



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

**Case reference** : **LON/00AX/LUS/2023/0003**

**Property** : **23 Fassett Road, Kingston Upon Thames,  
London KT1 2TD**

**Applicant** : **Kingston Independent RTM Company  
Limited**

**Representative** : **Amy Cuthbert**

**Respondent** : **Assethold Limited**

**Representative** : **Eagerstates Limited**

**Type of application** : **To determine the amount of any accrued  
uncommitted service charges to be paid  
under section s.94(3) of the Commonhold  
and Leasehold Reform Act 2002**

**Tribunal member(s)** : **Judge Hansen, Ms Phillips MRICS**

**Date of directions** : **10 November 2023**

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**DECISION**

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Determination

The amount of accrued uncommitted service charges held by the Respondent on 5 February 2023 which it is liable to pay to the Applicant pursuant to s.94 of the Commonhold and Leasehold Reform Act 2002 is £10,212.19. This sum is payable within 14 days from today.

## REASONS

1. This is an application under s.94(3) of the Commonhold and Leasehold Reform Act.
2. Section 94 of the CLRA provides as follows:

### *Duty to pay accrued uncommitted service charges*

*(1) Where the right to manage premises is to be acquired by a RTM company, a person who is (a) landlord under a lease of the whole or any part of 2 the premises ... must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.*

*(2) The amount of any accrued uncommitted service charges is the aggregate of— (a) any sums which have been paid to the person by way of service charges in respect of the premises, and (b) any investments which represent such sums (and any income which has accrued on them), less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.*

*(3) He or the RTM company may make an application to [tribunal] to determine the amount of any payment which falls to be made under this section.*

*(4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.*

3. Valuable guidance on the proper approach to the jurisdiction under s.94 was provided by HHJ Mole KC in *OM Ltd v. New River Head RTM Ltd* [2010] UKUT 394 (LC), in particular at [21]-[26], and we have applied that approach in coming to our conclusions.

## The Application

4. The Respondent to these proceedings is Assethold Limited. Whilst the application raised an issue as to the identity of the landlord, Eagerstates Limited (as managing agents) have filed a Statement of Case in response to this application which identified Assethold Limited as the landlord, including an estimated service charge account for the period

January-December 2023 which identifies Assethold Limited as the landlord pursuant to the obligation in section 47(1) of the Landlord and Tenant Act 1987. We therefore proceed on the basis that Assethold Limited is the appropriate Respondent to this application. The service charge year begins on 1 January.

5. The application relates to 22 Fassett Road, Kingston-upon-Thames, KT1 2TD, a building containing 5 flats. The Applicant is an RTM company which is the no-fault manager of the building. The acquisition date was 5 February 2023.
6. This application concerns payments of service charges, made to the Respondent prior to the date of acquisition, which were not required to be used by the respondent to meet any costs incurred before the acquisition date. The Respondent is under an obligation to pay over accrued uncommitted service charges as at 5 February 2023.
7. By an application dated 18 June 2023, the Applicant made an application to the tribunal to determine the amount of any payment which fell due under s.94.
8. On 10 August 2023 Judge Dutton directed the Respondent to file and serve "*a full reply to the application, including copies of the following:*
  - (a) *Service charge accounts for the past 3 years;*
  - (b) *A full summary of the service charge account as at the date the applicant became entitled to the right to manage, including full details of the amount held;*
  - (c) *Details of any reserve funds;*
  - (d) *Details of any monies held on account which have not been expended;*
  - (e) *Bank account statements for the 12-month period pre-dating the right to manage;*
  - (f) *All relevant correspondence*
  - (g) *A statement setting out any legal submissions the respondent wishes to make. In particular the respondent must identify which sums it accepts are due to the applicant; and any service charges which the respondent says are committed and therefore not payable to the applicant under section 94(3) with full reasons why.*

9. He further directed that "*This shall stand as the respondent's case*" and made it clear that "*All documents must be attached*".

10. In fact, the Respondent has only complied with these directions to a very limited extent. It has provided: i) a service charge account for the 2022 service charge year; ii) an estimated service charge account for the service charge year 2023; and iii) a document entitled "Internal Expenses" which appears to suggest that £9,653.26 was expended in the period "December 2022 – handover". A number of important directions have not been complied with, including (b), (d), (e) and (g). An extension of time was granted for the provision of this information until 7 September 2023 and the other directions were consequentially pushed back. The limited information that was provided by the respondent is undated but was received by the Applicant on 12 September 2023. The Applicant replied on 28 September 2023, making the point that it seemed surprising that the respondent had expended 69% of the total estimated budget (£9,653.26 out of £14,016.66) in the first 5 weeks of the year as well as making the point that the respondent's statement of case did not comply with the directions referred to above. In the circumstances the Applicant made it clear that it did not accept the Respondent's figures. The Respondent sought an extension of time in which to file its reply but this request was refused by the Tribunal. In the event, no further documentation has been provided to comply with the above directions, no reply from the Respondent was served and no witness statement has been filed by the Respondent. Further, the respondent did not attend today and was not represented. There was nothing to suggest that it was not on notice of today's hearing so we proceeded in their absence.

