



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

Case Reference : **MAN/32UE/LUS/2022/0001**

Property : **27 – 34 ARCHER ROAD, BRANSTON,
LINCOLN LN4 1NH**

Applicant : **27 ARCHER ROAD RTM COMPANY LIMITED**

Respondent : **BERNARD GOODCHILD**

**Type of
Application** : **Determination of uncommitted service
charges: section 94(3) Commonhold and
Leasehold Reform Act 2002**

Tribunal Members : **A M Davies, LLB
P Mountain**

Date of Decision : **1 December 2022**

DECISION

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DECISION

1. The amount of uncommitted service charges held by the Respondent is £1258.21.
2. The Respondent shall reimburse to the Applicant the application fee in the sum of £100.

REASONS

BACKGROUND

1. The Respondent is the landlord of flats at 27 – 34 Archer Road (the Property). On 8 June 2020 the Applicant RTM company became the manager of the Property, replacing the Respondent's former managing agents HLM Property Management (HLM).
2. At the time HLM were holding surplus funds in the Service Charge account for the property. After correspondence in which the Applicant requested a final account and payment of uncommitted service charges HLM paid the Applicant £593.55 on 23 March 2021.
3. No further payments were made and no final account was produced. The Applicant therefore applied to this Tribunal for a determination as to uncommitted service charges, if any, still held by the Respondent.

THE LAW

4. Section 94 of the Commonhold and Leasehold Reform Act 2002 reads, so far as relevant to this application:
 - (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 of 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 the appropriate 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.*
5. The Tribunal is informed that there are separate proceedings between leaseholders at the Property and the Respondent for a determination as to the reasonableness and payability of service charges. Such issues are not relevant to the present decision, which is concerned only with the amount of uncommitted service charges as at 8 June 2020.

THE SERVICE CHARGE ACCOUNT

6. The parties agreed that on the acquisition date HLM were holding £1704 in the leaseholders' sinking fund.
7. One of the leaseholders in the Property supplied the Applicant with a copy of HLM's service charge statement for the year ending 30 April 2020. This shows that at 30 April 2020 the service charge account was in credit in the sum of £659. Adding this to the sinking fund balance, HLM were holding £2363 in total at the end of the service charge year.
8. On 14 September 2022 the Respondent supplied a statement of case in these proceedings to which was attached a copy of HLM's Service Charge Transaction Listing, demonstrating that payments had been made after 30 April 2020 to defray expenses incurred prior to 8 June 2020.
9. Following receipt of this information the Applicant accepted that payments had been made in respect of electricity, emergency lighting maintenance and window cleaning totalling £313.44, and that the service charge balance at acquisition should be reduced by this sum.
10. HLM's Transaction Listing includes £791.65 deducted from the service charge account for management fees in May 2020, and a further £43.81 for management fees from 1st to 8th June. No explanation of these figures has been provided.
11. HLM's service charge statement for the year to 30 April 2020 shows that the management fee charged by HLM in that year was £1900, or £5.205 per day. There is no evidence that the management fee was to increase with effect from 1 May 2020. The amount of management fee due to HLM from 1 May 2020 to 8 June 2020 therefore amounts to £197.80.

POST ACQUISITION PAYMENTS

12. In its statement of case dated 14 July 2022 the Applicant informed the Tribunal that it “*understands*” that a leaseholder had paid £562.25 to HLM on or after the acquisition date. The Applicant continues “*if that payment is confirmed*” then the sum due in respect of uncommitted service charges would be increased accordingly. In the calculation provided separately by the Applicant, there is an entry “*Service Charges paid in respect of period from 1 May – 31 October 20 by leaseholders (2 @ £562.25) £1124.50*”. The Tribunal has not been provided with any further information or evidence that such payments have been received by the Respondent or his agents. The calculation of uncommitted service charges has therefore not taken post-acquisition service charge payments to HLM (if any) into account and no finding is made as to whether there were any.

CONCLUSION

The amount of uncommitted service charges not yet paid by the Respondent to the Applicant is therefore		£2363.00
Less		
Agreed post-acquisition expenditure	£313.44	
Management fees 1.4.20 to acquisition	<u>£197.80</u>	<u>£511.24</u>
		£1851.76
Less paid in March 2021		<u>£593.55</u>
Balance of uncommitted service charges		£1258.21

A M Davies
Tribunal Judge
1 December 2022