



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

Case Reference : **BIR/31UH/LCP/2019/0001**

Property : **33-37 Hollands Way, Kegworth, Derbyshire,
DE74 2GQ.**

Applicant : **Rowan Finance Limited**

**Applicant's
Representative** : **Estates and Management Limited**

Respondent : **33-37 Hollands Way RTM Company Limited**

**Respondent's
Representative** : **Unrepresented**

Type of Application : **An Application for costs pursuant to section 88-
89 Commonhold and Leasehold Reform Act
2002**

Date of determination : **21 May 2019**
**(Conducted without a
hearing)**

Tribunal Members : **Judge A McNamara
Mr G S Freckelton FRICS**

Date of Decision : **24 May 2019**

DECISION

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Background & Procedural History

1. This is the decision of the First-tier Tribunal (Property Chamber) (Residential Property) following an Application dated 22 January 2019 pursuant to Sections 88-89 Commonhold and Leasehold Reform Act 2002 (the Act) in respect of the costs arising from a Right to Manage Application first presented by the Respondent to the Applicant on 14 February 2018.
2. The Applicant is the Landlord of 33-37 Hollands Way, Kegworth, Derbyshire, DE74 2GQ (the Premises). It is represented by Estates and Management Limited.
3. The Respondent is a Right to Manage (RTM) Company which was incorporated in respect of the Premises pursuant to Chapter 1, Part 2 of the Act of 2002. It is unrepresented.
4. The procedural history is as follows:
 - 4.1. Directions were issued by the Tribunal upon receipt of the claim on 18 February 2019.
 - 4.2. The Respondent was required to file and serve its case by 22 March 2019. It failed to do so.
 - 4.3. Therefore, on 8 April 2019, the Tribunal varied the time for compliance to 23 April 2019. The Respondent failed to comply.
 - 4.4. The Tribunal contacted the Respondent on 24 March 2019 granting a further extension of 7 days in default of which the Tribunal would consider barring the Respondent from taking any further part in the proceedings. The Respondent failed to comply.
 - 4.5. On 2 May 2019, the Tribunal issued a direction requiring the Respondent to file its statement of case by 17 May 2019 failing which it would be barred. The Respondent failed to do so.
 - 4.6. On 20 May 2019, the Tribunal directed that the Respondent is barred from taking any further part in proceedings.
5. Accordingly, there is no response to the application.

The Law

6. The relevant sections of the Act of 2002 provide:

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 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].

89. Costs where claim ceases

(1) This section applies where a claim notice given by a RTM company—

(a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or

(b) at any time ceases to have effect by reason of any other provision of this Chapter.

(2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.

(3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).

(4) But subsection (3) does not make a person liable if—

(a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and

(b) that other person has become a member of the RTM company.

(5) The reference in subsection (4) to an assignment includes—

(a) an assent by personal representatives, and

(b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).

The Tribunal's Deliberations

7. The application was, at the request of the Applicant, dealt with on paper; since it relates to costs only a site visit would have been entirely superfluous.
8. The chronology, taken from the Applicant's submissions with the exception of 8.10, appears to be as follows:
 - 8.1. On 14 February 2018, the Respondent gave Notice (First Notice) to the Applicant that it sought the right to manage the premises;
 - 8.2. On 13 March 2018, the Applicant served a Counter Notice objecting to the Respondent's First Notice;
 - 8.3. On 24 April 2018, the Respondent withdrew the First Notice;
 - 8.4. On 1 May 2018, the Applicant sent to the Respondent an invoice of £339 in respect of the costs of dealing with the First Notice;
 - 8.5. On 17 May 2018, once again the Respondent gave Notice (Second Notice) to the Applicant that it sought the right to manage the premises;
 - 8.6. On 18 June 2018, the Applicant served a Counter Notice admitting the right to manage claim; re-sent the invoice seeking £339; and served a second invoice dealing with the costs of administering the Second Notice in the sum of £220.
 - 8.7. By letter dated 20 July 2018 the Applicant chased payment of the outstanding sums, allowing a further 14 days for payment;
 - 8.8. By further letter dated 12 September 2018, the Applicant chased payment once again, allowing a further 7 days for payment failing which application would be made to this Tribunal for consideration of the costs/fees;
 - 8.9. On 13 November 2018, the Applicant sent a draft Application to the Respondent and allowed a further 14 days for payment;
 - 8.10. No such payment has been made;
 - 8.11. In accordance with the directions of the Tribunal, the Applicant has provided an itemised schedule demonstrating the breakdown of its costs.
9. The Schedule of costs amounts to a total of £659 made up of 2½ hours of solicitors' time at £220 per hour (£550); plus the application fee of £100; and copying charges of £9.

The decision

10. It is the Tribunal's decision that the time taken is entirely reasonable and proportionate and allows the costs sought in full.
11. Therefore, the Tribunal grants the Application and directs that the sum of £659 is payable by the Respondent.
12. Other than allowing £100 in respect of the Application fee, this decision makes no order in respect of any of the costs of and occasioned by the Applicant in bringing this application.
13. In the event that the Applicant were to seek an Order for any of the costs ancillary to this application, the Tribunal directs that any such application, supported by a Schedule of any costs incurred, must be served and filed by 28 days from the date of this decision. That is, by 4.00 p.m. on 18 June 2019.

Appeal

14. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after the date this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Judge A McNamara
G Freckelton FRICS