



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

Case Reference	: LON/00AY/LCP/2021/0013
Property	: 215-217 Coldharbour Lane, London, SW9 8RU
Applicant	: Assethold Limited
Representative	: Mr Gurvits
Respondent	: 215-217 Coldharbour Lane RTM Company Limited
Representative	: Mr Lazarev
Type of Application	: Application re costs of RTM
Tribunal Members	: Judge Shepherd Susan Coughlin MCIEH
Date of Determination	27 th June 2022

1. This is an application made pursuant to a section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“The Act”). The Applicants are Assethold Limited (“The Applicants”) and the Respondents are 215 to 217 Coldharbour Lane RTM Co Ltd (“The Respondents”).
2. The Respondents sought to acquire the Right to Manage of premises of which the Applicants are the Freeholder. The First-Tier Tribunal dismissed a section

84 (3) application made by the Applicants following them the withdrawal of the claim by the Respondents.

3. The effect of the dismissal of the application was that the Applicants are prima facie entitled to recover their reasonable costs arising in consequence of the claim notice and of the proceedings in the First-Tier Tribunal. Section 88 of the Act states:

(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 the premises.....
In consequence of the 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 have 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) a 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.

4. Applying this section to the current circumstances the Applicants are prima facie liable for the Respondents' costs and the real question is whether the costs are reasonable.
5. The Applicants provided a breakdown of the costs showing the costs for the initial assessment of the RTM claim notice and the costs of the application before the Tribunal. The total costs are £2561.04 for the claim assessment and £1890 for the tribunal costs. The applicants seek solicitors' fees and management fees. In relation to the latter they rely on the case of Columbia House properties (No 3) Ltd v Imperial Hall RTM Co Ltd (2014) UK UTD 0030 (LC) which found that the recovery of the management fee came within s.88 of the Act.
6. In their response to the claim the Respondents deny that the Applicants costs are reasonable within the meaning of section 88 of the Act. They say: that the costs could have been avoided entirely had the applicant not acted unreasonably; the costs relate to duplicate works; the works performed were not necessary; the costs were not incurred in consequence of a claim notice given by the respondent in relation to the premises and there is no or not sufficient documentary evidence to support the costs claimed. They offer £688.35+ VAT.
7. The Respondents say this application raises an important point of principle that the Tribunal must determine namely whether a landlord opposing a RTM notice is entitled to any costs it incurs in taking steps which it is not entitled to take under the Act such as requiring the RTM Company to provide additional information to that contained in the notice of claim.

8. The background to the claim is as follows. A claim notice was served pursuant to section 79 of the Act on 6 November 2020. On 12 November 2020 solicitors for the Applicants sent a letter requesting information from the Right to Manage company. On 20 November 2020 this information was chased by email. On 25 November 2020 a further chasing email was sent. On 27 November 2020 a further chasing letter was sent. A counter notice was sent on 7 December 2020. On 11 January 2021 the Respondent emailed the Applicant requesting an explanation of the reasons behind their counter notice. The Applicants submitted a tribunal application dated 3 February 2021. In accordance with section 86 of the Commonhold and Leasehold Reform Act 2002 a withdrawal letter was served dated 1 June 2021. The Tribunal's order dismissing the application was made on 9 June 2021. On 7 July 2021 the Respondents served a new claim notice which was not disputed by the Applicants.

9. The Respondents do not object in principle to the Applicants receiving reasonable costs but they do object to the Respondents requesting additional information that is not specified in the Act which necessarily involves extra cost. They say that the 2002 Act provides a comprehensive and detailed set of steps that must be followed but there is no requirement for the RTM to prove to the landlord that it's carried out these actions accordingly they say it's for the landlord to carry out their own investigations as to whether or not the RTM has carried out these actions. They suggest that it is not unusual for landlords to embark on a "fishing expedition" and this is wrong and not in accordance with the Act. They also challenge the fact that the Applicants failed to point out earlier the error in their claim notice. The Respondents withdrew the claim as soon as they realised they'd made an error.

10. The Respondents deny that the Applicants required any support from a managing agent as the matter was straightforward. They say also that the

solicitors' invoices are vague and they do not provide actual time sheets or correspondence to demonstrate the work carried out. The Respondents also challenged the costs of preparation for the RTM takeover.

11. In response the Applicants maintain that they were entitled to seek relevant documents as part of the RTM process. They say that the request for information was made as a matter of necessity and was a necessary response to the claim to enable the landlord to carry out its assessment. The landlord was entitled to assess the legitimacy of the claim. They say that supply of the documents was necessary and was not unduly burdensome. The Applicants also resist the claim made by the Respondents that the FTT costs should be denied stating that section 88 (3) of the Act makes specific provision for disputes arising over the RTM and cost recovery. They also state that the deficiencies in the claim were readily apparent from their counter notice which stated that the claim notice was invalid because it specified a date for the acquisition of the right to manage the premises which was not at least three months after the date given pursuant to section 80 (6) of the Act. In relation to the solicitors' costs the Applicants say they are reasonable, similarly they say that there is no reason why a landlord should not be able to recover costs incurred in respect of the managing agent involvement in the process. They say that invariably there would be some work which would need to be undertaken by the managing agent outside the scope of its normal day-to-day management duties in respect of any right to manage claims however these works do not duplicate the works of the solicitor.

12. The Applicants were represented by Mr Gurvits, and the Respondents by Mr Lazarou. Mr Lazarou reinforced the argument that the Act did not require the right to manage company to provide the type of documentation sought by the Applicants in this case. Mr Lazarou went through the schedules of costs claimed by the Respondents accepting some of the costs but challenging others. Mr Gurvitz made very limited submissions and sought solely to rely on his statement of case.

Determination

13. The contents of a RTM claim notice are prescribed. In section 82 the RTM company can seek information which it reasonably requires for providing the information in the claim notice. Section 84 of the Act deals with the provision of the counter notice. There is no provision in the Act which specifically allows the landlord to seek information over and above that provided in the claim notice and necessarily therefore the Applicants are not entitled to seek the costs of seeking such information. Accordingly in respect of this aspect of the Applicants' costs some amendment is required. The tribunal will allow the costs detailed in the schedule of work on documents which amounts to £632.50 but will not allow the additional costs of letters sent seeking further information. These letters are charged at £165. The Tribunal will allow letters sent to the solicitors' client charged at £330. The total sum therefore allowed for work by solicitors prior to tribunal application is £962.50 plus vat.

14. The Tribunal had considerable difficulty working out what work the managing agents had actually done in relation to the right to manage application. No itemized costs were provided. The application was sent to the Freehold Company which is experienced in this field and we can see no reason why there should be much management work to do at this stage in the process, although clearly this may arise later. It may be that the landlord was contractually bound to pay this sum to the managing agent but this does not necessarily mean the RTM company should bear it. Accordingly, the tribunal disallows any claim for the managing agent fees both in relation to the claim process and the tribunal work.

15. The Tribunal does not accept that the landlord should not have incurred the costs of making an application to the Tribunal. The landlord had specified in its counter notice that the claim notice was in error because it specified a date

for the acquisition of the right to manage the premises which was not at least three months after the date given. Accordingly, the error ought to have been apparent to the Respondents and it was not incumbent on the landlord to give any further information. After the landlord had issued its application to the tribunal denying the right to manage the respondents withdrew the claim. They are liable for the costs incurred by the Applicants in applying to the tribunal. The solicitors' costs of this process are in our view reasonable and these amount to £825 plus VAT. In summary the total cost allowed are £1787.50 plus VAT.

Judge Shepherd

27th June 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.