

457



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

Case Reference : CHI/29UE/LUS/2013/0002

Property : Castle Mount
6 Walmer Castle Road
Walmer
Kent
CT14 7NG

Applicant : Walmer Castle (Walmer) RTM Co. Ltd.

Representative : Chaine Hunter

Respondent : Shuttleworth Property Management Co.
Ltd.

Representative : Circle Residential Management Ltd.

Type of Application : Determination as to amount of accrued
uncommitted service charges payable
to the Applicant under
Section 94(3) of the Commonhold and
Leasehold Reform Act 2002

Tribunal Members : Judge R. Norman (Chairman)
Mr. C.C. Harbridge FRICS

**Date of
Consideration** : 14th October 2013

Date of Decision : 4th November 2013

DECISION

© CROWN COPYRIGHT 2013

Decision

1. The sum of £2,152.62 is the amount of the payment, equal to the amount of any accrued uncommitted service charges held by Shuttleworth Property Management Company Limited (“the Respondent”) on 1st July 2012, to be made by the Respondent to Walmer Castle (Walmer) RTM Company Limited (“the Applicant”).

Background

2. The Applicant acquired the right to manage Castle Mount, 6 Walmer Castle Road, Walmer, Kent CT14 7NG (“the subject property”) on 1st July 2012.

3. The Respondent is the landlord of the subject property and has not made to the Applicant a payment equal to the amount of any accrued uncommitted service charges held by the Respondent on the acquisition date.

4. Therefore the Applicant has made an application under Section 94(3) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) for the Tribunal to determine the amount of any payment which falls to be made under this section.

5. Directions were issued and with those directions the Tribunal gave notice to the parties under Regulations in force at that time, that the Tribunal intended to proceed to determine the matter on the basis only of written representations and without an oral hearing. Also that if the matter were dealt with in that fashion it might be considered by a Chairman sitting alone, or alternatively with another Member of the Panel, rather than by a full tribunal of three members. The parties were given the opportunity to object to that procedure by writing to the Tribunal no later than 28 days from the 6th June 2013. No written objection has been received and the matter is being deal with on the basis only of written representations and without an oral hearing.

6. Representations have been received from Chaine Hunter on behalf of the Applicant and from Circle Residential Management Limited on behalf of the Respondent.

The Law

7. Section 94 of the 2002 Act provides that:

“(1) Where the right to manage premises is to be acquired by a RTM company, a person who is-

- (a) landlord under a lease of the whole or any part of the premises,
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

(2) The amount of any accrued uncommitted service charges is the aggregate of-

- (a) any sums which have been paid to the person by way of service charges in respect of the premises, and
- (b) any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3) He or the RTM company may make an application to a tribunal to determine the amount of any payment which falls to be made under this section.

(4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.”

8. Section 88 of the 2002 Act makes provision for the liability of a RTM company for reasonable costs incurred by the landlord and others in consequence of a claim notice given by the company in relation to the premises. Section 88 (4) provides that any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a tribunal.

9. A number of aspects of the operation of Sections 94 and 96 of the 2002 Act and Section 4(2) of the Landlord and Tenant Act 1987 were considered by the Upper Tribunal in the case OM Limited and New River Head RTM Company Ltd [2010] UKUT 394 (LC) and the following paragraphs are relevant to the present application.

(a) “23. The words of Section 94(1) are deliberately limited. The payment of accrued uncommitted service charges is confined to those accrued uncommitted service charges ‘held by’ the landlord or manager on the acquisition date. The natural meaning of those words is that what has to be paid is what the landlord or manager has actually got; not what he was entitled to have but failed to get or had at one stage but does not have now. Quite how broadly “held-by-him” should be interpreted in any particular case will depend upon the facts of that case. In dealing with an argument that appears to have troubled the LVT, I would have little hesitation in deciding that such charges were “held by him” within the section in a case where a manager had for his own reasons, dishonest or not, decided to put the service charges in cash in a box under his bed. That will be a matter for the LVT to determine under section 94(3).....”

(b) “24. The sums must have been paid “by way of service charges”. Those underlined words, to my mind, are there to make it plain that

there is to be no argument so far as the payment is concerned about whether or not the charges are in fact justifiable and reasonable service charges; if they were paid 'by way of service charges' they are service charges for the purpose of Section 94."

