



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

Case reference : LON/00AX/LCP/2023/0013

Property : Bramshott Lodge, 18a South Bank,
Surbiton, Surrey KT6 6DB

Applicant : Assethold Limited

Representative : Scott Cohen Solicitors Limited

Respondent : Bramshott Lodge RTM Company
Limited

Representative : Affinity Property Services

Type of application : Determination of costs under section
88(4) of the Commonhold and
Leasehold Reform Act 2002

**Tribunal
member(s)** : Judge J P Donegan

Date of decision : 17 July 2024

DECISION

Decisions of the Tribunal

- A. The following costs are payable by the respondent to the applicant under section 88(1) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'):**
- **Legal costs relating to the claim notice dated 27 January 2020 - £1,320 (including VAT)**
 - **Management fees relating to the claim notice dated 27 January 2020 - £288 (including VAT)**

- **Legal costs relating to the claim notice dated 04 September 2020 - £792 (including VAT)**
- **Management fees relating to the claim notice dated 04 September 2020 - £288 (including VAT).**

B. The respondent shall reimburse the sum of £100 (One Hundred Pounds) to the applicant, being the Tribunal application fee, by 5:00pm on 31 July 2024.

The background and procedural history

1. The application concerns right to manage ('RTM') claims for Bramshott Lodge, 18a South Bank, Surbiton, Surrey KT6 9DB ('the Property'), which comprises four leasehold flats. The applicant is the freeholder, and the respondent is a RTM company formed by the leaseholders.
2. The applicant is represented by Scott Cohen Solicitors Limited ('SCSL'). The respondent was represented by Canonbury Management on the RTM claims but is now represented by their managing agents, Affinity Property Services ('APS').
3. The respondent originally served a claim notice on the applicant dated 27 January 2020, claiming RTM for the Property pursuant to section 79 of the 2002 Act.
4. The applicant served a negative counter-notice dated 27 February 2020, alleging the respondent had failed to establish compliance with sections 80(5), (8) and (9).
5. The respondent subsequently submitted a Tribunal application, seeking a determination it was entitled to RTM, pursuant to section 84(3) ('the Original Tribunal Proceedings'). A preliminary issue arose as to whether a valid application had been made in time. In a decision dated 04 September 2020, Deputy Regional Judge Sheftel found in favour of the applicant and determined the Tribunal did not have jurisdiction.
6. The respondent then served a second claim notice on the applicant dated 23 September 2020. It is unclear if the applicant served a counter-notice, but the respondent acquired the RTM on 02 February 2021. Prior to the acquisition date the Property was managed by Eagerstates Limited ('EL'), on behalf of the applicant.
7. The parties failed to agree the costs payable to the applicant in consequence of the two claim notices. The applicant lodged an application to determine these costs on 19 September 2023, pursuant to section 88(4) of the 2002 Act ('the Costs Application'). The Tribunal issued directions on 22 November 2023. It appears these were not

delivered to the applicant and revised directions were issued on 24 April 2024. These included provision for a paper determination, which neither party has objected to.

8. The applicant claims the following costs:
 - SCSL’s legal costs for the first claim notice - £1,100 plus VAT and disbursements of £7.92
 - EL’s management fees for the first claim notice - £300 plus VAT
 - SCSL’s legal costs for the second claim notice - £660 plus VAT
 - EL’s management fees for the second claim notice - £400 plus VAT
9. The paper determination of the Costs Application took place on 16 July 2024. The applicant filed a 279-page bundle of documents in accordance with the directions. This included copies of the claim notices, the counter-notice on the first claim, SCSL’s costs statements, an invoice from EL the parties’ statements of case and supporting bundles, authorities and various other documents. The Tribunal considered everything in the bundle when making its decision.
10. The relevant legal provisions are set out in the appendix to this decision.

The parties’ submissions

11. The respondent relies on a statement of case dated 04 June 2024 and a bundle of supporting documents. They dispute the applicant’s costs on the following grounds:
 - (a) They believe some or all these costs have already been paid from the service charge fund.
 - (b) The applicant has failed to supply handover documents or information since the RTM acquisition date, despite various requests.
 - (c) They cannot check if any of these costs have been paid from the service charge fund without the handover documents/information.
 - (d) The documents they have received include an invoice from SCSL dated 02 October 2020 for £1,815 (including VAT), which is marked “paid”.
 - (e) All costs after 12 February 2021 have been incurred unnecessarily, due to the applicant’s failure to supply handover documents/information.
12. The applicant relies on a statement of case dated 19 June 2024 and supporting bundle. In brief, they contend:
 - (a) The respondent has not commented on the quantum of the applicant’s costs, or the breakdown provided.

