



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
THE LEASEHOLD VALUATION TRIBUNAL**

**IN THE MATTER OF AN APPLICATION MADE IN RELATION TO COSTS
UNDER SECTION 88 AND SCHEDULE 12 OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002 ('THE ACT')**

CASE REFERENCE: LON/OOAM/LCP/2009/0015

Applicants: Ground Rents (Regisport) Limited

Respondents: Cottrill Gardens 3 RTM Company Limited
Cottrill Gardens 4 RTM Company 4 Limited
Cottrill Gardens 5 RTM Company Limited

Premises: Blocks 3, 4 and 5 Cottrill Gardens, Marcon Place,
London E8 1NY

Date of Application: 30 July 2009

Date of Tribunal's Directions: 4 August 2009

Date of Hearing: Determinations were made on 6 October 2009 on
consideration of the documents neither party
having requested an oral hearing.

Appearances: None

Date of Decision: 19 October 2009

Leasehold Valuation Tribunal: James Driscoll, LLM, LLB, Solicitor,
John Avery BSc FRICS

DECISIONS

The tribunal determines that the applicant is entitled to their costs in the sum of £4,427.91 inclusive of VAT) in relation to three RTM applications which were unsuccessful.

No order for costs is made under paragraph 10 of Schedule 12 to the Act

The Applications

- 1 These applications are made under Section 88 and Schedule 12 of the Act by the landlords and owners of three blocks of flats in the subject premises. The respondents are three RTM companies formed to exercise the right to manage each of the blocks under the right to manage provisions and procedures in Part 2 of the Act. Leaseholders of flats in the three blocks are members of the RTM company formed in relation to their block.
- 2 On behalf of the respondents, notices were given by Canonbury Management under Section 79 of the Act on 8 December 2008 to acquire the right to manage to the applicants. The applicants responded with counter-notices given under Section 84 of the Act on the 13 January 2009. In response an application was made to a tribunal under Section 84(3) of the Act on 18 February 2009. This application was dismissed by the tribunal on 1 May 2009. (An earlier application to acquire the right to manage in 2008 by three different RTM companies formed on behalf of the leaseholders in the three blocks also foundered).
- 3 Both the RTM companies and the members of these companies are liable for certain costs incurred the applicant under Sections 88 and 89 of the Act. This costs liability is defined by Section 88 in the following terms:

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.

- 4 Clearly the three RTM companies (and ultimately their leaseholder members) are liable for the applicant's 'reasonable' costs under Section 88 of the Act. But the parties failed to reach agreement on the amount of costs and this led the applicants to make this application. In accordance with the directions the applicants prepared a bundle which includes submissions made by those advising the parties.

The submissions

- 5 In essence those advising the respondents state that much of their work for the respondents in this matter (and other clients) is undertaken electronically. In their view some 70% of the work had already been done in relation to the first RTM claim that foundered.
- 6 In response those advising the respondents argue that their clients are fully entitled to their costs and that much of the costs were incurred in relation to the proceedings in this tribunal which can be claimed under Section 88(3) of the Act. The applicants also submit that the behaviour of the respondent's advisors was such as to warrant the making of an order under Schedule 12 of the Act.

The determinations

- 7 The RTM is often referred to as a no-fault based right. This is because provided the building qualifies and a sufficient proportion of the leaseholders support the claim, the RTM can be exercised as of right regardless of whether the landlord is managing the premises properly or not. It may, therefore, be contrasted with the right to apply to this tribunal under Part 3 of the Landlord and Tenant Act 1987 for a manager to be appointed. In such applications, fault on the part of the landlord or current managing agents must be proved by the applicants. Where the right to manage is acquired under the 2002 Act, the landlord's management functions and obligations pass to the RTM company. No compensation has to be paid.
- 8 Whilst default on the part of the landlord or any appointed agent (or both) does not have to be established, there may be cases where a landlord may have grounds for denying a right to manage; for example, the landlord might argue that the building does not qualify. Or, a landlord may have ground for arguing that the procedures in the Act have not been followed. One such argument might be that the RTM company has not been properly incorporated: do the memorandum and articles of association comply with regulations made under the Act?

- 9 We reject the respondent's main submission, that most of the work had been undertaken in relation to the first claim, as a landlord is entitled to seek advice on questions, such as whether or not the RTM has been properly incorporated and whether the procedures in the Act have been complied with. When the applicants received a second RTM claim they quite properly took detailed legal advice on whether this claim is well-founded. Indeed the schedules of time spent indicate that the applicant's solicitors did not duplicate in the second and third applications work that had been performed in the first.
- 10 Having considered the claim for costs in detail we conclude that although the bill overall is on the high side, the hourly rate is appropriate, the major part of the work was undertaken in relation to the respondent's application to the tribunal, which, in effect, challenged the landlord's opposition to the claim to take over management of three separate blocks of flats.
- 11 Of course, the test of reasonableness in Section 88(2) requires us to consider whether the applicant would have undertaken the expense of seeking this level of advice from solicitors, who have a very considerable experience in residential leasehold matters. We consider that this test is satisfied in the case. A landlord who would be paying for advice, would in our view, seek detailed advice from specialist solicitors.
- 12 In summary, we determine that the applicant is entitled to be paid a total of £4,427.91 for their legal costs, a sum which is to be divided equally between the three respondent RTM companies. Turning to the Schedule 12 claim for costs, we are surprised at the language used by those advising the parties. For example, Canonbury Management in their submitted to the tribunal that the applicant's advisors claims for costs 'are regularly in excess of what we think is reasonable'. Those advising the applicants state in their written submissions to the tribunal that the respondent's objections to their costs claim are 'woefully misconceived' and (at worst) made 'in a disingenuous manner'. Just as landlords are entitled to their reasonable costs, so those paying the costs are entitled to object. A party should not be penalised for making objections. In the event, we prefer the applicant's arguments over costs. But rejecting the respondent's submissions hardly, in our view, amount to their having acted improperly in the main defined in paragraph 10(3) of Schedule 12.

Signed: *James Driscoll*
(James Driscoll, LL.M, LL.B, solicitor)
Dated: 19 October 2009