



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

**Case Reference** : **MAN/00BN/LUS/2016/0002**

**Property** : **Flats 1-20, 51-55 Cornishway, Wythenshawe,  
Manchester, M22 0JX**

**Applicant** : **Temple Apartments RTM Co Limited**

**Respondent** : **Adriatic Land 2 Limited**

**Type of Application** : **Application for a determination of accrued  
uncommitted service charges, pursuant to  
section 94(3) of the Commonhold and  
Leasehold reform act 2002**

**Tribunal Members** : **Judge C. P. Tonge LLB, BA  
Mrs S. A. Kendall BSc, MRICS**

**Date of Decision** : **12 April 2017**

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**DECISION**

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## **Background**

1. This application is dated 20 December 2016 and was received by the Tribunal on 22 December 2016. It relates to Flats 1-20, 51-55 Cornishway, Wythenshawe, Manchester, M22 0JX, "the property".
2. Temple Apartments RTM Co Limited "the Applicant" is a recently incorporated right to manage company, brought into existence by long leaseholders of "the property" to acquire management functions at the "the property". The Applicant has failed to state the date at which management was transferred to the Applicant, but the Tribunal has determined that this took place on 4 October 2016 (Respondents bundle, Completion statement, R1, 9).
3. The freeholder of "the property" is Adriatic Land 2 Limited "the Respondent".
4. Directions were issued on 16 January 2017 indicating that a Deputy Regional Judge took the view that this case could be dealt with by means of considering written evidence and submissions, without the need to inspect "the property" or hold an oral hearing. The parties were given 21 days in which they could request an oral hearing, but neither party did so.
5. The remainder of the Directions are in the standard form and they have been complied with. A statement of case and evidential bundle being served first on behalf of the Applicant, then on behalf of the Respondent. It should be noted that the Applicant did not serve a Reply, in which the Applicant could have challenged any part of the case as put forward by the Respondent.
6. On 23 March 2017 the Tribunal notified the parties that this case would be determined by a Tribunal on 12 April 2017.
7. On 12 April 2017 the Tribunal met in Sheffield to determine the issues in the case.

## **The law**

### **Commonhold and Leasehold Reform Act 2002 S94 Duty to pay accrued uncommitted service charges**

- (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 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,  
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 a leasehold valuation 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.

### **Written case on behalf of the Applicant**

8. The Applicant in paragraph three of its statement of case refers to a document "materialising" and gives a case reference. The Applicant was involved in this case and must know full well that the case relates to costs payable by the Applicant to the Respondent as a result of acquisition of the right to manage. The Tribunal found this to be an unhelpful reference as the Tribunal had to spend unnecessary time in consulting this earlier Decision.
9. The Applicant states that the Respondent transferred £3573.85 to the Applicant on 29 December 2017 (Applicants statement of case paragraph 6). This date cannot be correct as it has not yet occurred and the tribunal therefore reads this error as referring to 29 December 2016.
10. The Applicant's main issue of complaint is that the Respondent has deducted debt, caused by long leaseholders not paying their service charges, from the money paid over to the Applicant. The Applicant's case is that the Respondent should have recovered this debt from each long leaseholder who was in debt before the handover, this would have resulted in a much larger sum being uncommitted and thus handed over to the Applicants.

11. The Applicant suggests that if the Respondent had acted in this way there would have been £16,169.06 to transfer to the Applicant (statement of case, paragraph 7).

### **Written case on behalf of the Respondent**

12. The Respondent states "the problem here is that the lessees are not paying their service charges rather than a problem with debt collection." (Respondents statement of case, paragraph 6).
13. The Respondent goes through a detailed explanation as to how it came to calculate the figure of £3,573.85 to be transferred to the Applicant. In short the long leaseholders had not paid their service charges and the Respondent in calculating the uncommitted sum deducted the value of the unpaid service charges from the figure to be transferred.

### **The determination**

14. The Tribunal first considers the completion statement and the Applicant's contention that £16,169.06 should have been transferred to the Applicant. The problem with this approach is that the Applicant has not properly explained why it is that the Applicant suggests this very specific figure. The Tribunal can take this approach no further.
15. The Tribunal then considers the main issue in the case, whether or not the Respondent was correct in its approach to calculating the uncommitted sum to be handed over? This is easily resolved in that there is decided case law, directly on the point, that this Tribunal is bound to follow to the effect that the Respondent has set about the calculation properly, *OM Ltd v New River Head RTM Co Ltd* [2010]UKUT 394 (LC); [2011] 1 E. G. L. R. 97; [2011] 13 E. G. 112.
16. The Tribunal then considers the Service Charge Residential Management Code, both second and third editions, but they do not contain anything that suggests that the approach taken by the Respondent is wrong.
17. The Tribunal therefore determines that the Respondent is entitled to calculate the uncommitted service charges in the manner in which it has.
18. The Tribunal notes that the Applicant has not taken the opportunity provided to challenge, by reply, any of the specifics of the Respondents calculations.
19. The Tribunal considers those calculations and they are correct. the Tribunal therefore determines that the Respondent has transferred the correct amount to the Applicant, being £3,573.85.

## **Decision**

20. The Respondent has already transferred the correct amount of uncommitted service charges to the Applicant, pursuant to section 94 of the Commonhold and Leasehold Reform Act 2002, being £3,573.85.