



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

Case reference : LON/00AC/LUS/2018/0003

Property : 45 Goring Road, London, N11 2BT

Applicant : 45 Goring Road RTM Co Ltd

Representative : Ms Bidwell, Director

Respondent : Chancery Lane Investments Ltd

Representative : Did not attend and was not represented

Type of application : Right to manage – duty to pay accrued uncommitted service charges

Tribunal member(s) : Tribunal Judge I Mohabir
Miss M Krisko FRICS

Date of decision : 19 October 2018

DECISION

Introduction

1. This is an application made by the Applicant company under section 94(3) of the Commonhold and Leasehold Reform Act (as amended) ("the Act") to determine the amount of any accrued uncommitted service charges the Respondent should pay to it.
2. The facts that give rise to the application are that the Applicant acquired the right to manage 45 Goring Road, London, N11 2BT ("the property") on 21 September 2017. The property is comprised of 6 flats, all of which are subject to long residential leases. All of the lessees participated in the right to manage application.
3. Having acquired the right to manage, the Applicant, through its own managing agent and various Directors, has been seeking disclosure under section 93 of the Act from the Respondent (and its managing agent) about information and documents it requires in connection with the exercise of its right to manage the property.
4. The only reply received from the Respondent was a request to pay £450 for the disclosure, to which the Applicant has agreed. Nevertheless, no further response has been obtained from the Respondent.
5. In addition, the Applicant has made a request to the Respondent under section 94(1) of the Act to pay uncommitted service charges in the sum of £4,490.87. The figure has been quantified in the following way.
6. The Respondent's managing agent, Moreland Estate Management, prepared a service charge budget for the year ended 30 June 2018 in the sum of £8,025, which was apportioned equally between the 6 flats. The liability of each lessee was £1,337.50. The Tribunal was told that this contribution was paid variously by direct debits or quarterly instalments by the leaseholders. Of the estimated expenditure, it seems that they paid a total of £6,737.39.
7. Understandably, having acquired the right to manage, the lessees stopped paying any further service charge contributions to the Respondent. They estimate that the service charge expenditure incurred by the Respondent apportioned from 30 June 2017 to 21 September 2017 is £2,246.82. Therefore, they have requested the Respondent to refund the sum of £4,490.87 representing the overpayments they have made as uncommitted service charges. Again, no response has been received from the Respondent.
8. On 8 May 2018, the Applicant made this application to the Tribunal. On 30 July 2018, the Tribunal issued Directions, which have been complied with by the Applicant. The Respondent has not complied with any of the directions and has not participated in the proceedings.

Relevant Law

9. Section 94 of the 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...

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...

(3) He or the RTM company may make an application to a leasehold valuation 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”.

Decision

10. The hearing in this case took place on 17 October 2018. The Applicant was represented by Ms Bidewell and other leaseholders. The Respondent did not attend and was not represented.

11. Ms Bidewell gave an explanation of the steps taken by the Applicant to get the Respondent to provide the disclosure of information and documents and the repayment of uncommitted service charges since the right to manage had been acquired. She also provided an explanation of how the uncommitted service charges had been calculated.

12. On the basis that the unchallenged evidence provided by the Applicant, the Tribunal made the following findings:

(a) that the uncommitted service charges held by the Respondent since the date of acquisition are £4,490.87.

- (b) that the Respondent has not paid the uncommitted service charges to the Applicant as requested.
13. It follows that the Respondent appears to be in breach of the duty imposed on it by section 94 of the Act.
14. The Tribunal explained to the Ms Bidewell and the other leaseholders that in the event that they obtained a finding in the terms set out above, it had no powers of enforcement against the Respondent. The Tribunal said that they should seek independent legal advice as to how they can enforce this decision (and the Respondent's failure to make disclosure under section 93) against the Respondent.
15. The Tribunal also explained that it could not make any finding in relation to any monies held by the Respondent in a Sinking Fund because it had no evidence as to whether it was holding any such monies and what amount. In the event that such monies are being held by the Respondent and it also refuses to pay them to the Applicant, a further application could be made to the Tribunal.

Name: Tribunal Judge I Mohabir **Date:** 19 October 2018

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).