



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

**Case reference** : LON/00AZ/LCP/2014/0001

**Property** : 37 Whatman Road, London SE23  
1EY

**Applicant** : Assethold Limited

**Representative** : Conway & Co Solicitors

**Respondent** : 37 Whatman Road RTM Company  
Limited

**Representative** : Canonbury Management

**Type of application** : Application to determine amount  
of costs payable by a RTM Company

**Tribunal member(s)** : Mr Jeremy Donegan (Tribunal  
Judge)  
Mr Richard Shaw FRICS (Valuer  
Member)

**Date and venue of  
paper hearing** : 30 April 2014 at 10 Alfred Place,  
London WC1E 7LR

**Date of decision** : 02 May 2014

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the costs payable by the Respondent to the Applicant are £1,627.50 plus VAT (£1,953 including VAT).

## **The application**

1. The Applicant seeks a determination of the amount of costs payable by the Respondent pursuant to section 88 (4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The Application relates to two Claim Notices served by the Respondent pursuant to section 79 of the 2002 Act.
2. The application was received by the tribunal on 31 December 2013 and directions were issued on 22 January and 13 March 2014. The most recent directions provided that the case be allocated to the paper track, to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 30 April 2014.
3. The Applicant filed a bundle of documents in accordance with the directions that included copies of the application, the directions, the statements of case and the relevant correspondence.
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

5. The Applicant is the freeholder of 37 Whatman Road, London SE23 1EY ("the Building"). The Building is a converted house containing two leasehold flats.
6. The Respondent is an RTM Company and the members of the Company are the leaseholders of the two flats in the Building.
7. On 31 March 2013 the Respondent served a Claim Notice on the Applicant, asserting their right to manage the Building. The Applicant contested the claim and the matter was referred to the tribunal under case reference LON/OOAZ/LRM/2013/0019. On 29 August 2013 the tribunal determined that the Claim Notice was invalid. It follows that the Respondent was not entitled to the right to manage the Building and the application was dismissed.

8. On 16 September 2013 the Respondent served a second Claim Notice on the Applicant. Again the Applicant contested the claim and the matter was referred to the tribunal under case reference LON/00AZ/LRM/2013/0028. On 03 March 2014 the tribunal determined that the Respondent was entitled to acquire the right to manage the Building.
9. This application concerns the costs payable by the Respondent in respect of the two Claim Notices. The Respondent was represented by Canonbury Management ("Canonbury") in relation to the right to manage claims and the two previous applications before the tribunal.

### **Evidence and submissions**

10. The Applicant's solicitors provided the tribunal with a detailed statement of case, dated 04 February 2014. Attached to the statement of case was a bundle of documents detailing the various costs being claimed. Canonbury responded to the statement of case in a letter to the Applicant's solicitors dated 04 April 2014, who then filed a statement of response dated 14 April 2014.
11. The costs being claimed by the Applicant are set out below:

#### **1<sup>st</sup> Claim Notice**

Legal fees - £363.75 plus VAT and disbursements of £3.60 plus VAT

Management fees - £800 plus VAT

#### **2<sup>nd</sup> Claim Notice**

Legal fees - £393.75 plus VAT and disbursements of £6.22 plus VAT

Management fees - £250 plus VAT

12. The points raised in Canonbury's letter of 04 April 2014 are set out, verbatim, below:

*1. Can you advise how much you have charged your client for the preparation of this application as opposed to simply provided our client with a copy of your invoice for the costs?*

*2. Can you explain why the second claim notice costs are broadly the same as the first? We would expect a significant reduction in time. There would be no need to check the company M&A, for example, on both occasions. Your firm and your client are familiar with the form of the claim notice and so there would be no need to check that on both*

*occasions, particularly since your client has received so many of these from our firm recently.*

*3. Can you explain and provide an itemised invoice for the management company's fees and how they came to £800. The hearing was around 20 minutes in duration.*

13. The costs of the current application are not being claimed from the Respondent, within the application. It follows that the only relevant costs submissions made by Canonbury are those set out at paragraphs 2 and 3 of their letter of 04 April 2014. A breakdown of the £800 fee charged by the Applicant's managing agents was to be found in their invoice dated 15 August 2013, which was attached to Applicant's statement of case. Further the tribunal hearing referred to at paragraph 3 related to the second (rather than the first) claim.
14. Canonbury did not take issue with the hourly rates charged by the Respondent's solicitors (£225ph) or managing agents (£100ph). Further they did not suggest that Respondent was unable to recover costs charged by the solicitors or managing agents in consequence of the Claim Notices. It follows that the only issues to be determined by the tribunal are whether the costs claimed were reasonably incurred.

