



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

**Case reference** : **LON/00AH/LUS/2022/0001**

**Property** : **33 Normanton Road, South Croydon,  
Surrey CR2 7AE**

**Applicant** : **33 Normanton Road RTM Company  
Limited**

**Representative** : **Mr A Bell (co-owner of Flat 7)**

**Respondent** : **Assethold Ltd**

**Representative** : **Mr R Granby of counsel**

**Type of application** : **Application for a determination of the  
amount of any payment of accrued  
uncommitted service charges pursuant  
to s.94(3) Commonhold and Leasehold  
Reform Act 2002.**

**Tribunal member(s)** : **Judge S Brilliant  
Mr K Ridgeway MRICS**

**Date and venue of  
hearing** : **31 October 2022  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **02 November 2022**

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**DECISION**

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**Introduction**

1. s. 94 Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) provides as follows:

**Duty to pay accrued uncommitted service charges**

(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, 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 [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.

2. The respondent in these proceedings is the freehold owner of 33 Normanton Road, South Croydon, Surrey CR2 7AE (“the block”).

3. The applicant is an RTM company which is the no-fault manager of the block. The acquisition date was 01 November 2021.

4. This application concerns payments of service charges, made to the respondent prior to the date of acquisition, which were not required to be used by the respondent to meet any costs incurred before the acquisition date

5. The respondent is under an obligation to pay over accrued uncommitted service charges as at 01 November 2021.

6. By an application dated 04 March 2022, the applicant made an application to the tribunal to determine the amount of any payment which fell due under s.94.

### **Directions**

7. For the sake of convenience, the directions given in these proceedings are set out in the schedule at the end of the decision.

8. The applicant complied with the directions. It provided a bundle of 47 pages including arguments and witness statements.

9. The respondent wholly failed to comply with the directions. It did not serve a statement of case at all, or exchange any witness statements. Late on 28 October 2022, the working day before the hearing, it served a bundle of 130 pages. On the morning of the hearing further documents were served together with a skeleton argument from Mr Granby. The skeleton argument purported to include a considerable amount of evidence.

10. It has been held by the Supreme Court that the jurisprudence in Denton applies in the tribunal: BPP Holdings Ltd v Revenue and Customs Comrs [2017] UKSC 55, [2017] 4 All ER 756.

11. No witness statement was provided to explain why the documents were four

months late. The delay was inexcusable and in an extempore judgment (which has been recorded) the tribunal held that the late evidence should not be admitted. This was despite the customary charm and attractive advocacy of Mr Granby.

### The hearing

12. Mr Bell presented the applicant's case and was questioned by Mr Granby. Ms Noel, who is Mr Bell's partner, also attended and assisted Mr Bell. There were witness statements on behalf of the applicant from both of them. In addition, Ms Carson, who is another lessee in the block, made a witness statement but did not attend. Finally, Ms Griffin who is the current managing agent of the block under the new regime also made a witness statement, but did not attend.

13. As is apparent from above, the respondent was unable to call any evidence.

### The facts

14. The relevant service charge year for the block is 29 September 2021 to 28 September 2022. As already stated the acquisition date is 01 November 2022. Sensibly, the case proceeded on the basis that the costs subject to scrutiny were those said to have been incurred during October 2021.

15. The applicant's bundle (page 21) contains the estimated service charge account for the year 29 September 2021 to 28 September 2022. This totals £15,930.07.

16. The applicant's bundle (page 24) contains the list of payments said to have been incurred by the respondent during October 2021. It will be appreciated from what has been said above that there is no evidence that these payments have in fact been incurred (no witness statements in support were made and the invoices disclosed were excluded).

17. This list is as follows:

1.	Insurance.	£3,102.33
2.	Cleaning/gardening.	£988.40
3.	Electricity/gas.	£1,882.78
4.	Window cleaning.	£144.00
5.	FHS.	£227.62
6.	Drain works.	£2,520.48
7.	Electrical works.	£204.00
8.	Fire door works.	£750.00
9.	Handover fee.	£360.00
10.	Accounts fee.	£480.00
11.	Emergency line.	£84.00
12.	Management fee	£806.40

	Total	<b>£11,600.01</b>
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18. The applicant's bundle (pages 24–25) also contains the amount of service charges said by the respondent to have been paid in advance to the respondent for the service charge year 29 September 2021 to 28 September 2022.

19. The amount of service charges said to have been paid to the respondent by the lessees of the block amounts to £8,547.47. This figure is accepted by the applicant.

