QMS (RTM) Management Company Ltd**

Respondent **QMS (Lytham) Management Company Ltd**

Type of Application **Section 94 Commonhold and Leasehold Reform
Act 2002**

Tribunal Members **Mr P A Barber, LL.B LLM
Ms J A Jacobs**

Date of Decision **23 September 2013**

DECISION

DECISION

The amount of accrued uncommitted service charge for the Property payable by the Respondent under s 94 of the Commonhold and Leasehold Reform Act 2004 is £1293.40.

Application

1. The Applicant seeks a determination under section 94 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) of the amount of accrued uncommitted service charges held by the Respondent as at 13 February 2013 in relation to 1 -12 Elizabeth Court and 27 February 2013 in relation to 19-24 Bailey Avenue.
2. It was not disputed that the Applicant acquired the right to manage 1 -12 Elizabeth Court and 19-24 Bailey Avenue. The parties have tried to agree the level of accrued uncommitted service charges payable as at the date of the above transfers and the present application arises as a result of the alleged failure by the Respondent to account to the Applicant for the monies held by it as at that date.

Directions

5. The Tribunal issued Directions on 18 April 2013. The Tribunal determined that this was a case which could be decided on a consideration of the papers without a hearing and so directed. In accordance with Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendments) (England) Regulations 2004 notice was given to the parties that:
 - (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 7 June 2013, and
 - (b) a hearing would be held if either party requested one before that date.

Neither party requested a hearing. Both parties submitted written representations which were considered by the Tribunal.

Submissions

6. The Submissions were provided to the tribunal and to each of the parties in two separate bundles. The Respondent provided a response to the application dated 9 May 2013 including a significant amount of financial information in the form of accounts and various service charge statements in respect of the leaseholder accounts. The Respondents view was that £11,127.96 was to be transferred to the Applicant as uncommitted service charges and £5791.06 in respect of reserves demanded – a total of £16,919.02. However this figure could not in any way be correct not least because uncollected service charges

cannot form part of the uncommitted service charges payable (see *OM Limited v New River Head RTM Company Ltd* [2010] UKUT 394).

7. The Applicant responded to the Respondent's response dated 21 May 2013 and indicated that about £7052.77 is due in uncommitted service charges having derived this figure from "documents and information previously sent" by the Respondent. The Applicant also provided a detailed schedule of payments and charges in support of this figure.
8. The Respondent responded to the Applicant's response by way of a further lengthy document containing various leases and further financial information. In this response it is indicated that £4182.87 has already been transferred to the Applicant by the Respondent. This sum represents the uncommitted reserve fund.

The Law

9. Section 94 of the Act states:-

- (1) Where the right to manage the premises is to be acquired by a RTM company, a person who is:-
 - (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as a 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,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

- (2) The amount of any accrued uncommitted service charges is the aggregate of -
 - (a) any sums which have been paid to the person by way of service charges in respect of the premises, and
 - (b) any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

- (3) He or the RTM company may make an application to a leasehold valuation tribunal to determine the amount of any payment which falls to be made under this section.

The Tribunal's Conclusion

10. The Tribunal was of the view that it had to see the bank account of the Respondent relating to the leasehold properties as at the time of the transfer held pursuant to sections 42 and 42A of the Landlord and Tenant Act 1987 as appropriate. We therefore asked for the bank accounts.
11. Unfortunately these accounts appear to represent the account of the whole of the estate so it did not turn into a relatively straight forward process of looking at the amount of money held in the bank account as uncommitted service charge contributions. Uncommitted service charge amounts are what they are described – payments made by the leaseholders by way of service charges held on account by the landlord (management company) and not currently committed to any relevant costs at the date of transfer. Ordinarily ascertaining this amount should be a straight forward process.
12. In the end the Tribunal had to make use of the available evidence in making a decision. The Parties had opted for a paper hearing and given the costs involved the Tribunal did not believe it was proportionate to hold an oral hearing in Manchester.
13. On the basis of all the available evidence we found as fact that we could rely to a significant extent on the table of payments produced by Mr Lavin at pages 7 – 9 of the Applicant's response. There are some discrepancies between this table and the service charge accounts provided which we have factored into our conclusion.
14. We determined that the total income up to year ending 31 December 2012 was £49,627.28 and the total expenditure to that date was £47,853.35. The surplus in the service charge account at the end of 2012 was therefore £1773.93. In 2013, a further £1652.30 was received in service charge payments. Added to the £1773.93 from 2012, this totals £3426.23.
15. The respondents state that they have expended £2132.83 during 2013 in service and maintenance costs which should be taken off of the £3426.23. There should therefore be £1293.40 remaining in the service charge account which is uncommitted.