FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BF/LEE/2024/0600**
Property	**:**	**Hampton Lodge, 15 Cavendish Road, Sutton, Surrey SM2 5EY**
Applicant	**:**	**Hampton Lodge RTM Company Limited**
Representative	**:**	**Nick Davison (Director)**
Respondent	**:**	**Churchhill Retirement Living Limited**
Representative	**:**	**No appearance**
Type of application	**:**	**Determination of accrued, uncommitted service charges**
Tribunal member(s)	**:**	**Judge Robert Latham** **Richard Waterhouse FRICS**
Date and Venue of Hearing		**30 June 2025 at 10 Alfred Place, WC1E 7LR**
Date of decision	**:**	**23 July 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the following sums are payable to the Applicant as accrued uncommitted service charges (a total of £8,542.01):

(i) Issue 2- Guest Suite Income: £1,050;

(ii) Issue 3 – Arrears of Ground Rent: £2,586.22

(iii) Issue 5- Buggy Window: £3,159.07;

(iv) Flat 14 Arrears: £1,321.72;

(v) Late Payment Penalties: £425.

(2) The Tribunal determines that the Respondent shall pay the Applicant £330 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. On 8 November 2024, the Applicant, Hampton Lodge RTM Company Limited ("HLRTM") issued this application for the payment of accrued uncommitted service charges pursuant to section 94(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for

> "a determination of the amount of any payment which falls to be made under s 94(1) of the 2002 Act, viz such sum as is equal to the amount of any accrued uncommitted service charges held by the Respondent as Landlord of the premises on the acquisition date where the right to manage such premises is acquired by an RTM company."

2. The Applicant had indicated that it would be happy for the matter to be decided on papers alone. However, given the nature of the application and the fact that the amount in dispute was unknown, the tribunal considered that an oral hearing was required.

3. On 31 January 2025, a Procedural Judge gave Directions. He set the matter down for an oral hearing on 30 June 2025. On 5 February, the tribunal sent the Directions to the parties. We are satisfied that both parties received these. The Applicant has provided a Bundle of Documents to which reference is made in this decision.

4. Mr Nick Davison, a director of HLRTM, appeared for the Applicant. He is also the lessee of Flat 30 Hampton Lodge. He is an accountant. He was accompanied by Ms Inma Gell, the property manager with Diamond Managing Agents Ltd ("DMA"). She is also the Company Secretary of HLRTM.

5. The Applicant had specified RTMF Services Limited ("RTMF") as their representative in their application form. RTMF is a specialist organisation which advises RTM Companies and had assisted the Applicant in making their RTM application. On 29 June, RTMF advised the tribunal that the Applicant would be attending without representation as the matter was expected to be simply an issue of mathematics. However, RTMF have provided a Skeleton Argument.

6. There was no appearance from the Respondent. This was a matter of concern to the Tribunal and we asked the Case Officer to make inquiries as to why they were not present. The Case Officer contacted the following:

(i) Steele Raymond Solicitors. On 25 June 2025, Steele Raymond had written to RTMF making representations on the income from the Guest Suite, one of the issues which we are required to determine. The Solicitor responded that they were not instructed in this matter, but had been asked to address this discrete issue. They were unaware of the hearing.

(ii) Coles Miller Solicitors LLP ("Coles Miller"). The Applicant had specified Coles Miller as the Respondent's representative in the application form. It had been communicating with Coles Miller regarding their RTM application. Indeed, on 14 January 2025 (at p.9), Coles Miller had written to the tribunal contending that the RTM Claim Notice was invalid as it had not complied with section 80(6) of the Act. Coles Miller informed the Case Officer that they had never been instructed for the Respondent in these proceedings.

(iii) The Case Officer finally contacted the Respondent. She was told that as far as the Respondent was concerned, the matter had been settled and the statutory RTM had been acquired.

7. The Tribunal has had regard to rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013 ("the Tribunal Rules"). We are satisfied that the Respondent has been notified of the hearing. Further, having regard to the overriding objectives, it is in the interests of justice to proceed with the application. Neither the Applicant nor the Respondent sought an adjournment.

