FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KA/LCP/2022/0001**
HMCTS code (audio, video, paper)	**:**	**P: PAPERREMOTE**
Property	**:**	**Highview Court, Dudley Street Luton LU2 0FR**
Applicant	**:**	**Avon Ground Rents Limited**
Representative	**:**	**Scott Cohen Solicitors Limited**
Respondent	**:**	**Highview Court Luton RTM Company Limited**
Representative	**:**	**Philip Bazin, The Leasehold Advice Centre**
Type of application	**:**	**Application under Section 88(4) of the Commonhold and Leasehold Reform Act 2002 to determine any question in relation to the amount of any costs payable by an RTM company**
Tribunal members	**:**	**Judge David Wyatt**
Date of decision	**:**	**11 October 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote decision on the papers. A hearing was not held because it was not necessary; all issues could be determined on paper. The documents I was referred to are those described in paragraph 2 below. I have noted the contents.

Decision of the Tribunal

The Tribunal determines that £1,992 is payable by the Respondent to the Applicant for the costs incurred by the Applicant in consequence of the claim notice dated 18 March 2022 given by the Respondent in relation to the Property.

Reasons

Procedural history

1. This was an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the "**Act**") to determine the costs payable following the service of a claim notice in respect of the right to manage under Chapter 1 of Part 2 of the Act (the "**right to manage**" or "**RTM**").

2. On 19 July 2022, a procedural chair gave case management directions proposing that the application be determined based on the papers unless a hearing was requested. The directions required the Applicant landlord to produce a statement of case, all documents relied upon and a statement of the costs claimed, and the Respondent RTM company to produce their statement of case in response with all documents relied upon. The Applicant was given permission to produce a reply. Pursuant to the directions, the Applicant produced a bundle (154 pages, with some duplication) including these documents. There was no request for a hearing. Accordingly, by rule 31(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the parties are taken to have consented to this matter being determined without a hearing. I am satisfied that it is appropriate for this matter to be determined based on the documents in the bundle.

Background

3. The Property is a modern development, varying in storey height and accommodating 53 residential flats let on long leases. It appears the leaseholders of about 29 of the flats are members of the Respondent RTM company.

4. By a claim notice dated 18 March 2022, the Respondent gave notice of their intention to acquire the right to manage the Property on 8 August 2022. By a counter-notice dated 5 April 2022, the Applicant landlord alleged that the Respondent was not entitled to acquire the right to manage. The counter-notice gave very limited information, but it referred to the following provisions and made the following allegations:

Section of the Act	**Allegation**
72(1)	"*…these are not premises to which the section applies*"

78(1)	"*…the notice of invitation to participate was not given to each person required by that section*"
78(2)	"*…the notice inviting participation did not contain the particulars as prescribed by the regulations in accordance with that section*"
79(3)	"*…the claim notice was not given by an RTM Company which complied with section 79(5)…*"
80(6)	"*…the claim notice specified a date earlier than one month after the relevant date for response by counter-notice under section 84…*"
80(8)	"*…the claim notice did not contain the particulars required by that section*"
80(9)	"*…the claim notice did not comply with the requirements about the form of claim notices as prescribed by the regulations in accordance with that section*"

5. By letter dated 14 April 2022, the Respondent's representatives wrote: "*We accept that the earlier notice with our covering letter dated 21st March 2022 is invalid and of no effect. We therefore serve this further and effective claim notice.*" The Applicant confirmed in their statements of case that the Respondent had withdrawn the claim notice on 14 April 2022.

Law

6. The right to manage provisions are in Chapter 1 of Part 2 of the Act. By section 88(1), an RTM company is liable for the reasonable costs incurred by a landlord (or specified others) in consequence of the claim notice given by the company.

7. By section 88(2), any such costs in respect of professional services provided by another are to be regarded as reasonable only to the extent that costs in respect of such services might reasonably be expected to have been incurred by them if the circumstances had been such that they were personally liable for all such costs.

8. By section 88(3), an RTM company is liable for any costs which a landlord incurs as party to any proceedings under Chapter 1 before the tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage. No such application was made in relation to this claim notice.

9. By section 89(2), the liability of the RTM company under section 88 is a liability for the costs incurred down to the time the claim notice is withdrawn (or is deemed to have been withdrawn, or ceases to have effect, by reason of any provision of Chapter 1).