20. This figure is £3,052.54 less than the amount of £11,600.01 claimed by the respondent to have been incurred during October 2021.

21. Mr Bell told us that this difference had in fact been paid to the respondent. His recollection was that this money had in fact been paid after the acquisition date. He was given an opportunity to check his emails with the respondent, but there were so many that he was unable to give any further assistance. On the balance of probabilities, we find that the £3,052.54 was paid after the acquisition date and therefore does not fall within the jurisdiction of s.94.

22. We will therefore work on the basis that the amount of service charges paid by the lessees of the block to the respondent on account for the service charge year 29 September 2021 to 28 September 2022 was **£8,547.47**.

### **Analysis**

23. The applicant very fairly accepted that the costs of six of the 12 items said to have been incurred by the respondent during October 2021 had in fact been incurred. As a result of this admission, it did not matter that any evidence of this had been excluded.

24. The items so admitted were the following:

1.	Insurance.	£3,102.33
2.	FHS.	£277.62
3.	Drain works.	£2,520.48
4.	Electrical works.	£204.00
5.	Accounts fee.	£480.00
6.	Emergency line.	£84.00
	Total	<b>£6,668.43</b>

25. Accordingly, the costs of the remaining six items which the applicant says were not incurred by the respondent during October 2021 are as follows:

1.	Cleaning/gardening.	£988.40
2.	Electricity/gas.	£1,882.78
3.	Window cleaning.	£144.00

4.	Fire doors.	£750.00
5.	Handover fee.	£360.00
6.	Management fee	£806.40
	Total	<b>£4,931.58</b>

26. The applicant flagged up its challenge to these items in its statement of case. The methodology used, however, seems to us to be flawed. It took as its starting point, for any given item, the estimated costs. It then took the actual costs claimed, and from that figure deducted 1/12 of the estimated costs. The resultant figure was the amount said to be reclaimable. We do not accept this is the correct approach.

27. The applicant also purported to deduct from the cost of these items amounts for work which it said had not been done. For example the fire doors. But given that the respondent has no evidence that the cost of any of this work was incurred, the applicant's approach on this issue becomes academic and it is not necessary to consider OM Ltd v New River Head RTM Co Ltd [2010] UKUT 394 (LC).

28. The amount claimed to be repaid by the applicant using this incorrect methodology was **£4,457.31**.

29. The correct approach is to deduct:

(a) from the amount paid to the respondent on account for the service charge year 29 September 2021 to 28 September 2022 which was **£8,547.47**,

(b) the amount of the challenged costs claimed which the respondent, because of its lack of evidence, could not prove it had incurred during that period which was **£4,931.58**.

30. The resultant figure is **£3,615.89**, which is repayable by the respondent to the applicant. This should be paid within 14 days.

**Name:** Simon Brilliant

**Date:** 02 November 2022

### **Schedule**

#### **Respondent's statement of case**

2. By **23 June 2022** the respondent shall serve on the applicant a full reply to the application, including copies of the following:

(a) Service charge accounts for the past three years;

(b) A full summary of the service charge account as at the date the applicant became entitled to the right to manage, including full details of the amount held;

(c) Details of any reserve funds;

(d) Details of any monies held on account which have not been expended; Page 13 of 47

(e) Bank account statements for the 12-month period pre-dating the right to manage;

(f) All relevant correspondence;

(g) A statement setting out any legal submissions the respondent wishes to make. In particular, the respondent must identify which sums it accepts are due to the applicant; and any service charges, which the respondent says are committed and therefore not payable to the applicant under section 94(3) of the Act, with full reasons why.

3. This shall stand as the respondent's case. All documents relied upon must be attached.

#### **Applicant's statement of case**

4. By **21 July 2022** the applicant shall send to the respondent a full statement in reply, identifying the date, amount and nature of all payments which are alleged to comprise the monies, which are sought to be returned pursuant to section 94(1) of the Act. It should attach all documentation upon which it intends to rely.

5. This statement shall stand as the applicant's statement of case.

#### **Respondent's statement in reply**

6. By **29 July 2022** the respondent shall send to the applicant a brief response, which shall confirm any sums now agreed and those which remain in dispute, with reasons why. ...

#### **Witness statements**

8. The parties shall exchange copy witness statements of fact upon which they rely on or before **8th August 2022**. Those witness statements should identify the name and reference number of the case, have numbered paragraphs and end with a statement of truth and the signature of the witness. Original witness statements should be brought to the hearing. In addition, witnesses are expected to attend the hearing to be cross-examined as to their evidence, unless their statement has been agreed by the other party.

### **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).