



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

Case Reference : LON/00AH/LCP/2016/0010

Property : 5 Troy Road, London SE19 3SU

Applicant : Patrick Jackson

Representative : Capulet Solicitors

Respondent : 5 Troy Road RTM Company Limited

Representative : Urban Owners Limited

Type of Application : Section 88 Commonhold and
Leasehold Reform Act 2002 –
determination of costs payable

Tribunal Members : Judge John Hewitt
Ms Marina Krisko BSC (EstMan)
FRICS

**Date and venue of
determination** : 11 January 2017
10 Alfred Place, London WC1E 7LR

Date of Decision : 12 January 2017

DECISION

Decisions of the tribunal

1. The tribunal determines that the costs payable by the respondent to the applicant pursuant to section 88 of the Act amount to £1,704.45 made up as shown in Appendix A attached to this decision.
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The applicant is the owner of the freehold interest in the Property. The Property comprises three self-contained flats. All three flats have been sold off on long leases.
4. The three long lessees sought to exercise the right to manage conferred by Part 2 Chapter 1 of the Act. The respondent served two notices pursuant to section 79 of the Act. The first was dated 11 March 2016 [4] and the second was dated 8 April 2016 [8]. Evidently there was a concern as to whether the first notice was correctly served on the applicant, hence the first notice was withdrawn and the second notice was sent to him at his home address. By a counter-notice dated 9 May 2016 the applicant admitted that on 8 April 2016 the respondent was entitled to acquire the right to manage.
5. Section 88 (1) of the Act provides that a RTM company is liable for the reasonable costs incurred by a person who is a landlord in consequence of a claim notice given by the company. Section 88 (2) provides:

“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.”

6. The applicant’s solicitors made a claim to costs of £2,874.45, broadly broken down as to:

Legal costs	£2,200.00
VAT	440.00
Expenses	<u>£ 234.45</u>
	£2,874.45

7. The respondent’s advisers accepted the amount of the expenses claimed but challenged some of the legal costs. Despite the exchange of correspondence the parties were unable to agree the amount of costs payable and so the applicant made an application to the tribunal for the amount of costs payable to be determined.

8. Directions were given. The parties were notified of the intention of the tribunal to determine the application on the basis of written submissions and without an oral hearing, unless a request for an oral hearing was made. The tribunal has not received any such request.
9. The tribunal has been provided with a bundle of submissions and correspondence upon which the parties wish to rely.
10. A breakdown of the costs claimed is at [17]. The respondent's submissions in answer and points of objection are at [32]. Each item of costs claimed had been given a reference letter by the respondent and we have adopted that reference letter on Appendix A. The applicant's reply is [41].

The issues and discussion

11. The attached Appendix A sets out the costs claimed by the applicant and the costs allowed by the tribunal. Appendix A is part of this decision.
12. The legal costs claimed are based on a charge-out rate of £250. In correspondence this rate was challenged. It is not challenged in the respondent's statement of case or points of objection. For avoidance of doubt we make it clear that we find the charge-out rate is a reasonable rate for a solicitor practising in Tolworth, Surrey and undertaking specialist work in this jurisdiction, which is not without its complexities.
13. Most of the challenges made are as to the amount of time claimed for. The applicant's solicitors appear to accept that at the outset the time claimed for is more than might usually be the case. They explain this on the basis that the applicant is a novice landlord with no experience of RTM and that it was necessary to provide a detailed explanation of the RTM scheme. That is understood to an extent. But the applicant may only recover costs 'reasonably' incurred. That concept is clarified by section 88(2) which we have cited above. Against that statutory background, we find that it is not reasonable for a novice landlord to be overly reliant on his solicitor for a detailed summary of the RTM scheme and would not pay for that himself, but instead such a landlord would seek clear and crisp advice at modest cost against which he would test against his own researches using the many materials available free online and from interest groups.
14. Against that background, we have given careful consideration to the amount of time claimed for. In some instances, the time claimed for appears to us unreasonable. We have identified this on Appendix A. By way of an illustration, at item k is a claim for three units (18 minutes) for sending a letter [39] which simply says:

"We enclose herewith Counter Notice. Please acknowledge receipt. Please be informed that as is his entitlement, our Client would like to become a member of the RTM Company.

Yours ...”