### **The tribunal's decision**

15. In relation to the first Claim Notice the tribunal determines that the following costs are payable by the Respondent:

Legal fees - £363.75 plus VAT

Disbursements - Nil

Management fees - £620 plus VAT

### **Reasons for the tribunal's decision**

16. The total time claimed by the Applicant's solicitors for attending upon their client, perusing documents and routine correspondence amounts to 1 hour 37 minutes, which is entirely reasonable. The tribunal is satisfied that all of this work was undertaken in consequence of the first Claim Notice. It appears that Canonbury accept this, as they only challenge the solicitors' costs for the second Notice.
17. The disbursements of £3.60 plus VAT relate to printing costs, where the Applicant's solicitors were obliged to print off various electronic documents. These printing costs should be part of the solicitors' normal overheads and are disallowed.

18. The costs claimed by the managing agents on the first Claim Notice can be summarised as follows:

- Work relating to Counter-Notice – 1 hour
- Work relating to tribunal application – 2.5 hours
- Work relating to Applicant’s statement of case – 3 hours
- Work relating to response – 45 minutes
- Copying charges - £35
- Postage - £10
- 3 letters sent @ £12 each
- 3 letters received @ £8 each
- 4 telephone attendances @ £10 each

The total amount of the claim (time and disbursements) is actually £870 plus VAT but this has been reduced on the invoice dated 15 August 2013 to £800 plus VAT.

19. The tribunal considers that the time claimed in relation to the Counter-Notice was too high. This is a standard document that simply needed to be adapted to fit the particular facts of the case. The tribunal reduces the time claimed to 30 minutes, being the equivalent time claimed by Applicant’s solicitors for preparing the Counter-Notice on the second claim.

20. The Respondent is liable to pay the Applicant’s costs in connection with the tribunal application dealt with under case reference LON/00AZ/LRM/2013/0019 pursuant to section 88 (3) of the 2002 Act. The total time claimed by the Applicant’s managing agents, in relation to the application, is 6 hours 15 minutes. Again the tribunal considers that the time claimed is too high. The application was straightforward and was determined on paper. The tribunal reduces the total time to 5 hours.

21. The tribunal disallows the managing agents’ disbursements (photocopying of £35 and postage of £10) in full. These should be part of the agents’ normal overheads.

22. In relation to the correspondence, the tribunal allows the 3 letters sent but these should be charged at £10 each upon the basis that each letter is charged as a six minute unit. The letters received are disallowed upon the basis that routine letters in are not normally recoverable inter-partes. The Applicant has not provided any details of the letters received that would justify their recovery.
23. The tribunal allows the 4 telephone attendances at £10 each.
24. It follows that the total sum allowed for the managing agents' fees is £620 plus VAT, which is broken down as follows:
  - Work relating to Counter-Notice – 30 minutes @ £100 per hour (£50)
  - Work relating to tribunal proceedings – 5 hours @ £100 per hour (£500)
  - 3 letters sent @ £10 each - £30
  - 4 telephone attendances @ £10 each - £40

### **The tribunal's decision**

25. In relation to the second Claim Notice the tribunal determines that the following costs are payable by the Respondent:

Legal fees - £393.75 plus VAT

Disbursements - Nil

Management fees - £250 plus VAT

### **Reasons for the tribunal's decision**

26. The total time claimed by the Applicant's solicitors for attending upon their client, perusing documents, drafting and serving the counter-notice and routine correspondence amounts to 1 hour 45 minutes. Canonbury suggest that there was some duplication of work, as many of the documents relating to the second claim would already have been considered on the first claim. This is undoubtedly correct but there was a gap of approximately 6 months between service of the two Claim Notices and the Applicant's solicitors would have had to review the documents considered previously. The total time claimed for perusing documents is only 20 minutes compared with 50 minutes on the first claim. This is entirely reasonable, as is the time spent attending the

Applicant (20 minutes), preparing and serving the Counter-Notice (30 minutes) and on routine correspondence (30 minutes). The tribunal is satisfied that all of this work was undertaken in consequence of the second Claim Notice.

27. The disbursements of £6.22 relate to postage and are disallowed on the basis that this is a normal overhead.
  
28. The Applicant's managing agents have charged a fixed fee of £250 plus VAT for work relating to the second right to manage claim. This is in line with the tariff of additional charges appended to the management agreement. Details of the agents' time are set out in their invoice dated 03 December 2013. The total time claimed is 2 hours 35 minutes. Applying the agents' charging rate of £100 per hour would result in a fee of £255 plus VAT. The time claimed is entirely reasonable, given the need for the agents to advise the Applicant on the second Claim Notice and to then deal with the transfer of management to the RTM Company. Again the tribunal is satisfied that all of this work was undertaken in consequence of the second Claim Notice. It follows that the agents' fees are allowed in full.

**Name:       Jeremy Donegan                   Date:       02 May 2014**

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **Section 88 Costs: general**

- (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 the 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 the 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.