#### Discussion

11. The relevant service charge year with which we are concerned is 1 January 2023 to 31 December 2023. As already stated the acquisition date is 5 February 2023. We are therefore concerned with the accrued uncommitted service charges held by the respondent as at 5 February 2023. The Respondent did provide an estimated service charge account for the year totalling £14,016.66 as follows:

Insurance - £4,484.66  
Common parts electricity - £2,500  
Common parts cleaning - £650.00  
Window cleaning - £400.00  
Fire Health & Safety Training, Services and Repairs - £850.00  
Gardening - £100.00  
Gutter Cleaning – £250.00  
Accountant fee - £510.00  
Management fee January-December 2022 - £1,572  
Repair Fund (if needed) - £2,000  
Total - £14,016.66

12. The Respondent also provided, as noted above, an "internal expenses" document which, although unexplained by the Respondent and dated "December 2022 – handover", we have treated as purporting to be a record of what sums, referable to the service charge year 2023, were expended up to the acquisition date. The relevant figures are as follows:

Insurance - £2,966.88  
Common parts cleaning and gardening - £364.92  
Common parts electricity - £1,330.46  
Window Cleaning - £120.00  
FHS - £192.00  
Various repairs - £,1400  
Gutter Cleaning – £246.00  
Electrical survey - £1,680  
Handover fee - £600.00  
Accounts fee - £360.00  
Management fee - £393.00  
Total - £9,653.26

13. Taking the two documents together at face value, they would tend to suggest that the sum of £4,363.40 is due to the Applicant pursuant to s.94. But the list above is just a list of purported payments. It will be appreciated from what has been said above that there is no evidence that these payments have in fact been incurred or are otherwise committed (no witness statements in support were made and there is no supporting documentation or bank statement). This is an area where the tribunal expects full transparency, and the directions referred to above were given to ensure that all the relevant information was provided to the tribunal and the Applicant. We note too the notice under s.93 CLRA which was served by the Applicant on 14 March 2023 to which there was no response. In the event, the respondent has not complied with the directions, nor its statutory duty under s.93, and the tribunal has had to do its best on the limited information available, but with the assistance of Ms Cuthbert, a director of the Applicant, who attended today and gave evidence in support of the application.

14. The amount of service charges paid to the Respondent by the lessees amounts to £14,016.66. There is no dispute about this figure. However, the Respondent's figure of £9,653.26 is not accepted by the Applicant. Ms Cuthbert, based on her inquiries, accepted that the building was insured and she therefore accepted the figure of £2,966.88. She also accepted that there would have been money spent on common parts electricity and common parts cleaning and gardening and invited us to use a pro rata figure representing 36 days in 2023, i.e. 1 January 2023 to the acquisition date of 5 February 2023. She did not accept any of the other items and said that she and her fellow lessees were not aware of window cleaning, fire health and safety testing, repairs, gutter cleaning, or electrical surveys. We accept this evidence and absent any proper evidence to support these items, we find that that these charges have not been incurred. There is also no evidence to support the handover fee. In addition to the items which Ms Cuthbert accepted, at least on a pro rata basis, we have also allowed a pro rata figure for the management fee and have accepted the accounts fee in full because clearly this work had to be done and was done.

15. Applying the reasoning set out above, and emphasizing the fact that this is not a question of reasonableness but a question of fact, we deduct (as incurred or committed charges) the following from the figure of £14,016.66 paid over:

Insurance - £2,966.88

Common parts cleaning and gardening - £73.97 (36/365 x £750)

Common parts electricity - £246.58 (36/365 x £2,500)

Window Cleaning - £0

FHS - £0

Various repairs - £0

Gutter Cleaning – £0

Electrical survey - £0

Handover fee - £0

Accounts fee - £360.00

Management fee - £155.04 (36/365 x £1,572)

Total - £3,802.47

16. There is simply no evidence before the tribunal that the Respondent has incurred or is otherwise committed to pay anything more than the above sum of £3,802.47. In the circumstances, the resultant figure which the Respondent is liable to pay the Applicant is £10,212.19. This should be paid within 14 days.

Judge Hansen

10 November 2023