



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

Case Reference : LON/00AZ/LCP/2018/0003

Property : Aaron Lodge, 144 Burnt Ash Hill, London SE12 0HU

Applicant : David Macaree

Representative : Bishop & Sewell LLP

Respondent : Aaron Lodge (Grove Park) RTM Company Limited

Representative : Prime Management (PS) Limited

Type of Application : Costs to be paid by a RTM Company

Tribunal Members : Judge Robert Latham
Mrs Helen Gyselynck BSc MRICS

Date and venue of paper determination : 9 July 2018 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 12 July 2018

DECISION

The Tribunal assesses the Section 88 statutory costs in the sum of £2,021.45.

Introduction

1. This is an application under section 88 of the Commonhold and Leasehold reform Act 2002 ("the Act"). The Applicant landlord applies for the Tribunal to determine the reasonable costs that it has incurred in consequence of two Claim Notices given by Aaron Lodge (Grove Park) RTM Company Limited ("the RTM Company")

2. On 11 May 2018, the Tribunal issued its standard Directions, pursuant to which:

(i) The Applicant has filed a Schedule of Costs sufficient for a summary assessment.

(ii) The Respondent RTM Company has filed its Statement of Case.

(iii) The Applicant has filed a Statement in Response.

A Bundle has been filed extending to 89 pages.

The Background

3. On 19 September 2016, the RTM Company served its first Notice of Claim to acquire the Right to Manage pursuant to Section 79 of the Act in respect of 12 flats at 144 Burnt Ash Hill, London S12 0HU. The Right to Manage was to take effect on 1 February 2017. The landlord was required to serve any Counter-notice by no later than 25 October.

4. Three working days before the Counter-Notice was due, the landlord wrote to the RTM Company requesting further information. On 24 October, the landlord served a Counter-notice admitting the claim. However, the RTM Company discovered that there was a mistake in the Notice of claim and withdrew the claim.

5. On 16 November 2016, the RTM Company served its second Notice of Claim to acquire the Right to Manage. The Right to Manage was to take effect on 1 April 2017. The landlord was required to serve any Counter-notice by no later than 20 December.

6. On 2 December, the landlord wrote requesting evidence to substantiate the right to manage. The RTM responded by providing some of the documentation which had been request, but also seeking clarification as to the form in which the evidence should be presented. No reply was received.

7. On 19 December, the landlord served a Counter-notice admitting the claim. However, this notice was served without prejudice to the landlord's contention that the Notice of Claim was invalid on technical grounds.

8. The landlord did not clarify its position as to whether it was admitting or denying the RTM Company's Right to Manage. In January 2017, the RTM Company issued an application to the tribunal under Section 84(3) of the Act seeking a determination that it was on the relevant date entitled to acquire the right to manage.

9. On 17 May, the landlord finally clarified its position, namely by admitting the Right to Manage. The Applicant states that the landlord decided not to pursue the matter following publication and consideration of the Court of Appeal decision in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017]

EWCA Civ 89; [2018] QB 571. The Court of Appeal had given judgment on 23 February. The Court restricted the circumstances in which technical non-compliance with the statutory requirements might render a Notice of Claim invalid.

The Statutory Provisions

10. Section 84 - Counter-notices:

“(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled, and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.”

11. Section 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."

The Principles

12. The Act confers rights on tenants of leasehold flats to acquire the Right to Manage their flats without the need to show any fault by their landlord. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising their statutory right should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made and in completing the formal steps required by the Act.
13. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees. Section 88 (2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay. Section 88(2) provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to surrender the right to manage and for tenants against being required to pay more than is reasonable.
14. Section 88(3) makes express provision where disputes arise over the Right to Manage. A RTM company is liable for the costs incurred by the landlord before the tribunal only if the tribunal dismisses the application.

The Tribunal's Determination

The First Notice

15. The Respondent challenges the hourly rates of £360 ph and £280/£300 ph for the two Band A, London Grade 2 fee earners. It submits that the landlord is based in Bishop's Stortford whilst the relevant premises are based in outer London. The Respondent submits that the appropriate grade to apply is a National Grade 2 Fee Earner based on the client's location. An hourly rate of £146 is proposed.

