



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

**Case reference** : **CAM/26UK/LUS/2022/0001**

**Property** : **Sutton Court, 120 Sutton Road,  
Watford WD17 2QQ**

**Applicant** : **Sutton Court RTM Company  
Limited**

**Representative** : **Denice Golend**

**Respondents** : **1. Freehold Properties 23 Limited  
2. Red Rock Estate & Property  
Management Limited**

**Representatives** : **1. Stevensons Solicitors  
2. Adrian Calver**

**Type of application** : **Rule 13 costs application relating to  
application under section 94(3)**

**Tribunal members** : **Judge K. Seward  
Mr G.F. Smith MRICS FAAV**

**Date of hearing** : **31 May 2023**

**Date of decision** : **28 June 2023**

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**DECISION AND REASONS**

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## **Decision of the tribunal**

**The Tribunal orders under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondents shall reimburse to the Applicant the application fee of £100 within 28 days of the date this Decision**

## **Background**

1. The applicant acquired the right to manage the property at Sutton Court on 30 July 2022. By application to the Tribunal dated 14 November 2022, the applicant sought a determination under section 94(3) of the Commonhold and Leasehold Reform Act 2002 of the amount of any accrued uncommitted service charge held by the landlord of the premises on the acquisition date.
2. As part of the application, information was sought from Red Rock (the second Respondent) who managed the property on behalf of the freeholder (the first Respondent).
3. Following submission of the application, Red Rock provided extensive information to the new managing agents. The Respondents' position was that there are no uncommitted service charges, and the account is, in fact, in debit. The Applicant's representative, Ms Golend, confirmed that the leaseholders wished to challenge a number of service charges, and the Tribunal confirmed that a separate application would need to be issued for a determination as to their payability under section 27A of the Landlord and Tenant Act 1985.
4. The Tribunal issued directions on 23 January 2023 requiring Red Rock to provide: (a) copy bank account statements from 1 December 2012 to 31 December 2022 showing all transactions in respect of the property; (b) all purchase invoices for the service charge year 2022; (c) a statement explaining the movements on the account during the relevant period and, in particular, Red Rock must identify which sums (if any) it accepts are due to the Applicant and any service charges which are committed and therefore not payable to the Applicant under section 94(3); and (d) any witness statements of fact.
5. The section 27A application was made on 30 January 2023 and consolidated to be heard with the section 94(3) application by further directions issued on 17 February 2023.
6. A remote hearing, consented to by the parties, took place on 31 May 2023.

## **Reasons**

7. At the hearing the Applicant confirmed that following the production of information by Red Rock, the section 94(3) application had fallen away except for the question of costs.
8. There was no schedule of costs within the hearing bundle. The Applicant's representative, Ms Golend, confirmed that no costs had been incurred by the Applicant by way of professional advice or assistance. Ms Golend explained that besides the Tribunal fee, costs had been incurred for items such as stationery, printing and postage.
9. Under Rule 13(1) of the Tribunal Procedure Rules 2013 an order for costs can only be made if a person has acted unreasonably in bringing, defending or conducting proceedings. After the Tribunal flagged up this limited provision for costs, Ms Golend confirmed that the Applicant does not claim either Respondent acted unreasonably in defending or conducting the proceedings and so the application is not pursued for costs. The Applicant does seek reimbursement of the £100 Tribunal application fee. Pursuant to Rule 13(2), the Tribunal has discretion to make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid.
10. It is the Applicant's case that information on the accounts was requested from Red Rock many times from June/July 2022. The Tribunal application was brought to secure the information. Whilst information was provided once the application was made, there were insufficient bank statements and purchase orders for 2022. It was only after the Tribunal had ordered their production that the Applicant had the information sought.
11. At the hearing, the Respondents were invited to respond to the application for reimbursement of the Tribunal fee. The Respondents disputed the application. In essence, they say that the section 94(3) application was premature. It is the Respondents' position that the Applicant had been told categorically that the service charge account was in arrears in emails of 8 and 12 September 2022. Unless the Applicant was thinking that fraud had been committed (for which there is no suggestion) it was clear that there were no uncommitted funds.
12. Red Rock had confirmed by email to Ms Golend on 8 September 2022 that various documents had been shared with the new agent including service charge accounts for 2021. The email confirmed there were no funds to hand over and invoices were outstanding requiring payment.
13. The email of 8 September asked Ms Golend if she would prefer Red Rock to collect the arrears, the deficit within the account and to pay invoices before handing over the residual funds. Ms Golend accepted

that she had not explicitly responded to this query which was repeated in a further email from Red Rock on 12 September 2022. The Respondents asserted that they had been trying to ascertain the Applicant's position on this issue and if Ms Golend had responded then the accounts would have been crystallized and handed over. They suggested there was nothing more that Red Rock could possibly do.

14. Ms Golend had sent a letter dated 14 September 2022 to Red Rock to say that the statement in their email of 12 September that "there are currently no uncommitted funds" had not been substantiated. The letter identified missing information "to enable us to make informed decisions". Details were requested of purchase invoices, payments made, bank statements and information relating to outstanding creditors at the year end 2021 and 30 July 2022.
15. The Tribunal notes that the email from Red Rock of 8 September 2022 specified: "*Over the coming 3 months which takes us to the end of October 2022 we will upload the remaining information relating to the financial handover and concluding the handover.*" There is clearly an anomaly over the dates with reference to both 3 months and the end of October, but the email indicates that outstanding information would be forwarded by end of October 2022. This did not occur. Indeed, Mr Calver accepted that Red Rock was 3 weeks late in providing information.
16. The Tribunal is not satisfied with the explanation for the delay. Irrespective of the unanswered question over whether Red Rock should pursue the collection of arrears, it no longer managed the property with effect from 30 July 2022. There was no reason to withhold information relating to the accounts and it is irrelevant whether or not the Applicant had enough information to manage the property.
17. Written assurances that there were no funds to hand over did not suffice. The Applicant could not be properly satisfied of the position until all relevant information was produced for review.
18. Ultimately, it was not until the section 94(3) application was made and directions were issued that the matter was resolved. In the circumstances, the Tribunal considers it appropriate to exercise its discretion to require the Respondents to reimburse the Applicant's Tribunal fee of £100 which could have been avoided had information been forthcoming earlier. Given that Red Rock acted as agent for the freeholder, the Order is made against both Respondents.

**Name: Judge K. Seward**

**Date: 28 June 2023**

## **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).