Costs

10. In their statement of case, the Applicant claimed total costs of £2,637. These are composed of solicitors fees of £1,712.50, management fees of £350, disbursements of £135 and VAT.

Solicitors fees (£1,712.50 plus VAT)

11. The invoice produced from Scott Cohen Solicitors Limited, who are based in Henley on Thames, is headed "PROFORMA INVOICE" and dated 3 August 2022 for £1,712.50 plus VAT and the disbursement described below. The Applicant made general arguments in support of their claim, including the significance of a potential transfer of management obligations and the relatively technical nature of the legislation. They contended that the right to manage is a specialist area and requires an experienced practitioner. I note their reference to a decision relating to a different property by a different tribunal which upheld similar costs in their entirety, but such assessments are fact-sensitive and that was a first-tier tribunal decision following failure by the relevant RTM company to respond substantively to the proceedings.

12. The fee earners described in the Applicant's statement of costs are Lorraine Scott (Grade A) at £275 per hour and Juliet Morgan (Grade D) at £150 per hour. The current general guideline hourly rates for a Band 1 national firm are £261 and £126 respectively. The Respondent did not dispute the hourly rates charged, but emphasised that experienced specialists should work with corresponding efficiency.

13. The Applicant's statement of costs claims £462.50 for routine attendances. This is composed of 10 Grade A units (£275) for attendances on the Applicant, three Grade A units and two Grade D units for attendances on the Respondent (£112.50) and five Grade D units for attendances on the courier (£75).

14. In addition, the statement claims £1,250 for work on documents. This is composed of five Grade A units for assessment of the claim notice (£137.50), 20 Grade A Units and 10 Grade D units for assessment of the supporting RTM documents (£700), nine Grade A units for assessment of photographs and title information from the Applicant (£247.50), one Grade A unit for assessment of proof of delivery (27.50) and five Grade A units (£137.50) for preparation of the counter notice.

15. First, the Respondent said it would have been obvious on assessment of the claim notice that it was invalid because it specified in paragraph 5 that the deadline for any counter-notice was "*7 May 2022 April 2022*". They said, in essence, that a reasonable landlord spending their own money would not have carried out further work to identify any other potential grounds of dispute, but would have relied on that issue alone. In their submissions in reply, the Applicant acknowledged that paragraph 5 of the claim notice: "*provided a ground to render same invalid*" but made submissions to the effect that it was reasonable to investigate further, referring to the decision in Pineview Ltd v 83

Crampton Street RTM Co Ltd [2013] UKUT 598 (LC) at [66] and observing that several other alleged grounds were identified in the counter notice.

16. Second, the Respondent said the time spent was unreasonable, referring in particular to the attendances on the Applicant and the courier and the time spent assessing the documents (suggesting there was duplication in reviewing title documents from each party) and proof of delivery. They noted that more than three quarters of the time was spent by the Grade A fee-earner. They said the total time charge of about seven hours was wholly excessive and, even if it was appropriate to review all matters, the total time should be limited to three hours. The Applicant made submissions in reply which (amongst other things) emphasised the 53 leasehold units and said the Respondent had produced three PDF bundles of supporting documents totalling 1,812 pages. They said Ms Scott was the sole solicitor in the firm, attending to all outgoing correspondence by post and e-mail.

Conclusion

17. The Applicant's first point has more force in relation to the management fee considered below. It would have more force in relation to the legal costs if the obvious problem with the RTM claim was one which could not quickly be corrected in a new claim notice. In this case, a reasonable landlord spending their own money on all the professional costs might reasonably be expected to incur costs on reasonable further investigation. The fact that this work was done in consequence of the first claim notice may well be relevant to any question in future of what costs were reasonably incurred in consequence of the second claim notice given shortly thereafter.

18. I agree that it was reasonable for the Applicant to use relatively experienced specialist fee earners. I agree that the hourly rates of £275 and £150 are appropriate for specialists conducting work with corresponding efficiency. In my assessment, the total reasonable amount for the relevant legal costs in consequence of the claim notice in this case was the equivalent of five hours of time at the Grade A rate of £275 per hour (£1,375).

