



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

**Case Reference** : LON/00AF/LCP/2019/0004

**Property** : 125 Croydon Road, Penge, London  
SE20 7TT

**Applicant** : Assethold Limited

**Representative** : Scott Cohen Solicitors Limited

**Respondent** : 125 Croydon Road (Penge)RTM  
Company Limited

**Type of Application** : Costs on exercise of right to manage  
under section 88(4) of the  
Commonhold and Leasehold Reform  
Act 2002

**Tribunal** : Judge Daley  
Mr H Geddes

**Date of Decision** : 25 March 2019

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**DECISION**

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The Tribunal has determined that the amount payable to the Applicant by the Respondent in respect of costs under section 88 of the Commonhold and Leasehold Reform Act 2002 is £400 plus VAT.

**Reasons for Decision**

1. The Applicant seeks a determination under section 88(4) of the Commonhold and Leasehold Reform Act 2002("the Act") of the amount of costs payable by the Respondent as a Right to Manage Company ("RTM Company")
2. On 29 January 2019 the Tribunal gave directions for the determination of this matter. The Tribunal considered this matter to be suitable to be determined without an oral hearing. The Directions provided that -:

“Should either party desire a hearing a request in writing should be made, preferably within 14 days of these directions”. Neither party requested a hearing.

3. Point 5 of the Directions stated:- “If the parties cannot produce any of the documents listed below, reasons should be given when the bundle is sent.” The documents included serving a statement of response on or by 26 February 2019 from the Respondent RTM Company.
4. On 9 February 2019, the Respondent RTM Company sent an email to the Applicant’s solicitor in the following terms:- “...On the subject of costs for this case, our client agrees your fees of £1162.80 and I have paid this now. Our client does not agree Eagerstates fees of £400 plus vat and expects evidence of work they did not incur this fee prior to payment...” On 13 February 2019, Prime Property Management acting on behalf of the Respondent RTM sent a further email in which they stated:- “...Our clients’ position will be that evidence of the work done is required. They consider this to be a fair request given the cost. Redacted copies of correspondence can be provided if you choose... Unfortunately the relationship between our client and Eagerstates is somewhat poor, and our client views this invoice with suspicion...”
5. The Respondent did not provide a statement of case.
6. In the Applicant’s Statement of Response dated 3 March 2019. The applicant confirmed that the only issue outstanding was the Management fee in the sum of £400.00 plus VAT.
7. In the absence of any other objection from the Respondent the Tribunal has reached its decision on the evidence produced by the Applicant in the hearing bundle.
8. In their Statement of Response, the Applicant stated:- “5. Section 88(1) provides that an RTM company is liable for reasonable costs incurred by a person who is a landlord in consequences of a claim notice...6. The requirement for reasonableness as defined in section 88(2) provides that where the costs noted in section 88(1) fall with respect to professional services the test for reasonableness is by reason of whether it may reasonably be expected that the landlord would incur the costs if incurring the costs himself...” Simply put the landlord is only entitled to recover costs if he would normally have been liable to pay those expenses, regardless of whether or not he had the hope of recovering those costs from a third party.
9. The Applicant did not provide redacted copies of correspondence or print out of telephone attendance records. However they provided a copy of the management agreement between Assethold Limited and Eagerstate Limited dated 20 February 2018 Clause 7 & 8 of the

agreement provided for the fees and charges, together with Appendix 1-2 which provided a schedule of services undertaken for the management fees, and Appendix 3 which provided for additional services, which stated “ Providing any form of services to the client over and above this Management Agency agreement in relation to the exercise by the lessees of Enfranchisement, the Right to Manage or as the result of the Appointment of a Manager by an LVT charging basis £400.00 plus Vat.”

10. The Applicant in 7 (c ) of the Statement of Response set out that the following work had been undertaken: sending copies of the claim notice to the relevant parties and liaising with the contractors and service providers to assess the impact of the planned work.
11. The Tribunal considered the management agreement and the request from the managing agent on the Respondent’s behalf; the Tribunal noted the request for additional information from the Respondent and whilst they considered the request not unreasonable, it noted that, given the sum of money at issue, complying with the request would be disproportionate. The Tribunal also noted that the Respondent had not provided a statement of case however, given the limited nature of the disputed items, the Tribunal was satisfied that the email correspondence was sufficient in order to determine the nature of the dispute between the parties.
12. The Tribunal noted concerning the limited of the description of the tasks undertaken by the managing agent concerning the Right to Manage Application however, given the contract between the parties, the Tribunal has decided on a balance of probabilities that the manager’s costs in the sum of £400.00 plus Vat is recoverable.
13. The Applicant referred to the costs of these proceedings in their statement of case however the effect of section 88(3) of the Act is that the Tribunal cannot award any part of them.

**Name:** M Daley

**Date:** 25 March 2019

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **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.

#### **Section 89**

##### **Costs where claim ceases**

(1) This section applies 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.

(2) 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.

(3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).

(4) But subsection (3) does not make a person liable if—

- (a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and

- (b) that other person has become a member of the RTM company.
- (5) The reference in subsection (4) to an assignment includes—
- (a) an assent by personal representatives, and
  - (b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).