15. A further example is the counter-notice itself. The claim was for 12 units (1 hour 12 minutes). The respondent submits (and we agree) that it is a one page document containing mostly prescribed information. The respondent submitted that only 30 minutes was reasonable and justified. We have allowed 36 minutes (half of the time claimed) because that seems to us to be reasonable in all of the circumstances.
16. In the event, we have determined the costs payable at £1,704.45 as shown on Appendix A.

Penal costs

17. In paragraph 7 of the reply [44] the applicant makes reference to rule 13 and appears to claim costs of £1,225.00 [48]. Those costs appear to be associated with the current application before the tribunal.
18. First, we observe that the Act does not make express provision for payment of costs where a party had made or opposed an application made pursuant to section 88 of the Act. In the absence of such express provision the starting point in this tribunal, which is essentially a no costs tribunal, is that each party will bear its own costs of any section 88 application.
19. Secondly rule 13 makes two separate and distinct provisions. Rule 13(1)(a) applies to a ‘wasted costs’ order against a legal or other representative pursuant to section 29(4) Tribunals, Courts and Enforcement Act 2007. Rule 13(1)(b) applies where a costs order is sought against a party who has acted unreasonably in bringing, defending or conducting proceedings.
20. It is not clear against whom the applicant is seeking a costs order, but tacking a paragraph on the end of reply is not the correct way to make an application for a costs order under rule 13.
21. It is open to the applicant to make a rule 13 costs application but he must do so in proper form and within the time limits. However, the applicant may wish to consider *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander [and others]* [2016] UKUT 0290 (LC) in which the Upper Tribunal (Lands Chamber) gave guidance on the application of rule 13.
22. In the context of the current case, the respondent objected to some of the costs claimed by the applicant. The applicant exercised his statutory right to have the amount of costs payable determined by the tribunal. The respondent exercised its right to challenge some of the costs claimed. Some of the respondent’s challenges have been upheld and some not. Against that background, it is, at the moment, difficult to see how it can properly be said that the respondent or its legal or other representative has acted unreasonably.

Judge John Hewitt

12 January 2017

Item	Date	Brief Description	Units	Costs	Costs	Tribunal's Comments
R's SoC			Claimed	Claimed	Allowed	
a	04.04.16	Initial contact and advice	5	£ 125.00	£ 125.00	Not disputed by R
b	08.04.16	Attendance on client	10	£ 250.00	£ 150.00	Time claimed unreasonable
c	10.04.16	Liassing with managaing agents	6	£ 150.00	£ 100.00	Time claimed unreasonable
d	11.04.16	Ltr out to R	6	£ 150.00	£ 75.00	Ltr was in fairly standard form
e	13.04.16	Email exchange with R	2	£ 50.00	£ 50.00	
f	28.04.16	Advising on 2 notices	12	£ 300.00	£ 175.00	Time claimed unreasonable. Especially in light of time already claimed for
g	28.04.16	Ltr to R	2	£ 50.00	£ 50.00	Reasonably incurred
h	03.05.16	Email exchange with R	2	£ 50.00	£ 25.00	Ltr out only allowed
i	06.06.16	Prep counter-notice	12	£ 300.00	£ 150.00	Counter-notice was a simple template form
j	09.05.16	Ltr to managing agents	4	£ 100.00	£ 50.00	Time claimed unreasonable
k	09.05.16	Ltr to R	3	£ 75.00	£ 25.00	Short ltr serving the counter-notice
l	05.07.16	Ltr from R - s93 request	2	£ 50.00	£ 50.00	Not disputed by R
m	13.07.16	Ltr to managing agents	8	£ 200.00	£ 50.00	Most of the work arising was for the managing agents
n	18.07.16	Consider info from managing agents	4	£ 100.00	£ 100.00	Reasonably incurred
o	26.07.16	Advising client and ltr to R	10	£ 250.00	£ 50.00	No adequate supporting information was provided by A
		Sub-total		£ 2,200.00	£ 1,225.00	
		VAT @ 20%		£ 440.00	£ 245.00	
		Sub-total		£ 2,640.00	£ 1,470.00	
		Expenses				
		Land Registry fees		£ 33.00	£ 33.00	Not disputed by R
		Royal Mail		£ 21.45	£ 21.45	Not disputed by R
		Managing agents fees		£ 180.00	£ 180.00	Not disputed by R
		Totals		£ 2,874.45	£ 1,704.45	