



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

Case Reference : **LON/00AM/LCP/2016/0004**

Property : **Amhurst Court, Amhurst Park,
London N16 5AX**

Applicant : **Westbridge Estates Limited**

Representative : **Scott Cohen Solicitors**

Respondent : **Amhurst Court RTM Company
Limited**

Representative : **Sterling Estates Management**

Type of Application : **Section 88 Commonhold and
Leasehold Reform Act 2002 –
determination of costs payable**

Tribunal Members : **Judge John Hewitt
Mr Christopher Gowman**

**Date and venue of
Determination** : **27 June 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **1 July 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that the costs payable by the respondent to the applicant pursuant to section 88 of the Act are as follows:

Solicitors's costs	£1,297.74	(see para 22 below)
Managing agents' fees	<u>£ 180.00</u>	(see para 28 below)
Total	£1,477.74	

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. By a claim notice dated 19 November 2015 [76] given by the respondent (the RTM company) to the applicant pursuant to section 79 of the Act, the RTM claimed the right to manage the subject property.
4. By a counter-notice dated 21 December 2015 [80] the applicant alleged that the RTM company was not entitled to acquire the right to manage because several subsections of section 79 had not been complied but the counter-notice did not indicate in what respect and did not identify the reason(s) for the alleged non-compliance.
5. The RTM made an application to the tribunal for a determination that it had acquired the right to manage. Directions were duly issued and shortly thereafter the applicant conceded that the RTM company had acquired the right to manage and by letter dated 19 January 2016 the applicant withdrew its counter-notice. In consequence those proceedings were then withdrawn.
6. Section 88 of the Act provides that a RTM company is liable for the reasonable costs incurred by a party who is a landlord of the whole or any part of the premises in consequence of a claim notice given by the company in relation to those premises.
7. Subsection 88(2) provides:

“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 the costs in respect of such services might reasonably be expected have been incurred by him if the circumstances had been such that he was personally liable for all such costs.”
8. Evidently the parties were not able to agree the amount of costs payable and so on 29 April 2016 the applicant made an application to the tribunal [1] for the amount of those costs to be determined. The application is made pursuant to section 88(4) of the Act.

9. Directions were duly issued and in the absence of objections from either party the costs were to be determined on the papers and without an oral hearing.

10. We have before us a file which contains:

Applicant's statement of case	[36-40] + exhibits
RTM company's statement of case in answer	[101-129]
Applicant's statement of case in reply	[130 -133] + exhibits
Various other documents/authorities	[134-174]

The costs claimed

11. The costs claimed are as follows:

Solicitor's costs	£1,625.00
Expenses	<u>6.45</u>
	£1,631.45
VAT @ 20%	<u>£ 326.29</u>
Total	£1,957.74
Managing agents' costs	£ 300.00
VAT @ 20%	<u>£ 60.00</u>
Total	£ 360.00

The solicitor's costs

12. Throughout the applicant was represented by Miss Lorraine Scott, a sole practitioner, whose practice is known as Scott Cohen Solicitors. Ms Scott is an experienced solicitor in the specialised area of RTM and related work. Ms Scott had agreed a charge-out rate of £250 with the applicant.

13. A breakdown of the time spent is set out at [38 – 39].

14. It was not in dispute that the applicant is entitled to recover the reasonable costs of its solicitors and managing agents.

15. The thrust of the RTM company's objections are that the counter-notice was a ploy and delaying tactic to test the qualifying tenants' resolve and part of a strategy to deter them from exercising their right to manage. Support for this contention is said to be the decision of the applicant to withdraw the counter-notice shortly after the issue of tribunal proceedings. The applicant refutes this and claims the counter-notice was withdrawn for commercial reasons but it has not stated what those reasons are.

16. Whilst the motives of the applicant might be questionable in this regard they do not of themselves affect their statutory entitlement to recover costs within the ambit of section 88.

17. The RTM company argues that the charge-out rate of £250 is towards the higher end of the scale and is generally critical of the overall time claimed for. It submits that the reasonable solicitors' costs should not exceed £703.74 inclusive of VAT but does not explain how that sum is arrived at.

Decision

18. We have given careful consideration to the rival arguments and the various documents/authorities relied upon.
19. We are satisfied that the rate of £250 is a reasonable rate given Ms Scott's experience in this complex area. Of course that experience and expertise enables Ms Scott to despatch business much more quickly than a fee-earner without such experience.
20. We have looked carefully at the time claimed for. We have made an adjustment because it appears to be unreasonable in its own right and because the applicant plainly has an eye to commercial reality and we are not persuaded that the applicant would readily have agreed so much time being spent if it was footing the bill itself.
21. For the reasons mentioned above we have made the following adjustment:

Review of additional documents 234 minutes down to 120 minutes.

We have also adjusted the claim for counter-notice 36 minutes down to 18 minutes. We did so because this is plainly a pro forma document in a format very frequently given by Ms Scott on behalf of her clients and often seen in this tribunal. It is largely generic and whilst asserting alleged non-compliance it does explain why. Given Ms Scott's experience and the frequency with which she deploys such a generic document we cannot imagine that it would take any more than 18 minutes to complete given that time for compiling all of the underlying materials is charged for elsewhere.

22. Accordingly we determine the solicitors' costs payable as follows:

258 minutes (4.3 hrs) @ £250 =	£1,075.00
Expenses	6.45
	£1,081.45
VAT @ 20%	<u>£ 216.29</u>
Total	£1,297.74

Managing agents' fees

23. The claim is for £300 based on a charge-out rate of £75.
24. The RTM company complains of lack of cooperation with handover. Whether that be right or wrong the applicant correctly argues it is an

irrelevant to section 88 costs. The RTM company also submits there is an element of duplication with what the solicitors are doing and we can see that. The RTM company submits that reasonable costs should not exceed £120 inclusive of VAT.

Decision

25. We can see some duplication in work. Also 25 minutes is claimed for notifying the applicant and its solicitor of the fact of receipt of the claim notice. The applicant chose to require such notices to be served on its agent and it can hardly be reasonable to incur or agree a cost when agent simply passes the notice on. We find that the cost was not reasonably incurred and is not reasonable in amount.
26. The claim for 1.5 hrs to review the management file and the implications for RTM is excessive. A competent managing agent, on the ball, could and should have most, if not all, of the required information readily to hand.
27. We are not persuaded that it was reasonable to incur all of the time claimed for and the applicant, with its commercial nous, would have agreed to pay for such time if it had been footing the bill personally.
28. We have therefore made adjustment. We find that taking a broad view a reasonable amount of time would not have exceeded 2 hours. We therefore determine that a fee of £150 + VAT of £30 which = £180 is the reasonable fee payable by the RTM company.

Judge John Hewitt
1 July 2016

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
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 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.