(c) "25. They also have to be uncommitted service charges, so if they have been paid or committed to a particular management debt or function they do not fall within section 94."

(d) "28. The relationship of the management company and the tenants and the rights that have arisen between them up to the acquisition date, are preserved. If a tenant succeeds in demonstrating to the County Court or the LVT that service charges paid or demanded are unreasonable, he will recover his payment for himself or successfully resist a claim against him for any payment. The Act gives the RTM company no power, still less a right, to take over a tenant's claim or take over the defence of a claim properly made against a tenant. That does not involve the duplication of proceedings; it keeps things as they are."

(e) "29.....However, in my judgement it is impossible to spell a power for the LVT to award interest out of the words of section 94(2)(b). On the contrary, the words in that provision "any investments which represent" sums paid by way of service charges "and any income which has accrued on them" make it plain to my mind that Parliament only intended interest that has actually accrued on such investments to be transferred to the RTM company. Nor, in the absence of any specific statutory power to do so, does the LVT have an inherent power to award interest."

Reasons

10. Representations were made on behalf of the parties and were considered by the Tribunal. Findings of fact were made on a balance of probabilities.

11. On behalf of the Respondent it was submitted that £712.62 was the sum to be paid to the Applicant. This sum was calculated as follows:

	£
"01.01.12 Balance Brought Forward	975.80
01.01.12 Interim Service Charges	4,500.00
Expenditure to 30.06.12	- 1,794.91
30.06.12 Arrears	-1,528.27
01.07.12 Uncommitted Service Charges	2,152.62

s88 Costs Claim Notice @ £750	-750.00
s94 Application to 11.06.13 @ 2hs @ £225/hr	-450.00
VAT @ 20%	-240.00
Balance to be Remitted to RTM Co	712.62”

12. On behalf of the Applicant it was submitted that £7,619.27 was the sum payable to the Applicant. The difference between that sum and £712.62 is £6,906.65 and the disputed sums were referred to in the Applicant’s statement of case and, helpfully, set out in a schedule to that document. They comprise the following:

	£
Building repairs	2,472.50
Cleaning	1,009.17
Interest	1,524.98
Sundry & Miscellaneous	460.00
Claim Notice	900.00
Section 94 Application	540.00
Total	6,906.65

13. The case of OM Limited and New River Head RTM Company Ltd makes it clear that disputes as to the reasonableness or payability of service charges is not within the Tribunal’s jurisdiction in dealing with an application under Section 94(3) of the 2002 Act. The lessees may be able to make applications under Section 27A of the Landlord and Tenant Act 1985 but an RTM Company, in this case the Applicant, cannot do so.

14. As a result, the Tribunal dealing with this application is not able to make a decision as to whether or not the following service charges were reasonably incurred and cannot include them in the uncommitted service charges:

	£
Building repairs	2,472.50
Cleaning	1,009.17
Interest	1,524.98
Sundry & Miscellaneous	460.00

15. However, the Tribunal finds as a fact that the following sums should not be deducted from the uncommitted service charges:

	£
Claim Notice	900.00
Section 94 Application	540.00

16. The figure of £900.00 (£750 + VAT) in respect of the claim notice. As has been pointed out on behalf of the Respondent, provision has been made

by Section 88 of the 2002 Act to deal with such costs and if agreement cannot be reached then an application can be made to the Tribunal to determine the matter.

17. The figure of £540 (£450 + VAT) was stated on behalf of the Respondent to be in respect of "s94 Application to 11.06.13 @ 2hs @ £225/hr". In the absence of an indication to the contrary, and bearing in mind that the acquisition date was as long ago as 1st July 2012, the likelihood is that such work was carried out after the acquisition date and it is the accrued uncommitted service charges held on the acquisition date which must be paid to the Applicant. The Respondent is not entitled to deduct such a sum from the accrued uncommitted service charges to be paid to the Applicant.

18. This leaves the sum of £2,152.62, which was described on behalf of the Respondent as the uncommitted service charges as at the acquisition date, and the Tribunal finds that that sum is the amount of the payment equal to the amount of any accrued uncommitted service charges held by the Respondent which is to be paid by the Respondent to the Applicant.