- (b) SCSL's invoice dated 02 October 2020 relates solely to the Original Tribunal Proceedings, rather than the claim notices and this has been explained to the respondent.
 - (c) SCSL and EL's costs in connection with the claim notices are payable under section 88(1) of the Act and the amounts claimed are reasonable.
 - (d) The applicant's costs have not increased since 12 February 2021. The only item claimed for the subsequent period is the Tribunal application fee.
13. The applicant's statement of case also includes a breakdown of SCSL's time spent investigating and dealing with two claim notices.

Discussion and findings

14. The applicant is the landlord under the flat leases. This means the respondent is liable for reasonable costs incurred by the applicant in consequence of the two claim notices (section 88(1)(a) of the 2002 Act).
15. The Tribunal accepts that SCSL's invoice dated 02 October 2020 relates solely to the Original Tribunal Proceedings, rather than the claim notices. The costs relating to the claim notices are payable separately. There is no duplication.
16. The respondent has not commented on quantum or challenged the level of the applicant's costs. To the contrary, their managing agents (APS) said the costs "*appear reasonable*" in an email to SCSL dated 15 January 2021.
17. I have studied SCSL's costs statements and breakdown. All work was undertaken by Miss Scott, who is a Grade A fee earner. The nature of the case justifies this level of seniority. Ms Scott's charging rate is £275 per hour plus VAT, which is reasonable as is the time claimed for investigating and dealing with both claim notices. Her costs for the second notice are much lower than those on the second notice, as I would expect. I allow SCSL's costs in full. I disallow the disbursement on the first claim notice (£7.92), being postage for next day delivery of the counter-notice as postage costs are an office overhead and should not be charged separately.
18. The sums allowed for SCSL's costs are £1,100 plus VAT on the first notice (£1,320) and £660 plus VAT on the second notice (£792).
19. Managing Agents' fees for dealing with claim notices can, potentially, be claimed under section 88(1) (see Upper Tribunal's decision in ***Columbia House Properties (No. 3) Limited v Imperial Hall RTM Company Limited [2014] UKUT 0030 (LC)***) but must be

reasonable. The determination bundle includes one invoice from EL, dated 13 February 2024 for £400 plus VAT. Given the amount, this must relate to the second claim notice. The invoice gives a breakdown of EL's time, which totals 5 hours. Presumably their charging rate is £80 per hour, which is reasonable. The time claimed is high and exceeds SCSL'S time on either notice. I allow £240 plus VAT (£288), representing 3 hours at £80 per hour.

20. The bundle does not include an invoice, or any time breakdown, for EL's work on the first notice. I allow the same amount as that for the second notice (£288 inclusive).
21. I note the respondent's complaint about missing handover documents/information. They may wish to seek legal advice on any remedies available to them.
22. The Costs Application has been largely successful. For this reason, I order reimbursement of Tribunal application fee, pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules. The respondent must reimburse the £100 fee within 14 days of the date of this decision.

Name: Tribunal Judge Donegan **Date:** 17 July 2024

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 79 Notice of claim to acquire right

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which the notice is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (6) The claim notice must be given to each person who on the relevant date is –
 - (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (referred to in this Part as “the 1987 Act”) to act in relation to the premises or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.

Section 84 Counter-notices

- (1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this chapter as a

“counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

- (2) A counter-notice is a notice containing a statement either –
 - (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
 - (b) alleging that, by reason of specified provisions of this Chapter, the RTM company was on that date not so entitled,and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.
- (3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
- (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
- (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless –
 - (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
 - (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.
- (6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.
- (7) A determination on an application under subsection (3) becomes final –
 - (a) if not appealed against, at the end of the period for bringing an appeal, or
 - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (8) An appeal is disposed of –

- (a) if it is determined and the period for bringing any further appeal has ended, or
- (b) if it is abandoned or otherwise ceases to have effect.

Section 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 a landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 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 a 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 any amount of any costs payable by a RTM company shall, in default of agreement, be determined by the appropriate tribunal.

Section 89 Costs where claim ceases

- (1) This section applies where a claim notice given by an RTM company –
 - (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provisions 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 section (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.

Section 112 Definitions

...

- (2) In this Chapter “lease” and “tenancy” have the same meaning and both expressions include (where the context permits) –
 - (a) a sub-lease or sub-tenancy, and
 - (b) an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy),but do not include a tenancy or will or at sufferance.
- (3) The expressions “landlord” and “tenant” and references to letting, to the grant of a lease or to covenants or to terms of a lease, shall be construed accordingly.

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