RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**Stamford Lodge Cumberland Lodge Brighton BN1 1WN**
Applicants	:	**Stamford Lodge RTM Company Limited**
Respondents	:	**Anstone Properties Limited**
Case number	:	**CAM/00KA/OCE/2004/0022**
Applications	:	**Application for a determination of the applicant's entitlement to acquire the right to manage the property (Section 84(3) Commonhold and Leasehold Reform Act 2002 ("the Act")) Application for an Order that none of the costs incurred by the respondent in connection with this application should be recoverable as part of any service charge (Section 20C Landlord and Tenant Act 1985)**
Tribunal	:	**Bruce Edgington, lawyer chair David Brown JP, FRICS Marina Krisko BSc (Est. Man.) FRICS**
Representatives	:	**Ms. Alison Leitch and Mr. David Westgate for the applicants No attendance on behalf of the respondents (but see below)**
Date of Hearing	:	**14th December 2004**

DECISION

1. The applicant is a right to manage ("RTM") company with all 26 leaseholders of the property being members.

2. On the 29th July 2004 the applicant served a claim notice on the respondent inviting any counter notice to be served by 30th August. On the 23rd August a

counter notice was served alleging that the RTM company was not entitled to manage and also alleging failures to comply with the Act.

3. On the 17th September 2004, the applicant made these applications.

4. On the 8th December 2004, the respondent's solicitors, Osler Donegan Taylor ("ODT") faxed a letter to the Tribunal office acknowledging that the applicant was entitled to manage the property. They said that the issue of costs should be dealt with by written submissions.

5. In view of such agreement, the applicant assumes the right to manage on the 8th March 2005 pursuant to Section 84(5)(b) of the Act and no determination of this Tribunal is needed.

6. With regard to the application under Section 20C of the **Landlord and Tenant Act 1985**, the respondent is able to recover any costs reasonably incurred in consequence of the claim notice (Section 88 of the Act). However, an RTM company would only have been liable for costs incurred by the respondent in connection with this application if this Tribunal had dismissed the application (Section 88(3)), which it has not.

7. Accordingly, the issue of costs is dealt with fully under the Act and no order under the 1985 Act in favour of the applicant is needed. Accordingly, such application is dismissed.

8. Having said that, it is the RTM company which is applying for such order and not the tenants. It is therefore not possible, under this application, to make an order under the 1985 Act in favour of the tenants. If such an application had been made by the tenants, it is highly likely that an order would have been made preventing recovery of costs incurred by the respondent as a party to this application in any claim for service charges.

9. By letter dated 11th December 2004, ODT enclosed its schedule of costs said to have been incurred in consequence of the claim notices but excluding costs

relating to these proceedings. It suggests that the costs are recoverable under Section 89(4) of the Act whereas this sub-Section is only applicable in the event of the Claim Notice having been withdrawn or ceasing to have effect. Neither of these situations apply in this case. The only costs recoverable are those referred to in to Section 88.

10. For reasons which will become clear, one very important part of this letter says, "Given that we have prepared detailed costs submissions, we respectfully ask that we be excused from attending the hearing on the 14th December, in order to keep costs to a minimum. We appreciate that the Applicants will attend the hearing to make oral submissions on costs."

11. On the morning of the hearing, this Tribunal was due to hear another case involving completely different parties but learned, following inspection of the property involved, that the case had been settled and no-one had bothered to tell the Tribunal office. In order that the Tribunal members did not waste the morning, a call was put through to the applicants in this case asking whether the hearing could be brought forward. They kindly agreed and arrived at the hearing venue at about 12.00 midday. As ODT had said that they were not attending the hearing, no call was made to their offices.

12. The Tribunal heard the submissions of the applicants and made its decision. Its members had left the hearing venue by 2.00 pm. The clerk had not left and a representative from ODT turned up. The Tribunal has considered whether it should re-convene the hearing as it is clear that Article 6 of the European Convention on Human Rights has been engaged. It considers that the letters from ODT dated 8th and 11th December respectively are clear and unambiguous. ODT effectively abandon their right to an oral hearing.

13. Turning now to the issue of costs, the task of the Tribunal is to consider whether costs claimed on behalf of the respondent are reasonable. The first matter to decide is the charging rate. ODT say that £180 per hour is allowed in Brighton County Court for a partner on detailed assessment of inter partes costs. The Chair of this Tribunal telephoned Brighton County Court on the

day of the hearing and was told that the rate currently being awarded by District Judges for a Grade A fee earner i.e. a solicitor with at least 8 years' post qualification experience is £165 per hour. The rate which this Tribunal considers to be reasonable is £165 per hour except for the telephone call by the trainee which is allowed at £10.

