



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

Case Reference : CHI/21UG/LCP/2020/0001

Property : 23 Devonshire Road, Bexhill on Sea
TN40 1AH

Applicant : Holdmanor Ltd

Representative : Scott Cohen Solicitors Ltd

Respondent : 23 Devonshire Road Management Ltd

Representative :

Type of Application : Landlord's costs:
Commonhold and Leasehold Reform Act
2002 S.88(4) (The Act)

Tribunal Member(s) : Mr W H Gater FRICS MCI Arb
Regional Surveyor

Date of Decision : 14 April 2020

Determination

**The Tribunal determines that costs in the sum of £2382.28
have been reasonably incurred and payable.**

Background

1. By a notice under the Commonhold and Leasehold Reform Act 2002, dated 6 August 2019 the Respondent claimed the Right to Manage the subject premises 23 Devonshire Road. The Applicant as Landlord issued a counter notice dated 4 September through its representatives Scott Cohen Solicitors Ltd.
2. The Applicant claims that certain costs were incurred as a consequence of the Respondent giving notice of claim.
3. The Applicant seeks a determination from this Tribunal as to whether the Respondent is liable to pay these costs and whether the sums claimed are reasonable.
4. The Tribunal made Directions on 31 January 2020 setting out the steps required in preparation for the determination, including statements from the Applicant and Respondent and the requirement for the assembly and delivery of a determination bundle.
5. Further directions were issued on 11 February 2020 allowing the Applicant to respond to the Respondent's points of dispute if any.
6. On 13 March 2020 the Tribunal received the bundle from the Applicant. It contained the Applicant's statement of response which pointed out that the Respondent had not served a statement of case or response to the schedule of costs.
7. The Applicant makes a claim under the Commonhold and Leasehold Reform Act 2002 S.88(4) for the following: -

Solicitors Fees	£1799.64
Disbursements	£13.20 + VAT postage £139.00 + VAT courier
Managing Agents Fees	£250.00 + VAT

8. In its Statement of Response contained in the bundle the Applicant further asks the Tribunal to exercise its discretion under Rule 13(2) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 and order the reimbursement of the Tribunal fee of £100 by the Respondent.

The Law

S.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 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.

9. The Respondent has failed to engage with the process and the Tribunal is faced with determining the matter with only the Applicant's representations.

Evidence

10. The Applicant's Statement of case sets out the claim for costs incurred by the Landlord as a consequence of the giving of a Right to Manage (RTM) claim notice, dated 6th August 2019, by the Respondent in relation to the premises.
11. They state that whilst correspondences were exchanged after the Claim and Counter Notice, no S.84(3) application was made to the Tribunal. Such an application is for a determination that the RTM company was entitled to acquire the right to manage the premises at the relevant date.
12. The Applicants position is that the costs are payable pursuant to S.88(1) of the Act and meet the test of reasonableness under S.88(2). They support this by a detailed breakdown of Solicitors fees and disbursements.
13. The costs of the Managing Agent, Blair Estates are said to relate to additional tasks which are non-standard activities, as a consequence of the service of the Notice of Claim and for which additional fees are charged.
14. In the Schedule of disputed costs, the Applicants state that the managing agent is instructed to carry out additional tasks which are non-standard management activities and for which additional fees are charged. Such non-standard management activities include those undertaken in consequence of a receipt of a RTM Claim Notice, which include liaison

between the Applicant and the Applicant's solicitor and the provision of assistance and information to all parties throughout the progress of claim; taking the necessary steps to co-ordinate the management response to the notice, and to advise the Landlord on the impact upon services and anticipated repairs and funding.

15. They further itemise in the Statement of Case in paragraphs 16-22 illustrating the extent of the non-standard work made necessary by the serving of the notice.
16. The Applicants in support of their claim for reimbursement of Managing Agents fees cite the Upper Tribunal case of *Columbia House Properties (No3) Ltd and Imperial Hall RTM Company Limited LRX/138/2012*.
17. In the Statement of Response, the Applicants refer to attempts to settle the proceedings and the absence of any submissions from the Respondent in support of their claim for reimbursement of Tribunal Fees of £100.

Determination

18. It is not clear from the application why the inclusion of VAT has been dealt with differentially in the amounts claimed. The Tribunal determines that the total sum payable shall be inclusive of VAT.

Solicitors Fees and Disbursements. £1799.64 inc VAT + postage £13.20 plus VAT + Courier £139.00 plus VAT. Total inclusive of VAT £1982.28.

19. On examination of the evidence provided by the Applicant regarding the time spent, hourly rate and the instruction of a solicitor experienced in RTM matters, **the Tribunal finds that the Solicitors fees and disbursements claimed are reasonable and payable.**

Managing Agents Fees. £250 plus VAT. Total Inclusive of VAT £300.

20. The Tribunal notes that the Managing Agents Terms of Engagement have not been provided in evidence. This is regrettable as it may illustrate the extent of standard and non-standard work agreed.
21. The Tribunal has considered *Columbia House Properties (No3) Ltd and Imperial Hall RTM Company Limited LRX/138/2012* concerned, inter alia, the payability of Managing Agents fees under S.88. In dealing with an apparent lack of documentary evidence of Managing Agents terms the learned judge commented: -

35. Further, I consider that while it may be within a managing agent's day to day duties to pass on notices served on it in its capacity as agent for the Landlord and possibly to serve counter notices, the sort of investigations which SEM was undertaking on the Landlord's behalf to deal with the 2010 claim notices fall well outside what could

reasonably be described as “day to day normal management services”, even by the LVT as a specialist Tribunal.

22. In the present case, the Tribunal, sitting as an expert Tribunal, with the benefit of the evidence provided by the Applicant **finds that the managing agents’ fees claimed are reasonable and payable.**

Tribunal Fees. £100.

23. This is an application for reimbursement of the Tribunal’s fees by the Respondent under S.13(2) of the Tribunal’s procedural rules.
24. The fee was payable as a direct consequence of the Respondent’s action in commencing RTM proceedings which were not then pursued.
25. The Applicant has been wholly successful in its application to the Tribunal and it must be just and equitable that it should also recover the cost of bring the application to the Tribunal. **The Tribunal therefore orders that the fee of £100 paid by the Applicant is reimbursed by the Respondent.**
26. The Tribunal therefore determines that the total sums payable by the Respondent amount to: -

Solicitors Fees and Disbursements £1982.28.

Managing Agents Fees. £300

Tribunal Fees. £100.
£2382.28

WH Gater FRICS ACI Arb
Regional Surveyor

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.