

Ref: LON/00AU/LCP/2008/0007

LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL

DETERMINATION

RE APPLICATION AS TO COSTS
UNDER SECTION 88 OF COMMONHOLD AND LEASEHOLD REFORM
ACT 2002

PREMISES: 9 Corinne Road, London N19 5EZ

Applicant: 9 Corinne Road RTM Company Limited
Representatives Pro-Legal Ltd

Respondent: Sinclair Garden Investments (Kensington) Limited
Representatives P Chevalier & Co

Meeting: Tuesday 29 July 2008

Tribunal: Professor J T Farrand QC LLD FCI Arb Solicitor
Mr L G Packer

1. The Applicant (tenants' RTM company) sought a determination of the amount of the reasonable costs payable by it to the Respondent (landlord/freeholder) incurred in consequence of its notice claiming to acquire the right to manage the Premises.
2. In pursuance of Directions, dated 20 June 2008, the matter was determined without an oral hearing.

3. The Application, dated 9 June 2008 and made under s.88(4) of the 2002 Act, was prompted by a letter, dated 6 June 2008, from the Respondent's representatives requiring payment of £840.12. This sum was the amount of their fees as shown in an attached Statement as follows:

SCHEDULE

ENGAGED (2 hr 45 min)

- a) Attendances on client obtaining instructions and advising (30 mins)
- b) Considering leases of each Flat and Official Copy Entries of each registered title (30 min)
- c) Considering Notice of Claim and researching questions which need to be confirmed (45 mins)
- d) Drafting Counter Notice (15 mins)
- e) Considering Memorandum and Articles of Association and validity of membership (30 mins)
- f) Considering whether Notice Inviting Participation should be served and investigating whether service effected of Claim Notice on Qualifying Tenants (15mins)

ENGAGED IN TOTAL:	2.75 Hours	
HOURLY RATE	£220 per hour	605.00
ALSO		
5 letters out	£22	<u>110.00</u>
		715.00
VAT		<u>125.12</u>
		840.12

4. The written Submissions made on behalf of the Applicant, dated 7 July 2008, primarily challenged the charging rate, asserting that the Respondent should have negotiated a reduced rate of £175-180 per hour for large quantities of Grade B work concerning a straightforward claim concerning only two flats. In addition, the minutes stated as spent on the work were challenged as unnecessary or excessive. The conclusion submitted was that the Applicant was only liable to pay for 48 minutes of legal work at a rate between £175-200 per hour – ie at most a total fee of £160.

5. Substantial Submissions in response on behalf of the Respondent, dated 17 July 2008, explained at length the significant investigations and responsible obligations undertaken on behalf of a landlord in dealing with a claim notice by an RTM company. In particular, attention was drawn to the statutory test set out in s.88(2) of the 2002 Act:

“Any costs incurred by [a landlord] 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.”

A letter from the Respondent, dated 13 June 2008, to its representatives was exhibited confirming that the charging rate of £220 had been agreed and that liability was accepted for their fees in the amount of £840.12.

6. Generally, the Tribunal agrees with the submissions made for the Respondent focussing on the legitimate interests of a landlord in ensuring that all is in order with the right to manage claim. However, it should be emphasised that the Tribunal does not agree that the provision quoted in the previous paragraph constitutes a complete test of reasonableness for present purposes. Essentially, it seems to be a negative test: costs will not be reasonably incurred if the landlord would not have been willing to pay them out of his own pocket. It does not follow that costs should automatically be regarded as reasonably incurred simply because a landlord would be content to pay them, since this might depend on personal if not irrational circumstances and considerations.

7. In cases such as the present, the Tribunal considers that a 'broad brush' approach to reasonableness should be adopted and that undertaking a detailed and restrictive scrutiny or 'taxation' of legal costs of the item by item sort frequently undertaken in the wake of litigation is not rendered appropriate by the provisions of s.88 of the 2002 Act. As is well understood in comparable contexts, a reference to 'reasonable costs' does not impose any obligation upon a landlord to restrict costs otherwise reasonably incurred by him to the cheapest rates or to rates acceptable to tenants. In the Tribunal's judgment, it is impossible to find that the overall amount of fees payable in the present case falls outside the range of what it would be reasonable to pay solicitors of admitted experience and expertise in this area of law and practice for work properly undertaken in consequence of a RTM claim notice.

8. Therefore, the Tribunal has decided that the Applicant is liable to pay the full sum required on behalf of the Respondent for legal costs. This means that the amount payable under s.88(1) of the 2002 Act according to the Tribunal's determination is **£840.12**.

Judith Forward

CHAIRMAN

DATE 30 July 2008