

**RESIDENTIAL PROPERTY TRIBUNAL****Leasehold Valuation Tribunal****Case reference: LON/00AG/LCP/2007/0002****Application under Section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the 'Act')****Applicant: 8 Frognal Lane RTM Company Limited****Respondent: Mr AG Kirk****Premises: 8 Frognal Lane, LONDON NW4 7DU****Paper Determination: 25th September 2007****The Tribunal: Professor James Driscoll LLM, LLB, Solicitor****DECISION**

**The Tribunal determines that the Applicant is to pay the sum of £978.19 (which includes VAT) representing costs payable under Section 88 of the Act to the Respondent within 28 days of the date of this decision.**

**BACKGROUND**

- 1 The Applicant is a company incorporated in accordance with Sections 73 and 74 of the Act and under Regulations made under the Act to act as the RTM company on behalf the leaseholders. The premises consist of four flats of which three are held on qualifying leases. The members of the Applicant company are the leaseholders.

2 The Respondent is the freeholder of the premises and the landlord under the leases of the flats.

3 The Applicant sought an order under Section 84(3) of the Act that it was on the relevant date entitled to acquire the right to manage ('RTM') the premises.

4 On the 10 June 2004 the Tribunal made a determination that the Applicant was on the 'relevant date' – that is the 9 February 2004 – entitled to acquire the RTM. This followed the service of a claim notice given under the Act and the service of a counter-notice denying that the Applicant was so entitled.

5 That decision set in full the background and the issues and the reasons for the Tribunal's decision (see: LON/OOAG/LRM/2004/0001).

#### **THIS APPLICATION**

6 The parties failed to agree the amount payable to the Respondent for its costs under Section 88 of the Act. Accordingly the Applicant applied to the Tribunal for a determination (in accordance with Section 88(4)) on the 26th July 2007.

7 The Directions given by the Tribunal dated the 3rd August 2007 also set out the relevant statutory provisions and the details of the claim. It was also directed that the Application should be dealt with without a hearing. Neither party sought a hearing. Accordingly the Tribunal made a determination of the costs payable on consideration of the papers.

8 Representations and other documents were filed by the parties and considered by the Tribunal. The Tribunal also read and considered the papers relating to the decision given in 2004. The Tribunal notes that the application was made in relation to a block of four flats, three of which were held on qualifying leases. The fourth flat (a basement flat) was held on a regulated tenancy.

- 9            However, the Respondent claimed that the fourth flat (a basement flat) had in fact been converted into two flats both of which are occupied by rent paying tenants. This led him to the conclusion that in consequence the building did not qualify for the right to manage. This argument was that as under Section 72(1) of the Act the total number of flats held by qualifying leaseholders must be not less than two-thirds of such qualifying leaseholders, that in fact less than this proportion applied to the building as two of five units were not held on qualifying leases. In consequence the building did not qualify for the RTM.
- 10           Based on this reasoning, the Respondent served a counter-notice denying the Applicant's entitlement to the RTM. This in turn led to the Application, which was heard on the 26th May, and the 10th June 2004. The Tribunal also inspected the premises and was satisfied that the basement consisted of one flat only. In consequence the building qualified under Section 72(1) of the Act.
- 11           At the hearing the Respondent raised for the first time issues relating to whether or not the Applicant was a properly constituted RTM company, the authority of the leaseholder who represented it and as to whether that Tribunal was properly constituted. The Tribunal rejected these submissions.
- 12           The Respondent now seeks costs to cover his costs in instructing specialist solicitors to advise and also for certain personal costs. This Tribunal is surprised at the amount claimed as legal costs. It seems to this Tribunal that the legal issues were very straightforward in this case and amounted in substance to a determination of fact - that is whether or not the basement flat was one flat or two. The Tribunal decided this simple issue on the basis of its inspection.
- 13           The Tribunal decides that amount put forward on behalf of the Applicant that is the sum of £978.19 (which includes VAT) is a reasonable amount to pay in the circumstances of this matter. It is based on a bill of costs sent by the firm of Withers, solicitors who advised the Respondent (referred to in the papers before this Tribunal as invoice number 122853). This bill was for advice given and the drafting of a counter-notice. However, the Tribunal does not consider that any of the costs charged to the Respondent under invoice number 12575 for advice (including the costs of instructing counsel to advise) is recoverable from the Applicant as these costs in connection with the application to the

Tribunal are only recoverable if the Respondent had succeeded with the challenge to the RTM claim (see: Section 88(3) of the Act).

- 14 The Tribunal also rejects Mr Kirk's claim for his own costs. The Tribunal repeats that the issues in this matter – whether a block of four flats qualifies for the right to manage - were very straightforward. Mr Kirk had the benefit of legal advice but he is not entitled to claim any costs in relation to the Tribunal hearing as such costs can only be claimed where the landlord's challenge to the validity of the claim is successful (see Section 88(3)). In this claim the Respondent's challenge was unsuccessful.

Signed..... James Driscoll

(James Driscoll, LLM, LLB, Solicitor)

Dated: 10th January 2008