8. The Tribunal is satisfied that on 1 April 2025, the management of Hampton Lodge passed from the Respondent to the Applicant. Prior to that date, Churchill Estate Management ("CEM") had been managing Hampton Lodge on behalf of the Respondent. Since that date, DMA has been managing Hampton Lodge on behalf of the Applicant. The issue for this Tribunal is what accrued uncommitted service charges were payable by the Respondent to the Applicant on this date.

9. This RTM application has not been handled well by either side. Mr Davison accused the Respondent of bad faith, seeking to use every device to deprive the Applicant of its statutory Right to Manage ("RTM"). The Applicant must understand that the statutory RTM deprives a landlord of important proprietary rights. A landlord is entitled to put a RTM Company to strict proof that the statutory requirements have been satisfied.

10. The Tribunal must consider the troubled background to this application, before addressing what accrued uncommitted service charges are payable by the Respondent to the Applicant. Mr Davison informed the Tribunal that on 8 April 2025, the Respondent had transferred £38,000 and on 1 May 2025 a further £12,681.28. Mr Davison argued that a further sum of £17,707.56 was payable (see p.101).

The Background

11. Hampton Lodge is a block of 39 flats in Sutton. It is a requirement that any leaseholder should be 55 years or over. There is also a guest suite which any leaseholder can book with the Lodge Manager for visits by friends and relatives. A charge is payable.

12. On 2 October 2023, HLRTM was established to enable the leaseholders to exercise the statutory RTM. Twenty eight of the leaseholders who are qualifying leaseholders, agreed to become members of HLTRM. RTMF have assisted the leaseholders with their application.

13. It seems that HLRTM served two Claim Notices which the parties accepted were invalid. The first was served on 4 November 2023. A second notice was apparently served in January 2024. On 28 August 2024, RTMF paid the Respondent £2,413.60 in respect of costs payable pursuant to section 88 of the Act.

14. On 27 August 2024, RTMF served a further Claim Notice (at p.30-33). There are two critical dates in such a notice. The First is the date by which a Counter-Notice is to be served. Paragraph 5 of the Notice specified 30 September 2024. The second is the date on which the RTM is intended to be acquired. Section 80(7) specifies that this must be a date "at least three months" after the date for service of the Counter-Notice. Thus, the earliest date would have been 30 December 2024. Paragraph 6 of the Notice specified 2 December 2024.

15. The Respondent did not serve any Counter-Notice by the deadline of 30 September 2024. However, it is apparent that RTMF recognised the error in their original Claim Notice. On 1 October 2024, RTMF served a revised Claim Notice (at p.3-7). This was also dated 27 August 2024. Paragraph 5 still specified 30 September 2024 as the date by which any Counter-Notice was to be served. Paragraph 6 now stated that the date on which HLTRM intended to acquire the RTM was 2 January 2025. The Respondent did not make any objection to this revised Notice.

16. On 8 November 2024 (at p.8), RTMF served a document described as "Right to Manage Certification". This referred to the Claim Notice which had been served on 27 August 2024. No Counter-Notice had

been served. HLRTM would therefore acquire the RTM on 2 January 2025.

17. On 8 November 2024 (at p.16-24), RTMF issued the current application. The applicant asserted that it would acquire the RTM on 2 January 2025 and urgently needed to know the amount of uncommitted funds that would be transferred on that date. The estimated amount of accrued uncommitted service charges was £92,000.

18. This application was issued prematurely. The duty to transfer any accrued uncommitted service charges only arises "on the acquisition date or as soon after that date as is reasonably practicable" (section 94(4). Indeed, they can only be computed at the acquisition date. An application should only be issued when it is apparent that there is a dispute between the parties as to the amount to be transferred. As a Procedural Judge noted when he gave Directions on 31 January 2025, the amount in dispute was unknown when the application was issued.

19. On 4 December 2024 (at 11-15), the Applicant sent the Respondent a Notice Requesting Information pursuant to section 93 of the Act. On 14 January 2025 (at p.9), Coles Miller wrote to the Tribunal asserting that there was no valid RTM Claim as the revised Claim Notice served had only given them three days to respond with a Counter-Notice.

