



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

Case reference : **LON/00BG/LRM/2021/0038**

Property : **52-58 (even numbers) and 54-58
(even numbers) Commercial Road,
London E1 1AN**

Applicant : **52-58 (Even) Commercial Road
RTM Co Ltd**

Representative : **Setfords Solicitors**

Respondent : **Rocquefort Properties Ltd**

Representative : **Shakespeare Martineau LLP**

Type of application : **Application in relation the denial of
the right to manage**

Tribunal Chair : **Ms H C Bowers**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **30 June 2022**

DECISION

The Tribunal's Decision

- (1) This application is dismissed under rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 as the Tribunal has no jurisdiction to determine the application.

Background

- (2) The Tribunal received an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for a decision that, on the relevant date, the Applicant RTM company was entitled to acquire the Right to Manage premises known as 52-58 (even numbers) and 54-58 (even numbers) Commercial Road, London E1 1AN ("the premises").
- (3) By a claim notice dated 3rd September 2021, the Applicant gave notice that it intends to acquire the Right to Manage the premises on 17th January 2022.
- (4) By counter notice dated 8th October 2021 the Respondent freeholder disputed the claim alleging that the Applicant had failed to establish compliance with sections 72(1), 72(6) and Schedule 6 of the 2002 Act.
- (5) The application that was dated 14 October 2021 was received by the Tribunal on 15 October 2021. The Tribunal issued directions on 23rd November 2021 on its own initiative. However, the application was then set down for a case management hearing on 12th April 2022. The parties jointly provided proposed directions and their attendance was excused. The Tribunal issued further directions on 12th April 2022 which superseded the earlier directions.
- (6) On 26th May 2022, the Applicant's representative, Setfords Solicitors, wrote to the Tribunal stating that the Applicant wished to withdraw its claim and discontinue this application.
- (7) On 27th May 2022 the Respondent's representative, Shakespeare Martineau LLP, disputes the request for withdrawal and emailed the Tribunal requesting a formal dismissal of the application so that it could recover its costs pursuant to section 88(3) of the Act. The Respondent's representative drew the Tribunal's attention to the decision of the Upper Tribunal in the case of *Post Box Ground Rent Ltd v The Post Box RTM Company Ltd* [2015] UKUT 0230. In addition, there is reference to a previous Right to Manage claim and that the Applicant's conduct in the previous case should be taken into account in the subsequent assessment of costs by the Tribunal.
- (8) In a response from Setfords dated 30 May 2022, the Applicant acknowledges that the application should be dismissed and that the Applicant will be liable for the reasonable costs of the Respondent as provided by the 2002 Act.

- (9) The Applicant also made submissions on the issue of costs and the previous claim. However, those issues are not currently being considered in this decision. Indeed, I note that the Respondent has made a new application under the Tribunal reference number LON/00BG/LCP/2022/0008 for a determination of costs pursuant to section 88(4) of the 2002 Act. As noted below, the Tribunal will issue Directions and make provisions for the parties to make full submissions in due course.

Decision and Reasons

- (10) In my judgment this application should be dismissed.

- (11) Section 88 of the Act provides as follows:

- (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 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 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.

- (12) Section 89 provides that where a claim notice given by a RTM company-

(a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or

(b) at any time ceases to have effect by reason of any other provision of this Chapter (section 89(1)).

then the following costs consequences of withdrawal set out in section 89(2) apply, namely:

'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.'

- (13) At paragraph 44 of its decision in *The Post Box RTM Company Ltd* the Upper Tribunal concluded that the withdrawal of an application made under s. s.84(3) does not, without more, bring that application to an end and that the application ends only when the Tribunal formally dismisses it.
- (14) As the parties agree to this approach, I hereby dismiss the current application.
- (15) The effect of this dismissal means that the Applicant is liable for the reasonable costs incurred by the Respondent in consequence of the claim notice including costs incurred as a party to the proceedings up to the withdrawal of its application. As the Tribunal has an application under section 88(4) of the 2002 Act, it will be reviewed and appropriate Directions will be made.

Name: Ms H C Bowers

Date: 30 June 2022

APPENDIX - 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.