



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

Case reference : **LON/00AU/LCP/2018/0007**

Property : **Various flats at 96 Tollington Way
London N7 6RY**

Applicant : **Assethold Limited**

Representative : **Scott Cohen solicitors**

Respondent : **96 Tollington Way (London) RTM
Company Limited**

Representative : **Prime Management (PS) Limited**

Type of application : **Application to determine costs to be
paid by an RTM company under**

Tribunal members : **Judge Pittaway**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **3 October 2018**

DECISION

Decisions of the tribunal

The tribunal determines that pursuant to section 88(4) Commonhold and Leasehold Reform Act 2002 (the “Act”) the following costs are payable by 96 Tollington Way (London) RTM Company Limited (the “RTM Company”)

1. Legal fees of £962.50 plus VAT
2. Disbursements of £6.45 plus VAT
3. Eagerstates’ fees of £350 plus VAT

The application

1. This is an application under section 88(4) of the Act to determine the amount of the applicant’s recoverable costs in connection with an application relating to (No Fault) Right to Manage.
2. The application was received by the tribunal on 17 July 2018 and directions issued on 30 July 2018 which required the applicant to provide a bundle of relevant documents, including the parties’ statements of case, which the applicant provided on 12 September 2018.
3. The directions contemplated that the matter would be dealt with on the documents received unless either party requested a hearing. Neither party did.

The law

4. Section 88 (1) provides that a RTM company is liable for the reasonable costs incurred by a landlord under a lease of the whole or part of the premises in consequence of a claim notice given by the company in relation to the premises.
5. Section 88(2) provides that any costs incurred by such person are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably have been expected to have been incurred by him if the circumstances were such that he was personally liable for them.
6. Section 88(4) provides that any question on the amount of the costs payable by a RTM company shall, in default of agreement, be determined by the appropriate tribunal; which in this instance is this tribunal.

The applicant’s case

7. The applicant provided a schedule of costs which included
 - (i) a breakdown of the time spent on the matter; and confirmed a charge out rate of £275 per hour

- (ii) Disbursements of £6.45 for Next Day Delivery of the counter notice
- (iii) Eagerstates' fees of £350 plus VAT for tasks carried out by the managing agents in addition to their standard management activities.

Supporting invoices were provided for both Scott Cohen's and Eagerstates' claimed costs.

8. In response the respondent accepted in the main the costs of Scott Cohen but sought that 66 minutes of time should be disallowed. This consisted of 42 minutes of time set against drafting the counter-notice and 24 minutes of "routine attendances" due to "Scott Cohen's own ofuscations".
9. Insofar as Eagerstates' costs were concerned the respondent submits that it was not aware of Eagerstates' involvement before it received the statement of case. It considers that the Eagerstates' invoice indicates unnecessary duplication of work, pointing to the invoice referring to it notifying the landlord of the claim (when the respondent submits it was in fact sent directly to the landlord) and advising on the ramifications of the RTM (which the respondent submits was a matter on which the solicitors, not managing agents should have been advising). The respondent seeks a reduction in Eagerstates' invoice from £350 plus VAT to £100 plus VAT.
10. In response to the respondent the applicant referred the tribunal to Columbia House Properties (no 3) Ltd v Imperial RTM Company Limited [2014] UKUT 0030 (LC) which upheld the recovery of a management fee as a professional fee in the context of a right to manage application. The respondent also reiterated that the work undertaken by the managing agents was non-standard management activities for which additional fees were charged.
11. As for the legal fees the applicant reiterated that these simply reflected the time spent on the matter by their solicitor. It submitted that the work described was reasonably required to investigate thoroughly whether the respondent was entitled to claim to a right to manage.
12. As for discounting the costs of preparing the counter-notice (because the RTM Company was successful in its challenge of it) it referred the tribunal to the legislation, submitting that it would unfairly penalise the landlord if it could only recover its costs when the RTM company was unsuccessful in its application to manage. They also submitted that the decision in Elim Court RTM Company v Avon Freeholds Limited [2017]EWCA Civ 89 created more uncertainty for landlords and that the safest course is for landlord to issue the counter notice to challenge the position so a clear determination might be obtained.

13. The applicant argued that a total of eight routine attendances was not exceptional and that the respondent's proposed reduction appeared arbitrary.
14. On Eagerstates' fees the applicant referred the tribunal to the management agreement under which Eagerstates manage the property for the applicant, Appendix 3 of which provides for a minimum charge of £350 plus VAT in relation to a RTM. The applicant asserted that the full fees should be paid and in particular referred the tribunal to its decision Assethold Limited v Kingswood Lodge RTM Company Limited LON/00AR/LCP/2015/001 in which the tribunal found £350 plus VAT to be a reasonable estimate for the work that might reasonably be involved from receipt of claim form and prior to any RTM acquisition.

The tribunal's decision and reasons for its decision

15. Having considered the statements and documents provided, the tribunal has made determinations on the costs at issue as follows;
16. The costs of preparing the counter-notice

The tribunal accepts the applicants' submission that it was not the intended effect of the legislation that any applicant who unsuccessfully disputed the validity of a right to manage application would not be entitled to recover the costs of preparing their relevant counter-notice. As the respondent's objection to the 42 minutes spent on the counter-notice was only that it should not have been drafted at all, and does not go to the length of time spent on such drafting the tribunal is not prepared to disallow the 42 minutes of the applicant's time.

17. The cost of routine attendances

The tribunal agree that the reduction in time sought by the respondent in respect of this item of costs is arbitrary. It does not consider 8 attendances to be unreasonable. It accepts that some of the attendances may have taken less than 6 minutes but it is clear from the documents before it (including the extract from the terms of appointment) that the applicant's solicitors work in no smaller unit and that therefore 48 minutes spent on attendances is reasonable.

18. Eagerstates' fees

19. The tribunal accept that a management fee may be recovered as a professional fee in the context of a right to manage application. It also accepts that the managing agents will have undertaken work that was non-standard management activities for which additional fees were charged. The respondent has challenged whether the managing agents unnecessarily duplicated work. The tribunal accepts that the description of the work they undertook as set out in the invoice may create that impression but are satisfied as to the applicant's explanation of what the managing agents did was not such a duplication.

20. The previous decision in *Assethold Limited v Kingswood Lodge RTM Company Limited* LON/00AR/LCP/2015/001 does not make the sum of £350 a reasonable sum of itself but the tribunal consider that the reduction requested by the respondent is also unsubstantiated. In the circumstances it has based its decision (that £350 may be recovered for additional management costs) on the inclusion of the provision in Appendix 3 of the management agreement which the applicant has with Eagerstates; on the basis that if this sum had not been recoverable from the RTM Company it would have been payable by the applicant under the terms of the agreement; and thus is a cost that it would have expected to meet if it had been personally liable for it.

Name: Judge Pittaway

Date: 3 October 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).