20. On 20 January 2025 (at p.10), RTMF responded asserting that the RTM was valid as no Counter-Notice had been served. RTMF relied on the decision of the Supreme Court in *Sunderland Ltd v Tudor Studios RTM Company Ltd* [2024] UKSC 27; [2024] 3 WLR 601.

21. Given this dispute, there was no transfer of management responsibilities on 4 January 2025. Rather, on 7 February 2025 (at 35-37), RTMF sent James Knight, a commercial director at CEM a "without prejudice" letter proposing that the date of the formal handover of management functions from CEM to HLRTM be extended to 1 April 2025. It was noted that CEM would need to commence immediate TUPE consultations for the on-site manager and current employee to be transferred to DMA.

22. It would seem that the Respondent agreed to this proposal. On 1 April 2025, the management functions were transferred from CEM.

23. The Tribunal highlights the following paragraphs from the letter to Steele Raymond dated 25 June 2025:

> "You will be aware of our client's position in relation to the RTM application. Whilst your client purported to serve ours with notice dated 27 August 2024 to acquire the management

functions on 2 January 2025, the notice was in fact invalid as it did not comply with the requirements of section 80 of the Act.

Notwithstanding the invalidity, our client has nevertheless consented to the transfer of management functions to your client on 30 April 2025, as a gesture of goodwill. We reiterate that our client was not bound to do so, but chose to in order to avoid the escalating costs of a dispute for both parties."

The Law

24. Section 94 of the Act provides:

(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 the premises,

(b) party to such a lease otherwise than as landlord or leaseholder, 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,

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 the appropriate 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.

The Tribunal's Determination

25. The first issue which this Tribunal is required to determine is the date on which the management functions transferred from the Respondent to the Applicant. This is the date on which the Tribunal is required to determine the accrued uncommitted service charges which are to be transferred.

26. We are satisfied that this occurred on 1 April 2025. Our analysis is as follows. Under the Act, the statutory RTM was transferred on 2 January 2025. However, the parties agreed to defer this until 1 April 2025. This was a matter which they were entitled to agree as a matter of private law.

27. We note the reference in the Steele Raymond's letter to the transfer date as being 30 April 2025. However, we are satisfied that this was an error. The letter confirms that there was an agreement that the management functions would be transferred. We are satisfied on the evidence before us that this occurred on 1 April 2025.

28. We note that an issue has been raised as to the validity of the Claim Notice (s). However, that is no longer a live issue between the parties. In any event, no Counter-Notice was served by the Respondent. We are bound by the Supreme Court decision in *Sunderland Ltd v Tudor Studios RTM Company Ltd*. We accept that in the absence of a Counter-Notice, the tribunal has no jurisdiction to consider the validity of the Claim Notice. We remind ourselves of [88] of the judgment:

> "There is no jurisdiction in the tribunal to revisit and undo a transfer of the right to manage which has purportedly occurred as a result of the operation of section 90 or a determination of the tribunal, so the way in which a challenge would be brought would be by proceedings in the High Court simply seeking a declaration of rights (in the former situation) or seeking judicial review of the order of the tribunal and a declaration (in the latter). Since the exercise of a right to avoid is generally subject to equitable considerations, delay or other unconscionable conduct of the relevant landlord or other stakeholder could lead to the right to avoid being lost, or refused as a matter of discretion."

29. The Applicant (at p.101) has provided a Schedule of the outstanding issues in Dispute. The sums total £12,601.28. The following sums are claimed:

(i) Duplicate Building Insurance premium for Year to 31st December 2025 incorrectly charged to RTM: £5,005.29;

(ii) Deduction of Guest Suite Income earned to date which should be credited to the Contingency Fund: £1,050.00;

(iii) Duplicate deduction of half year Ground Rent due to Landlord: £330.42;

(iv) Deduction of CEM "Handover Administration Fee" wrongly charged per 3rd March 2025 court ruling: £1,872.00;

(v) Deposit on Buggy Window agreed to be paid by Landlord, not credited to RTM in Final funds statement: £954.79; Balance of cost of Buggy Window agreed to be paid, not credited to RTM in Final funds statement: £2,204.28;

(vi) Deduction of Service Charge/Ground Rent Debtor (Flat 14) not collected by CEM for 2.5 Years: £5,865.78;

(vii) Deduction of Late Payment Penalties on fictitious Service Charge to Leaseholders: £425.00.