16. The Tribunal does not accept this argument. The Applicant states that the landlord has retained Bishop & Sewell LLP for a substantial period in relation to his property portfolio. We are satisfied that he was entitled to do so. However where a partner deals with an application of this nature, the time engaged should be less than a less experienced member of staff. We would describe the work as being routinely technical.

17. The Applicant claims the following in respect of the First Notice:

(i) Investigation of the Claim: 2 six minute units at £360 ph and 16 at £280 ph: £520.

The Respondent accepts the time engaged, but disputes the hourly rate.

We have agreed the hourly rate and therefore allow the sum claimed of £520.

(ii) Preparation and Service of the Counter-Notice: 27 units at £280 ph: £756.

The Respondent contends that the time allocated to this is excessive given the pro forma nature of the Counter-Notice. We accept that the paperwork needs to be checked. We allow 15 units, a total of 90 minutes.

(iii) Post-service Investigations and follow-up: 12 units at £280 ph: £336.

The Respondent contends that we should disallow this in full given the contradictory and confusing Counter-notice that was served. We disagree. The Respondent accepted that its Notice of Claim was invalid. Some work should be allowed for the subsequent checking of the validity of the Notice of Claim. However, we are only willing to allow 7 units.

(iv) Disbursements: £149.

The Respondent contends that these should be disallowed as no breakdown or reasons have been provided. We have a completion statement at p.59. The disbursements seem to relate to the Land Registry Fees and courier fees. We allow them.

18. The Applicant claims the following in respect of the Second Notice:

(i) Investigation of the Claim: 8 units at £360 ph: £224.

The Respondent accepts the time engaged, but disputes the hourly rate.

We have agreed the hourly rate and therefore allow the sum claimed of £224.

(ii) Preparation and Service of the Counter-Notice: 6 units at £280 ph: £168.

The Respondent accepts 4 units, but disputes 2 in respect of an email exchange between solicitor and client to clarify costs. The time engaged is modest and we allow it.

(iii) Post-service Investigations and follow-up: 28 units at £300 ph: £1,020.

The Respondent contends that we should disallow this in its entirety. The landlord had served a Counter-Notice admitting that the RTM Company had acquired the Right to Manage. This was served on a "without prejudice basis" so that the landlord kept open the option of arguing that not all the technical notices had been served.

Section 84(2) requires a landlord to make a clear election whether to admit or to deny the right to manage. It proved necessary for the tenant to issue an application to the tribunal to determine its right to manage. Section 88(3) provides that a RTM Company shall only be liable for costs in connection with such proceedings if a tribunal dismisses its application.

It is apparent that all the costs claimed by the landlord relate to the period after which the RTM Company had issued its application to the tribunal. The RTM Company was justified in making that application as the landlord was apparently disputing the right to manage. That application led to a successful outcome for the Respondent, albeit without the need for a determination by the tribunal. We therefore disallow all of these costs.

(iv) Disbursements: £38.50.

The Respondent contends that these should be disallowed as no breakdown or reasons have been provided. We have a completion statement at p.59. The disbursements seem to relate to courier fees (but not to Land Registry fees as suggested by the Applicant). We allow them.

(iv) Landlord's Administrative Costs of dealing with two RTM Notices: £500 + VAT.

The Respondent contends that no adequate particulars have been provided of this charge, despite the Directions given by the Tribunal. The landlord refers to an Invoice from Vermac, dated 13 August 2017 (at p.76). The invoice is addressed to Bishop & Sewell. We understand that Vermac is the landlord's managing agents. If so, this should have been an expense for which the landlord was personally liable and had discharged (see Section 88(3)). Vermac provide no details of the work involved. It is dated nine months after the landlord served his second Counter-Notice. We disallow this item.

19. We allow the following costs:

(i) The First Notice: 2 units at £36 (£72); and 38 units at £28 (£1,064): £1,136. Total (inc VAT): £1,363.20. Disbursements: £149. Total: £1,512.20.

(ii) The Second Notice: 14 units at £28 (£392). Total (inc VAT): £470.40.
Disbursements: £38.85. Total: £509.25.

Judge Robert Latham,
12 July 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).