



Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL for the**  
**LONDON RENT ASSESSMENT PANEL**  
**COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**LON/00BE/LCP/2008/0004**

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**Premises:** Towergate  
112 Pages Walk  
London SE1 4HQ

**Applicant:** Sinclair Gardens Investments (Kensington) Ltd

**Represented by:** P Chevalier & Co

**Respondent:** Towergate RTM Company Ltd

**Represented by:** Canonbury Management

**Tribunal:** Mr NK Nicol

**Date of Decision:** 14/07/08

## **DETERMINATION**

1. The Applicant has applied under s.88(4) of the Commonhold and Leasehold Reform Act 2002 for a determination of the amount of costs payable by the Respondent in exercising their right to manage. On 23<sup>rd</sup> May 2008 the Tribunal directed that the matter should be determined on the papers. The Respondent sent in short representations by letter dated 20<sup>th</sup> June 2008. The Applicant, as well as relying on the 19-page Submissions as to Section 88 Costs enclosed with their application, sent in an 8-page Landlord's Response accompanied by a large bundle of documents and a separate large bundle of authorities containing 12 separate items.
2. The costs claimed by the Applicant total £1,615.62, inclusive of VAT, and are broken down at pages 7 and 8 of their Submissions as to Section 88 Costs.
3. The Applicant has stated, and the Tribunal accepts, that costs must be determined on an indemnity basis. The rate of £220 per hour charged by the Applicant's solicitor is within the range which may be expected in the circumstances.
4. The Applicant has alleged that the burden of proof is on the Respondent. While this may be the case if the Respondent were alleging, for example, alternative hourly rates of pay, this cannot be right in respect of whether the charges were actually incurred. This is information exclusively within the knowledge of the Applicant and it cannot possibly be for the Respondent to demonstrate what the charges were not.
5. The Respondent's approach is to nit-pick various charge items and to question exactly what they were for. Allegations are also made of inappropriate behaviour. It is not possible for the Tribunal on a paper determination to support the kind of further requests for disclosure listed in the Respondent's submissions or to make findings of fact on such serious allegations. The Tribunal must determine this case strictly on the basis of the evidence in front of it. Reasonableness has to be determined according to the nature of the case and the Tribunal's experience and knowledge as a specialist Tribunal.
6. This case appears to be a standard right to manage case. Neither party has alleged that it has any unusual characteristics. The one principle relevant to the Tribunal's determination which the Applicant has failed to mention is

proportionality – the time and resources spent in determining the right to manage claim and this application must be proportionate to the complexity of each matter and the amount of costs involved.

7. In the light of the above points, the Tribunal has the following comments on the Applicant's submissions:-

- (a) The Applicant's solicitors submissions are vastly overblown. As well as providing more authorities/precedents than that permitted for a full hearing in the Court of Appeal, the submissions purport to rely on quotes which are of little, if any, assistance to the Tribunal in making its determination, e.g. para 3 of the Submissions as to Section 88 Costs quotes from another LVT decision without making any effort to suggest that anything in the quote supports any contention made on behalf of the Applicant or refutes anything to be said on behalf of the Respondent.
- (b) Some submissions state what is so obvious as to be a waste of paper and ink, e.g. para 11.2 of the Submissions as to Section 88 Costs states, "There was no point in Parliament enacting provisions in Commonhold and Leasehold Reform Act 2002 to protect Qualifying Tenants if they can be simply ignored."
- (c) Some parts of the Applicant's submissions appear contradictory. The Applicant relies extensively on CPR Part 44 and on other LVT decisions. However, the first authority they provide (244 Northwood Rd, ref: LON/00AH/OLR/2007/0628) makes the following sensible statement of principle,  
  
" ... the determination of the landlord's reasonable costs ... involves a broad-brush approach in resolving the items in dispute between the parties. It is not the function of the Tribunal to carry out a detailed assessment of the landlord's costs. The function of the Tribunal in such cases is simply to determine the landlord's reasonable costs that have been incurred in accordance with the section. Where there is a dispute between the parties, such dispute can readily be resolved summarily by the Tribunal. It is therefore unnecessary to resort to or extrapolate any principles from Part 44 of the Civil Procedure Rules."

- (d) Section 19 of the Applicant's Submissions as to Section 88 Costs makes various allegations as to the Respondent's charges to their own clients. These allegations are irrelevant and of no assistance in determining the reasonableness of the Applicant's costs.
- (e) The Applicant's solicitors can only be applauded when they are being thorough, professional, comprehensive and careful. However, the above points demonstrate an approach which has gone beyond that to one which is disproportionate to the nature of the case and the issues involved. The unnecessarily large quantity of documents, authorities and otiose arguments strongly suggests that the Applicant's solicitor expends more time and effort on matters than would be required by any proportionate approach.
- (f) Items 1-6 and 8 in the Applicant's breakdown of charges would seem to be appropriate charge heads.
- (g) However, item 7 is incomprehensible. Despite the extremely lengthy submissions, no information or evidence has been provided as to what the "Contract notices" or "contractor notices" are or even what they relate to.
- (h) Item 9 claims to constitute the costs of compliance with s.93 which permitted the Respondent to request information from the Applicant. However, the Applicant's breakdown also says it relates to solicitor's advice, presumably to the Applicant themselves, as to cancellation of the current insurance policy and refunding uncommitted service charges, which is something different entirely. It is possible to speculate what the Applicant's submissions are supposed to mean but that is not the Tribunal's role. Again, it is surprising that in such lengthy submissions, the Applicant found no room to explain these charges properly.

8. In the light of the above matters, the Tribunal is not satisfied that the Applicant's costs are reasonable. Making a summary judgment on the available information, the Tribunal determines the Applicant's reasonable costs at £1,000 inclusive of VAT.

Chairman.....*N.K. Nicol*.....

Date 14<sup>th</sup> July 2008