

**UPPER TRIBUNAL (LANDS CHAMBER)**



**UT Neutral citation number: [2016] UKUT 489 (LC)  
UTLC Case Number: LRX/1/2016**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – service charges – payment of accrued uncommitted service charges to RTM company – whether wrongly posted management charge correctly calculated by FTT – appeal allowed – s.94 Commonhold and Leasehold Reform Act 2002***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION  
OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

**BETWEEN:**

**GATEWAY PROPERTY HOLDINGS LIMITED**

**Appellant**

**and**

**WESTWOOD (COLCHESTER) RTM CO LIMITED**

**Respondent**

**Re: Westwood Lodge,  
Inglis Road,  
Colchester  
Essex  
CO3 3HP**

**Determination on written representations**

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No cases are referred to in this decision

## DECISION

### Introduction

1. This is an appeal by way of rehearing against a decision of the First-tier Tribunal (Property Chamber) (“FTT”) dated 23 November 2015. The appellant is Gateway Property Holdings Limited, the freehold owner of Westwood Lodge, Inglis Road, Colchester, Essex CO3 3HP (“the appeal property”).

2. On 12 December 2014 the management of the appeal property was acquired by the respondent, Westwood (Colchester) RTM Co Ltd. Prior to that date the property had been managed by Gateway Property Management Limited (“Gateway”) who were appointed as managing agents by the appellant on 18 July 2008.

3. Under section 94 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) where the right to manage premises is to be acquired by a RTM company the landlord, or its managing agent, must make to the RTM company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

4. A dispute arose about the amount of the uncommitted service charges that should have been paid to the respondent on the acquisition date and the respondent applied to the FTT under section 94(3) of the 2002 Act to determine the amount payable. In its decision the FTT found that the appellant owed a total of £1,641 as uncommitted service charges. This was said to represent the amount of a wrongly posted management charge.

5. The amount which had been wrongly charged was Gateway’s quarterly management fee of £820.50. In its closing reconciliation statement for the period ending 12 December 2014 Gateway gave the following figures:

B/F Reserve 31 December 2014	1,374.83
Less Management fees Jan to Mar 14	-820.50
Water Oct to Dec 14	- 13.85
Bank interest received to Dec 14	1.12
Less EDF Electricity – Direct Debits	<u>-106.91</u>
	-940.14
Retention – Electricity	<u>-200.00</u>
Total funds due to RTM company	<u>234.69</u>

6. The FTT reached the following conclusion at paragraph 13 of its decision:

“**Management charge wrongly posted.** This seems to be a genuine error. A management fee of £820.50 was charged for the period after the takeover. However, in the attempt to redress this error, [Gateway] deducted this amount from the balance reserve instead of adding it. A promise has now been made to pay over the £820.50 in a letter written on behalf of [Gateway] dated 4<sup>th</sup> November 2015. However, this does not take account of the fact that the money should not have been deducted in the first place. Thus [Gateway] does owe the total sum of  $£820.50 \times 2 = £1,641.00$ .”
7. In its letter dated 4 November 2015 Gateway stated:

“Whilst the relevant legislation is silent as to management contracts post the exercise of the Right to Manage, [Gateway] concedes the point made ... and a refund of £820.50 will be arranged.”
8. In refusing permission to appeal the FTT expanded upon its decision on this issue as follows:

“The mathematics in the account are correct. However, the way in which the management fee has been dealt with is clearly wrong. The correct position is that the management fee in question had already been wrongly charged and paid before the £1,374.83 was calculated. Thus the starting figure should have been  $£1,374.83 + £820.50 = £2,195.33$ .

Then the closing account made a further deduction of £820.50 from the uncommitted service charge reserve. Thus there are 2 accounting errors. The £820.50 was wrongly omitted from the opening balance and then a further £820.50 was wrongly deducted. The incorrect accounting meant that the total sum to be refunded was £1,641.00 of which the proposed Appellant said that it agreed to pay back £820.50 only.”
9. The appellant acknowledges that the quarterly management charge of £820.50 was wrongly debited to the reserve account because it was not chargeable for a period after the RTM company had taken over management responsibility, i.e. after 12 December 2014. But it denies that this sum “was deducted in the first place” and that Gateway owes twice this amount.
10. The respondent says that the FTT was correct and notes that in an email dated 8 June 2015 Gateway referred to the reconciliation statement “which reflects the *refund* of the £820.00 (sic)” (my emphasis). The respondent says it follows that the £820.50 should be refunded and the reconciliation statement increased by £820.50 rather than reduced by that amount; i.e. a payment of £1,641.00 is due.

## **Discussion**

11. According to the certified service charge accounts for the period ended 12 December 2014 the management fee for 2014 was £3,282.00, i.e. four quarters at £820.50 per quarter. This amount formed part of the total service charge expenditure for 2014 of £17,069 which was met from the service charge receivable (£13,030.00) plus a transfer from reserves (£4,039.00). So the management charge for January to March 2014 was paid. It is this quarterly charge which is ostensibly the subject of the refund referred to in Gateway's letter dated 8 June 2015 and in its closing reconciliation statement.

12. The respondent has given no reason why the first quarter's management charge for 2014 should be refunded. There is no suggestion that it was not properly charged. It is clear from its letter dated 4 November 2015 that Gateway is referring to a management charge "post the exercise of the Right to Manage" i.e. after 12 December 2014, and that the refund referred to there has nothing to do with the first quarter's management charge for 2014.

13. In my opinion the refund refers to a management charge for the first quarter of 2015 that was wrongly deducted from the reserves in the closing reconciliation statement. Gateway acknowledged that this amount should not have been so deducted and they have added it back to the reserves. That is correct. Only if the tenants paid this charge for the first quarter of 2015 as well as it having been deducted from the reserves would the amount of £1,641 be due. I do not understand that to be the position. I consider the reference to "management fees Jan to Mar 14" in the closing reconciliation statement was wrong; it should have been a reference to 2015. The respondent doubts this but I am satisfied it is the correct explanation for the misunderstanding. In their statement of case in this appeal dated 15 March 2016 Gateway state that the sum of £820.50 "for the period 1 Jan – 31 Mar 2015" was billed prior to the handover to the RTM company. They confirmed in a letter to the Tribunal dated 7 October 2016 that (i) the reconciliation statement mistakenly referred to 2014 instead of 2015; and (ii) the lessees did not make any payment to them in respect of the first quarter's management charge for 2015 and have not claimed to have done so, notwithstanding the comments made in the FTT's reasons for refusing permission to appeal. That being so the reserve should be credited by £820.50 and not £1,641.

## **Disposal**

14. I allow the appeal and determine that the outstanding amount of uncommitted service charges payable to the respondent is £820.50.

Dated: 3 November 2016

A J Trott FRICS  
Member Upper Tribunal (Lands Chamber)