Issue 1: Building Insurance: £5,005.29

30. Under the lease, the landlord covenants to insure the Building. The policies arranged by CEM for the Building and terrorism ran from 1 January to 31 December. CEM renewed the policies for the period 1 January 2025 to 31 December 2025, the Building insurance being £4,466.67 and terrorism cover £273.58. There was a separate policy for engineering insurance which ran from 1 September 2024 to 31 August 2025.

31. The Applicant took out insurance from 2 January 2025, the date on which it anticipated that it would take over the management of the Building. Mr Davison argued that the Respondent should have cancelled the policy and that they should be entitled to a refund from 2 January.

32. We disagree. The Respondent was obliged to insure the Building up until the management functions transferred on 1 April 2025. On 1 January 2025, the Respondent had the responsibility to ensure that an insurance policy was in place. It was entitled to arrange insurance for the normal period of 12 months.

33. On 1 April 2025, the Respondent had two options. It could have sought to negotiate to cancel the existing policies and arrange its own insurance. There may have been a penalty for this which the Applicant would need to bear. Alternatively, it could have allowed the existing policies to run their course, and arranged alternative insurance when these policies expired.

34. We are satisfied that the Applicant acted prematurely in arranging alternative insurance. In the absence of any agreement to the contrary, the Respondent was obliged to manage the Building up to the date of the transfer of functions. The Tribunal has found that that date was 1 April 2025.

Issue 2: Guest Suite Income: £1.050

35. Hampton Lodge consists of 39 flats. There is also a studio flat with ensuite facilities ("the guest suite"). At the hearing, the Tribunal was provided with a copy of the Lease for Flat 1. Schedule 2, Part I, paragraph 3 gives the leaseholder the right to use it to accommodate guests:

> "the right in common with all other persons entitled to the like right… to use the owners, lounge and kitchen, guest bedroom, laundry room and other common facilities (if any) and the communal parking spaces on the estate… in the case of the guest room only, to the payment to the Landlord of the charges for such use which the Landlord may its discretion from time to time impose".

36. The Tribunal was told that the use of the guest room is arranged by the Lodge Manager who is now employed by the Applicant. A fee is payable. The leaseholders are required to pay for the cost of the repair, maintenance and management of the guest room through the service charge. In the past, any income from the guest suite has been credited to the service charge account.

37. In its letter, dated 25 June 2025, Steele Raymond argues that the Respondent is not entitled to retain the fees from the guest suite. Neither is it entitled to manage the guest suite. These are outside its "management functions" which are defined by section 96(5) of the Act as "functions with respect to services, repairs, maintenance, improvements, insurance and management".

38. On 29 June 2025, Dudley Joiner, from RTMF, provided a Skeleton Argument in response. He relies upon two authorities: *Earl Cadogan v 27/29 Sloane Gardens Ltd [2006] L&TR 18*, HHJ Rich QC and *Warwickshire Hamlets Limited v Olive Gedden and others* [2010] UKUT 75 (LC) (HHJ Huskinson). In the latter case, the Upper Tribunal was asked to determine nature of the payment to the landlord for their use of the common parts, including a guest suite. Mr Joiner argues that it is relevant that the landlord does not pay a service charge towards the upkeep of the guest suite, as the lease requires this from other flat owners. Then landlord does not have a lease on the guest suite; it is rather part of the common parts. The leaseholders pay for the cleaning, lighting, heating and general maintenance of the common parts, including the guest suite, not the landlord. This is a strong indicator

that the lease should be interpretated to mean the charge for use was to compensate leaseholders, who pay for the upkeep of the guest suite and was payable to the landlord to credit to the service charge.