19. This allows for reasonable attendances, taking into account the delivery problems described below. The remainder is a reasonable allowance for the review of the claim notice, reasonable work on documents, including reasonable checks of the details for the Respondent and its membership and constitution, of the 53 leasehold titles, of the photographs of the building and the other work referred to (including preparation of the counter-notice). It allows for more than five hours of actual time, because some attendances and basic checks of the corporate and Land Registry details should have been (and some apparently were) delegated to the Grade D fee-earner.

Management fees (£350 plus VAT)

20. The Applicant said its agents were instructed to carry out additional tasks for which additional fees are charged, including liaison between the Applicant and its solicitors, providing assistance and information, co-ordinating the management response to the claim notice (checking the arrangements in relation to insurance and any service providers, for example) and advising the Applicant on the impact on services and anticipated repairs and funding. They referred to the decision in Columbia House Properties (No 3) Ltd v Imperial Hall RTM Company Limited [2014] UKUT 0030 (LC).

21. The copy "*Management Agency*" document names the Applicant and their agents ("*Y&Y Management Ltd*"), is dated 25 March 2022 for a term of 12 months from that date and is signed only by a representative of the agent. It provides for general management services to be provided for a management fee of £15,900 including VAT, with additional services (specified in Appendix 3) to be provided for additional charges. For additional services in relation to the exercise of the right to manage, this specifies a minimum fee of £200 plus VAT, plus £150 plus VAT per hour for court or tribunal appearance.

22. The invoice from the agents is dated 29 July 2022 and simply describes the services provided for the £350 plus VAT as "*Assisting Solicitors*". The Respondent did not dispute that the Applicant was liable for these fees. However, they said they were not reasonable.

Conclusion

23. The claim notice was apparently served under cover of a letter dated 21 March 2022, seeking to acquire the right to manage on 8 August 2022, and the Applicant says it was withdrawn on 14 April 2022. The agents produced no evidence in these proceedings of what work they had done. The agent's invoice indicates only that the fee was for assisting the solicitors. In my assessment, the reasonable fees for work by the managing agents during this period on helping the solicitors to deal with the claim notice and any reasonable related work would have been £150 plus VAT, even if the Applicant had by the relevant time signed an agreement to pay at least £200 plus VAT for any services provided in relation to any RTM claim.

24. I am not satisfied that substantive additional management services of the type claimed by the Applicant in the rather general wording in their statement of case were provided during the relevant period. Even if they were, my assessment is that the additional costs of those services would not reasonably be expected to be incurred by the Applicant during the relevant period (of less than four weeks, knowing that even the claimed acquisition date was about four months away and the claim notice had at least one obvious defect) if the circumstances had been such that they were personally liable for all such costs.

Disbursements (£135 plus VAT)

25. The Applicant said that the disbursement of £135 was for courier hand delivery of the counter notice. They produced an invoice from the courier dated 6 April 2022 for "*Same day delivery to BR1 2BJ*" for £135 plus VAT. The Respondent said this cost was unreasonable and ordinary postage would have been sufficient. The Applicant said the counter-notice had initially been sent on 5 April by next-day delivery, but it discovered on 6 April that delivery had been refused (a copy of the Royal Mail tracking print was produced). They said the attendances on the courier had been reasonable to agree a price, arrange same-day delivery and chase the courier for a signed statement as proof of delivery.

Conclusion

26. I consider that, exceptionally, the courier charge was reasonable in this case. The counter-notice should not ordinarily have been left to such a late stage. However, it was not unreasonable for the Applicant to wish to ensure that the counter notice was served by the earlier of the two possible deadlines specified in the Respondent's counter-notice. That apparently gave them only a little more than two weeks from receipt of the claim notice. They had attempted unsuccessfully to serve by inexpensive next-day delivery before they resorted to the same-day courier. The Respondent produced no evidence to suggest that a lower charge should have been negotiated with the courier for same-day delivery from Henley to the specified address for the Respondent in Bromley.

Summary

27. In my assessment the recoverable costs, including the professional costs which would reasonably be expected to have been incurred by the Applicant if the circumstances had been such that they were personally liable for all such costs, would be £1,992 (legal fees of £1,375, management fees of £150, the courier fee of £135 and VAT of £332).

Name: Judge David Wyatt **Date:** 11 October 2022

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).