



638
First-tier Tribunal
Property chamber
(Residential Property)

Case references : CAM/00KF/LUS/2018/0001

Property : Glenhurst Mansions,
Southchurch Road,
Southend-on-Sea,
SS1 2NR

Applicant : Glenhurst Mansions RTM Co. Ltd.
Representative : Gerard Purcell (lay representative)

Respondent : Long Term Reversions (Harrogate)
Ltd. and Alan Matthey
Representative : Carly Melling (lay representative)

Date of Application : 10th May 2018

Type of Application : For a determination of the amount of
any accrued uncommitted service
charges (section 94(3) Commonhold
and Leasehold Reform Act 2002 (“the
Act”))

Tribunal : Bruce Edgington (lawyer chair)
Stephen Moll FRICS
Nat Miller BSc

**Date and place of
Hearing** : 14th August 2018, at Park Inn by
Raddison, Church Road, Southend
-on-Sea, SS1 2AL

DECISION

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1. The Tribunal orders the Respondents to pay to the Applicant the sum of £1,142.55 in accrued uncommitted service charges made up as follows:

	£	£
Uncommitted Service Charges		12,070.66
Tribunal hearing fee		200.00
Interest on late payments		265.17
Garage 5		<u>412.22</u>
		12,948.05
Less: Uncollected service charges	4,623.91	
Legal expenses	180.00	
Handover fee	360.00	
Paid	<u>6,641.59</u>	

11,805.50

1,142.55

2. The said sum plus any unpaid service charges received in the meantime must be paid by 31st August 2018 and must be accompanied by an immediate written assignment of the Respondents' rights to recover any unpaid service charges and legal expenses to the Applicant.

Reasons

Introduction

3. The Applicant took over management of the property on the 12th March 2018. This application is for the Tribunal to determine the amount of uncommitted service charges to be handed over to the Applicant by the Respondents. The figures originally put forward by the Respondents appear to be as follows:

Uncommitted Service Charges		£	12,070.66
		£	
Less: Uncollected service charges	4,713.91		
Interest on late payments	265.17		
Legal Expenses	180.00		
Handover fee	360.00		
Retention	<u>1,000.00</u>		
			<u>6,519.08</u>
			5,551.58

4. Since then, the Respondents have agreed to pay £412.22 from uncollected service charges in respect of garage 5 and also the interest element of £265.17. The Applicant accepts that legal expenses have been incurred by leaseholders in arrears but they should not be deducted from the uncommitted service charges. They should be recovered from the defaulting leaseholders. As far as the handover fee is concerned, the figure given has not been agreed, but the Applicant says that a reasonable figure should be paid in due course and not deducted from the uncommitted service charges. Finally, the Respondents have agreed to release the retention.
5. Thus the £5,551.58 can be increased by £412.22, £265.17 and £1,000.00. This would appear to leave the Tribunal to determine the issues of whether the uncollected service charges, the legal expenses and the handover fee can be deducted plus the quantum of the legal expenses and handover fee.
6. The Tribunal issued a directions order on the 18th May 2018 timetabling this case to determination. The Tribunal said that it would be happy to determine the case on the basis of the papers submitted, including any representations to be made by the parties. It also said that if any party wanted an oral hearing, one would be arranged. The Respondents have asked for such a hearing and, as a result, the Applicant was required to pay the hearing fee of £200.

The Law

7. Section 94 of the Act provides that where the right to acquire the right to manage is obtained by an RTM company ("RTM"), any accrued

uncommitted service charges held by the landlord or manager on the acquisition date i.e. 12th March 2018 in this case, must be paid by the landlord or manager to the RTM.

8. The section goes on to say:-

“(2) The amount of any accrued uncommitted service charges is the aggregate of---

(a) any sums which have been paid to (the manager) 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 (this 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.

The Leases

9. The only copy lease seen by the Tribunal is for the whole building consisting of 15 flats, 2 shops and 10 lock-up garages plus some land. It is dated 8th March 1957 and is for a term, of 90 years commencing 25th December 1956. It should be said that this is not a copy of a signed or sealed lease and there is no evidence of payment of stamp duty. However, the lack of a lease for each flat is not particularly relevant as both parties clearly accept that the right to buy provisions apply and nothing has been put forward to suggest unusual terms affecting this decision.

The Hearing

10. Those attending the hearing were Gerard Purcell on behalf of the Applicant together with Carly Melling from the Respondents' managing agent together with the person in charge of accounts.

11. The Tribunal chair went through the figures with those present and was told (a) that the £360 charge for the handover fee was agreed provided that there was no further fee and (b) that £6,641.59 had already been handed over being the net figure mentioned above plus the retention of £1,000 and £90 being a sum paid by the defaulting leaseholder.

12. In so far that it is relevant, Ms. Melling said that of the unpaid service charges, the vast majority was owed by the owner of flat 16 who is a pensioner with personal financial difficulties. A payment plan was in existence and the agreed monthly payments had recently gone up to £90.

13. Oddly, the legal expenses were not incurred by flat 16 but by someone else who owed £865.00, most or all of which has been paid but not the

legal expenses. In the circumstances, the figure for legal expenses in the sum of £180 is within the bounds of reasonableness.