39. We agree with Mr Joiner. The landlord does not retain possession of the guest suite for its own use. It is a facility which the leaseholders are entitled to use. They do not pay rent. It is rather a licence fee. The licence fee is a charge to be credited to the service charge account to compensate for the cost of maintaining and managing the facility. The repair, maintenance and management of the guest suite is an integral part of the management of the building which has been transferred to the Applicant. This includes retaining the fees which are paid in respect of the use of this facility. We are therefore satisfied that the sum of £1,050 is an accrued uncommitted service charge which the Respondent should pay to the Applicant.

Issue 3: Deduction of Ground Rent: £2,586.22

40. The Aged Debtors list at p.119 records arrears of ground rent due to the landlord of £2,586.22. Ground rent is a debt between the landlord and the relevant leaseholder. It is not a service charge item. The RTM Company has no role in collecting the rent. The Respondent should not have deducted this sum from the accrued uncommitted service charges which are payable to the Applicant.

Issue 4: CEM "Handover Administration Fee": £1,872

41. CEM have deducted a "handover administration fee" of £1,872. The Applicant contends that this is manifestly unreasonable. Mr Davison suggested that some £300 to £350 would be reasonable. We disagree. CEM was entitled to charge a reasonable sum to reflect the administrative work involved in transferring the management of Hampton Lodge to the Applicant. This is a building with 39 flats. There were also contracts of employment which needed to be transferred. We are satisfied that the fee is reasonable.

Issue 5: Buggy Window: £954.79 + £2,204.28

42. In 2022, the Respondent investigated a fire retardant window which a Fire Risk Assessment recommended above the scooter charging area. The Respondent agreed to fund the necessary remedial works (see emails at p.125-127). The Respondent is now seeking to deduct this sum from the accrued uncommitted service charges to be transferred to the Applicant. We accept that the Respondent is wrong to do so.

Issue 6: Debts owed by Flat 14: £1,321.72 + £4,544.04

43. The leaseholder of Flat 14 has not paid either service charges or ground rent over a period of some 2.5 years. The flat is now being sold. These debts will therefore need to be deducted from the proceeds of the sale before completion. We were told that £1,321.72 related to ground rent and £4,544.06 to arrears of service charges. Ground rent is nothing to do with the RTM Company. It is for the landlord to recover this debt of £1,321.72. This should not have been deducted from the accrued uncommitted service charges to be transferred to the Applicant. However, it is for the RTM Company to pursue any arrears of service charges. It was therefore appropriate for the Respondent to deduct these arrears of £4,544.06. It is probable that this finding is academic. Before the sale is completed, the arrears of rent will be recovered by the Respondent and the arrears of service charges by the Applicant.

Issue 7: Late Payment Penalties: £425

44. The Respondent has sought to deduct a number of administration charges which CEM sought to levy for late payment. These administration charges were not paid by the leaseholders (see p.129). Mr Davison stated that CEM had agreed to waive these fees.

45. These administration charges have not been paid. They are a debt payable to the service charge account to compensate it for the costs of late payment. They are not intended to be a windfall for the landlord. This was a debt for the Applicant to recover and should not have been deducted from the accrued uncommitted service charges which were otherwise payable to the Applicant. It is for the Applicant to decide whether to pursue these debts or waive the charges.

Tribunal Fees and Costs

46. The Applicant has paid Tribunal fees of £330. The Tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision pursuant to Rule 13(2) of the Tribunal Rules.

47. Mr Davison indicated that the Applicant was considering an application for a penal costs order against the Tenant pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal emphasised that this is normally a "no costs" jurisdiction. There is a high threshold before a tribunal makes a penal costs order (see *Lea v GP Ilfracombe Management Co Ltd* [2024] EWCA Civ 1241; [2025] 1 WLR 371 and *Willow Walk Management Co and others* [2016] UKUT 290 (LC); [2016] L&TR 34). The Tribunal has found that there has been considerable fault on both sides. If, despite these comments, the Applicant decides to proceed with this application, the Tribunal will issue further directions.

Judge Robert Latham
23 July 2025

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).