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**First-tier Tribunal
Property chamber
(Residential Property)**

Case references : CAM/26UG/LUS/2014/0004

Property : 41 Wellesley Road,
Colchester,
Essex CO3 3HE

Applicant : 41 Wellesley Road RTM Co. Ltd.

Respondent : (1) Chancery Lane Investments Ltd.
(2) Moreland Estate Management

Date of Application : 14th July 2014

Type of Application : For Orders (a) to determine the
amount of costs payable by a RTM
company (section 88(4)
Commonhold and Leasehold Reform
Act 2002 ("the Act")) and (b) to
determine the amount of any accrued
uncommitted service charges (section
94(3))

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The reasonable additional costs of the Respondents in dealing with the matters set out in Section 88 of the Act are assessed at nil.
2. The amount of accrued uncommitted service charges to be handed over to the Applicant is £3,618.53 less any monies already handed over.

Reasons

Introduction

3. The Applicant has served a Claim Notice and, it is said, took over management of the property on the 14th April 2014. This application is for the Tribunal to determine 2 matters i.e. to assess the costs incurred as a result of the Claim Notice and to determine the amount of uncommitted service charges to be handed over to the Applicant by the Respondents.

4. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 10th September 2014 and (b) an oral hearing would be held if either party requested one before that date. No such request was received.

The Law

5. Section 94 of the Act provides that where the right to acquire the right to manage is obtained by an RTM company, any accrued uncommitted service charges must be paid by the landlord to the RTM Company and subsection (3) provides that either party may apply to this Tribunal to “*determine the amount of any payment which falls to be made*”.
6. Section 88(1) of the Act says that where a Claim Notice is served, the RTM company is liable to pay the reasonable costs incurred by the landlord as a consequence of the service of the Claim Notice

Conclusions

7. As far as **costs** are concerned, the Respondents were ordered to file and serve a statement of the costs they are claiming. They have failed to do so. On the other hand, the second Respondent, Moreland Estate Management, has attempted to deduct £500 plus VAT from the uncommitted service charges on the basis that they were ‘agreed’. The Applicant denies this. Despite the Tribunal’s order, no details of that have been given.
8. The Tribunal notes that in the closing accounts served for the period 1st January 2014 to 14th April 2014, there are entries for management fees and auditing costs for that period. In the absence of any details of claims for additional costs, any claim under section 88(1) of the Act is assessed at nil.
9. As far as **uncommitted service charges** are concerned, the bundle includes, as stated above, closing accounts up to 14th April 2014 which have been audited by a chartered and certified public accountant. These set out the cash available as £4,443.53 less accrued expenditure at £825 leaving a balance due of uncommitted service charges at £3,618.53.
10. In an e-mail from Moreland Estate Management dated 25th July 2014, it is said that £3,018.53 is being transferred in ‘full and final settlement’. This is the figure of £3,618.53 less the £500 plus VAT allegedly claimed ‘to facilitate the handover’.
11. In what is clearly an attempt to create a Scott Schedule document which is in the bundle, it seems that the Applicant is seeking to challenge some of the service charges actually claimed in the accounts. The items are set out together with comments as to why the amounts claimed are unreasonable. There are no entries in the subsequent columns for landlord’s comments and subsequent replies.

12. The difficulty with this approach is there is no evidence filed to support the criticisms of the service charges. Whilst an application for the Tribunal to determine the reasonableness of services charges under section 27A of the **Landlord and Tenant Act 1985** could be made by an RTM company, it has not made such an application in this case.
13. For these reasons, the Tribunal does not consider that it can go into the disputes over those items. It does not seem to be contested that the £3,618.53 is the uncommitted money available. It is questioned as to what the deduction of £825 is in respect of, but the accounts are properly audited and, as has been said, an application could always be made under section 27A (above) if committed service charges are to be challenged.

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Bruce Edgington
Regional Judge
10th September 2014