

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

S.88 Commonhold and Leasehold Reform Act 2002

DECISION & ORDER

Case Numbers:	CHI/00ML/OC9/2009/0005
Property:	Duncan Court 6 Chichester Drive Brighton East Sussex BN2 8LB
Applicant:	Ennersdale Investments Limited Solicitors: TWM LLP
Respondent:	Duncan Court Associates RTM Company Limited
Consideration:	2nd September 2009
Decision:	14th September 2009
Tribunal:	Mr RTA Wilson LLB Mr Neil Cleverton FRICS

SUMMARY OF DECISION

The Tribunal determines that the total amount payable by the Respondent to the Applicant in respect of legal costs shall be the sum of £350.00. VAT is to be added to this figure as appropriate.

APPLICATION

1. On 6th June 2009 the Applicant applied to the Tribunal pursuant to Section 88 of the Commonhold and Leasehold Reform Act 2002 ("The 2002 Act") to determine

the costs payable by the Respondent in connection with a right to manage claim in respect of the Property.

2. Directions were issued on 11th June 2009 to the effect that the Tribunal was minded to determine the issue on the basis of written representations unless either party objected. Neither party objected.
3. TWM LLP, solicitors for Applicant, provided a copy of their bill of costs. The Respondent did not respond to the directions and made no observations on the application. The Tribunal duly considered the application on 1st September 2009.

LAW

4. The law is to be found at Section 88 of the 2002 Act, which deals with costs incurred in connection with a claim by a right to manage company and provides, insofar as is relevant:

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 a leasehold valuation 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 a leasehold valuation tribunal.*

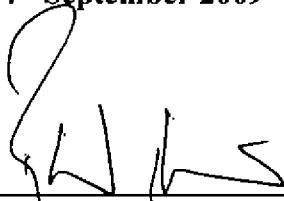
CONSIDERATION

5. The Tribunal carefully considered the bill of costs rendered by TWM LLP. The amount claimed for costs was £402.50 inclusive of vat.
6. The Tribunal's papers contained very little background information or documentation and thus it proved difficult to ascertain the background facts. It appears that on 2 June 2008, the Leasehold Advice Centre on behalf of the lessees of the property served a claim notice by authority of the RTM company seeking to acquire the right to manage the property. It is not clear if the application was contested but there is no counter notice which suggests that the application was accepted without challenge. The Tribunal noted that the RTM company intended to acquire the right to manage the premises on 9 October 2008.
7. Directions issued by the Tribunal had provided for the Applicant to set out details of their claim and for the Respondent to file a statement of reply to identify the issues in dispute. As the Respondent did not comply with the directions the Tribunal made its determination on the basis that the Respondent neither consented to the application nor did they oppose it.
8. In the Tribunal's opinion the total costs charged by TWM solicitors at £350+ VAT is not excessive, even for a straightforward application, as this appears to have been. The right to manage legislation is of a specialist nature and requires the appropriate legal expertise. The property comprises of six flats let out on long leases and the Applicant's solicitors would have had to peruse each lease as well as examine the freehold title. In addition they would have had to scrutinise the application claim form to satisfy themselves that it complied with the legislation. We believe that approximately 2 hours time would have been necessary to complete this exercise. On the basis that the solicitors did carry out approximately 2 hours work their bill of £350.00 suggests a charge out rate of £175 per hour. We believe this charge out rate to be compatible for work of this kind.

DETERMINATION

9. The Tribunal therefore determines that the Applicant's reasonable costs payable by the Respondent pursuant to section 88 of the 2002 Act are £350 to which vat is to be added as appropriate.

Dated 14th September 2009



Mr RTA Wilson
Chairman