19. Under Section 94 of the 2002 Act the payment by the Respondent to the Applicant of accrued uncommitted service charges, must be complied with on the acquisition date or as soon after that date as is reasonably practicable. The Applicant makes the point that no monies have been paid by the Respondent and seeks interest from the acquisition date of 1st July 2012 to the date when payment is made. However, as was found in the case of OM Limited and New River Head RTM Company Ltd, the Tribunal has no power to award such interest.

20. The Applicant has made a claim for costs of £500 for having to seek recovery of the accrued uncommitted service charges under the Section 94 provisions but has provided no indication of how that figure has been calculated. In the absence of such an indication the Tribunal is not, at the present time, in a position to make an award.

Appeals

21. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

22. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

23. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

24. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)



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

Case Reference : CHI/29UE/LUS/2013/0002

Property : Castle Mount
6 Walmer Castle Road
Walmer
Kent
CT14 7NG

Applicant : Shuttleworth Property Management Co.
Ltd.

Representative : Circle Residential Management Ltd.

Respondent : Walmer Castle (Walmer) RTM Co. Ltd.

Representative : Chaine Hunter

Type of Application : Application for Permission to Appeal
a Decision to the Upper Tribunal (Lands
Chamber)

Tribunal Members : Judge R. Norman (Chairman)
Mr. C.C. Harbridge FRICS

**Date of
Consideration** : 16th December 2013

Date of Decision : 19th December 2013

DECISION

© CROWN COPYRIGHT 2013

Decision

1. The Tribunal is satisfied that there is no justification for an appeal. Permission is therefore refused. The Tribunal did consider, first, whether to review the original decision and decided that it would not. The reasons for that are the same as those for the refusal of permission to appeal.

Background

2. Walmer Castle (Walmer) RTM Co. Ltd. ("the Respondent") acquired the right to manage Castle Mount, 6 Walmer Castle Road, Walmer, Kent CT14 7NG ("the subject property") on 1st July 2012.

3. Shuttleworth Property Management Co. Ltd ("the Applicant") is the landlord of the subject property and has not made to the Respondent a payment equal to the amount of any accrued uncommitted service charges held by the Applicant on the acquisition date.

4. Therefore the Respondent made an application under Section 94(3) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for the Tribunal to determine the amount of any payment which falls to be made under that section.

5. Directions were issued and with those directions the Tribunal gave notice to the parties under Regulations in force at that time that the Tribunal intended to proceed to determine the matter on the basis only of written representations and without an oral hearing. Also that if the matter were dealt with in that fashion it might be considered by a Chairman sitting alone, or alternatively with another Member of the Panel, rather than by a full tribunal of three members. The parties were given the opportunity to object to that procedure by writing to the Tribunal no later than 28 days from the 6th June 2013. No written objection was received and the matter was dealt with on the basis only of written representations and without an oral hearing.

6. The Tribunals' decision was that the sum of £2,152.62 was the amount of the payment, equal to the amount of any accrued uncommitted service charges held by the Applicant on 1st July 2012, to be made to the Respondent.

7. Circle Residential Management Limited represented the Applicant (the Respondent in the original proceedings) and now, on behalf of the Applicant seeks permission to appeal the decision of the Tribunal in respect of those proceedings.

Reasons

8. When making its decision, the Tribunal considered the representations received from Chaine Hunter on behalf of the Respondent and from Circle Residential Management Limited on behalf of the Applicant.

9. The Tribunal made its decision on the evidence produced on behalf of the parties and made findings of fact on a balance of probabilities.

10. The Tribunal was mindful of the fact that there was before it no application under Section 27A of the Landlord and Tenant Act 1985 or under Section 88 of the 2002 Act and therefore limited its decision to matters within its jurisdiction under Section 94 of the 2002 Act.

11. It should be noted that the sum of £2,152.62 which the Tribunal found to be the amount of the payment, equal to the amount of any accrued uncommitted service charges held by the Applicant on 1st July 2012, was described in representations made by Circle Residential Management Limited on behalf of the Applicant as the uncommitted service charges as at the acquisition date 1st July 2012.

12. In accordance with Rule 53(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the Tribunal did consider, first, whether to review the decision and decided that it would not. The reasons for that are the same as those for the refusal of permission to appeal.

13. The Tribunal is satisfied that none of the reasons for this application advanced on behalf of the Applicant apply and that there is no justification for an appeal. Permission is therefore refused.

14. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 the Applicant may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

Judge R. Norman (Chairman)