



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

Case reference : **LON/00BH/LCP/2019/0009**

Property : **Portunus Building, 6 Gernon Road,
London E3 5FG**

Applicant : **Assethold Limited**

Respondent : **Portunus Building (London) RTM
Company Limited**

Type of application : **Right to Manage – costs under
section 88(4) Commonhold and
Leasehold Reform Act 2002**

Tribunal member : **Judge P Korn
Mr C Gowman MCIEH**

Date of decision : **3rd September 2019**

DECISION

Decision of the tribunal

- (1) The tribunal determines that costs of £1,642.80 are recoverable by the Applicant from the Respondent under section 88 of the Commonhold and Leasehold Reform Act 2002 (“CLARA”).
- (2) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Respondent is ordered to reimburse to the Applicant the £100.00 application fee.

The application

1. The Applicant seeks a determination under section 88(4) of CLARA as to the costs payable to the Applicant by the Respondent in relation to a claim for right to manage by the Respondent in respect of the Property.

Paper determination

2. In its application the Applicant stated that it would be content with a paper determination. In its directions the tribunal stated that it would deal with the case without an oral hearing unless either party requested a hearing. Neither party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Applicant’s case

3. The Applicant is the landlord of the Property. The Respondent served a claim notice on the Applicant claiming the right to manage in relation to the Property. The Applicant’s solicitors took instructions from the Applicant, considered the claim notice and other relevant documentation and information, prepared a counter-notice and engaged with the Respondent and engaged further with the Applicant. In addition, the Applicant’s agents (Eagerstates Ltd) were instructed to carry out tasks arising out of the receipt of the RTM claim notice which went beyond standard management activities and for which it charged a fee of £400 + VAT (which is included in the £1,642.80 being claimed).
4. The Applicant has included in its written submissions a breakdown of the work undertaken and the time taken to carry out each task and details of the solicitor’s hourly rates, together with details of the disbursements. It has also included copy invoices.
5. In addition, the Applicant has made written submissions on the legal issues arising in relation to its claim.

No response from the Respondent

6. The Respondent has not made any submissions in response to the application. The Applicant has provided copy email correspondence in which the Respondent's agent has stated that the Respondent is prepared to pay £500.00. However, the agent has not provided any explanation as to why the Respondent considers that no more than £500.00 is properly payable other than a simple assertion that minimal work was required.

The relevant legal provisions

7. Section 88 of CLARA provides as follows:-

(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.

Tribunal's decision

8. The Applicant has provided a clear breakdown of costs, including details of work done, the hourly rate and grade of the solicitor involved and details of disbursements. It has also provided an explanation of the additional management charge by Eagerstates Ltd.
9. Despite having had the opportunity to do so, the Respondent has made no submissions whatsoever. We only know from the copy correspondence provided by the Applicant that the Respondent has stated that no more than £500.00 is payable, but that statement is a mere assertion without explanation or justification. In particular, the Respondent has not made any reasoned objection to any particular aspect of the costs claimed, let alone offered any evidence of its own in support of its position.
10. In the absence of any challenge from the Respondent (other than the bald assertion referred to above) and having considered the Applicant's written evidence in the light of the relevant statutory provisions, we consider that the costs claimed by the Applicant pursuant to this application are reasonable in amount, recoverable under section 88 of CLARA and payable in full.

Costs

11. The Applicant also seeks the reimbursement of its £100.00 application fee pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which states that "*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor*".
12. The Respondent has had ample opportunity to engage with this process but has seemingly chosen not to do so, despite receiving chasing letters from the Applicant. Its eventual response to the Applicant merely contained an assertion, and the Respondent has neither complied with the tribunal's directions nor provided an explanation for its failure to do so. In addition, the Applicant has been wholly successful in its application under section 88(4) of CLARA. Accordingly, we consider it appropriate to order the Respondent to reimburse to the Applicant its application fee of £100.00.

Name: Judge P Korn

Date: 3rd September 2019

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.