14. Finally, Mr. Purcell mentioned the First-tier Tribunal case of **Kingsview Court RTM v Westleigh Properties Ltd.** (relating to 5-7 Kings Road, Westcliff-on-Sea SS0 8BH) (ref: CAM/00KF/LUS/2014/0002) in support of his contention that unpaid service charges should not be deducted from monies held on account of service charges.
15. At the end of the hearing, the matters still not agreed were (a) whether the handover fee could be deducted from the uncommitted service charges or should be the subject of a separate fee note, (b) whether the unpaid service charges could be deducted from the sinking fund and (c) whether the legal expenses could be deducted from the sinking fund. Mr. Purcell then asked that the Applicant be reimbursed for the hearing fee of £200. The Applicant and the Tribunal had considered that the case was appropriate for paper determination, the hearing was very short and had not raised anything of particular complexity.
16. On that issue, Ms. Melling, in reply, said that the hearing was an entitlement and it would be wrong in principle for the Respondents to have to reimburse the fee. She said that the Respondents have been able to assist the Tribunal at the hearing. It was put to her that the only assistance given was to provide information about payments and the defaulting leaseholders which the Respondents had failed to deal with in the papers. She could not really answer this. She said that the Respondents had made the decision to ask for a hearing because it had been considered that the Respondents' case could be better put at an oral hearing. She had been instructed to attend after this decision and after the preparatory work had been done.

Discussion

17. The first point made by the Respondents is that the application form states that the Applicant is Gerald Purcell whereas the Applicant in the directions order is the RTM but no application to amend has been seen. The reason for that is quite simple. The Tribunal chair took the view that as the uncommitted service charges must be paid to the RTM, it was inappropriate for an individual to be the Applicant. As it would cost the parties and the taxpayer for everything to be returned to the Applicant when the facts in that regard were obvious to everyone, the chair put the RTM as the Applicant.
18. The scheme of the right to manage company was controversial when implemented. It is, after all, a draconian step to allow leaseholders to form a company which takes away the right to manage from the owner of the property or a management company on a no fault 'compulsory' basis.
19. Management takes planning and the transfer of management will take thought and preparation. This is presumably why the scheme provides for a step by step approach. There has to be a Claim Notice and then a gap of at least 3 months. The purpose of this is to enable the existing manager to plan the handover so that the RTM company

can start to manage the property as from the date set out in the Act. The extra cost incurred in this process can be recovered from the RTM company.

20. Accordingly, there was time for the necessary financial matters to be addressed within the 3 month period. They have clearly not been and this does not reflect well on the Respondents. It was obvious at an early stage that over £5,000 was to be paid over and this should have been paid at the time.
21. The case of **OM Ltd. and New River Head RTM Co. Ltd.** [2010] UKUT 394 (LC) helpfully sets out some views on what should be handed over. It is in fact referred to in the First-tier Tribunal case relied upon by the Applicant. Some of the comments of HHJ Mole QC may well have been *obiter* but they are still of assistance. In essence the decision confirms what is in the Act i.e. that at the take-over date or as soon as is reasonably practicable thereafter, the landlord must hand over to the RTM company all accrued uncommitted service charges so that the RTM company can take over the management on a day to day basis.
22. As to unpaid service charges, the **OM Ltd.** case does provide assistance by making it clear, at paragraph 23, that *“The payment of accrued uncommitted service charges is confined to those accrued uncommitted service charges ‘held by’ the landlord or manager on the acquisition date. The natural meaning of those words is that what was to be paid is what the landlord or manager has actually got; not what he was entitled to have but failed to get or had at one stage but has not now”*.
23. The reason by the **Kingsview** case mentioned by the Applicant is not persuasive is because the leaseholder of the flat in question allegedly owing outstanding arrears had been the subject of 2 previous Tribunal decisions. Those decisions were noted by the Tribunal which then considered the statement of arrears prepared for them on behalf of the landlord. According to the Tribunal in **Kingsview** *“the statement of account is complete nonsense and fails to recognise the decisions made already”*. That was the reason for not deducting the ‘unpaid’ service charges.
24. Having said that, that Tribunal did say something about the legal expenses in that case had not been proved and *“were not incurred before the acquisition date in connection with the matters for which the service charges were payable”*. In this case, they were incurred before that date.
25. Thus, it seems quite clear to this Tribunal that as soon as was reasonably practicable after 12th March 2018, the Respondents should have handed over all the accrued uncommitted service charges it then held i.e. at least £5,000 as referred to above. The Tribunal has not seen the claim notice but it is presumably dated at least 3 months beforehand. The Respondents should then have instructed their accounts department or outside accountants to work on preparing the necessary figures for the property. Any extra costs involved can be

charged to the RTM company. The word 'reasonably' in this context must surely be an objective test bearing in mind the 3 month lead in period.

Conclusions

- 26. Following the Upper Tribunal case of **OM Ltd. and New River Head RTM Co. Ltd.**, the Tribunal finds that the unpaid service charges and legal expenses can be deducted from the uncommitted service charges provided that the Respondents assign their rights to those monies in consideration for the immediate payment.
- 27. The Respondents accept that they now owe £412.22 for garage 5 and interest in the sum of £265.17. The Tribunal agrees to the further deduction of £180.00 in legal expenses because the debtor in question has, even now, not paid his or her outstanding amount in service charges.
- 28. As far as the hearing fee is concerned, rule 13(2) of the **Tribunal Procedure (First-tier)(property Chamber) Rules 2013** says that "*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party...*". This does not depend on proof of unreasonable behaviour. It is a matter in the discretion of the Tribunal.
- 29. In this case, the Tribunal considers that as neither the Applicant nor the Tribunal asked for a hearing and as the hearing itself did not achieve anything save for the provision of information from the Respondents which should have been in the written representations and evidence, the hearing was in fact a waste of time and expense. It would therefore be unreasonable to expect the Applicant to bear the cost of the hearing and the Respondents are ordered to reimburse this sum. It has been added to the amount to be handed over.



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Bruce Edgington
Regional Judge
16th August 2018

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.

- iii. 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.
- iv. 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.