14. Such a rate is applicable for a senior solicitor which, of necessity, implies someone with a high degree of experience and knowledge. Applying that test, the times claimed for considering the documents and drafting the counter notice in this case are excessive. The claim notice is 29 pages long, but only the first 2 pages need to be considered in any depth. The third page sets out standard notes and the remaining pages each contain the name and address of a tenant. The form of counter notice used is clearly a standard form used for notices both accepting and denying the right to manage. Only paragraph 1, being just over half the first page needs any drafting skills.

16. On the detailed assessment of solicitors' claims for costs on an inter partes basis, it has long been the practice not to allow anything for incoming letters. The 6 minutes allowed for a standard letter is intended to include time for perusing any incoming letter.

17. The Tribunal was also concerned to see that there have been telephone calls and letters dealing with the same matter e.g. the initial reaction to the first claim notice being a telephone call on 29/07/04 followed by a letter dated 02/08/04. This appears to be duplication. There is also a letter to the applicant on the 26/08/04 and a letter to the applicant's solicitor on the same day which again appears to be a duplication.

18. Finally, ODT concede that when Mr. Donegan arrived back from holiday on the 8th September 2004, the copy register of members sent on the 26th August was in his possession. They go on to say, in their detailed representations, "The Respondents now accept that the copy Register of Members enclosed with their letter of 26/08/04 was sufficient evidence of membership". This removed the entire basis for the counter notice.

19. Accordingly, it is absolutely clear that it was not reasonable to incur any further costs except to tell the applicants that the counter notice was no longer effective. Taking all these matters into account, the Tribunal decides that only the following costs have been reasonably incurred:-

28/07/04	perusing defective claim notice	12 mins
02/08/04	letter to respondents	6 mins
04/08/04	perusing correct claim notice	12 mins
12/08/04	letter to applicant	6 mins
21/08/04	telephone call to respondent	6 mins
23/08/04	" "	6 mins
23/08/04	drafting counter notice	12 mins
23/08/04	letter to applicant	6 mins
23/08/04	telephone call to respondent	6 mins
24/08/04	perusal of documents	6 mins
24/08/04	letter to respondent	6 mins
25/08/04	telephone call with Mrs. Leitch	6 mins
26/08/04	telephone call to respondent	6 mins
26/08/04	letter to applicant's solicitor	6 mins
02/09/04	trainee's telephone call to respondent	6 mins
08/09/04	perusing register of members	6 mins
08/09/04	letter to applicant's solicitor	6 mins

20. This equates to 19 units at £16.50 and one unit at £10 i.e. £323.50 plus VAT of £56.61 making a total of £380.11. However, the matter does not end there.

21. It was put to the Tribunal that the respondents have acted unreasonably and an application was made for the respondent to pay something towards the costs incurred by the applicant. The applicant had given notice to the respondent of its position on this matter in an e-mail dated 10th December. The applicant produced a schedule setting out costs incurred by Farrington Webb of £775.50 most of which appear to have been incurred after these proceedings were issued. There is also a schedule setting out a claim for over 19 hours time spent by board members of the RTM company which are charged at £50 per hour.

22. The Tribunal does have the power to order a respondent to pay the costs of an applicant in connection with proceedings before it if, in the opinion of the Tribunal, the respondent has acted "...unreasonably in connection with the proceedings" (Schedule 12, clause 10 of the Act).

23. In this case the application was sent to the Tribunal office on the 17th September 2004 and was received on the 20th September. As has been decided above, the respondent was deemed to have sufficient knowledge of the validity of the claim notice when ODT received the copy register of members on or about 27th August. Even allowing for Mr. Donegan's holiday, the respondent could, and in the Tribunal's view, should, have prevented this application being made by acknowledging the validity of the claim notice before the 17th September.

24. By failing to do so and by allowing the application to almost reach the hearing before withdrawing, the Tribunal decides that such behaviour is clearly unreasonable. Not only have costs been unnecessarily incurred, but the effective date for the RTM company to take over management has been delayed for over 3 months. As to the amount of any award, the Tribunal is unable to make any award in respect of the board members' time as there is no calculation of how £50 per hour is arrived at. However, it is clear that the solicitor's costs incurred by the applicant in connection with these unnecessary proceedings exceeds the maximum of £500 which this Tribunal is empowered to allow.

25. The Tribunal therefore has no hesitation in ordering the respondent to pay £500 towards the costs of the applicant. Deducting the amount due to the respondent in respect of its costs, leaves a net amount due from the respondent to the applicant of £119.89 which should be paid on or before 14th January 2005.

.....

Bruce Edgington
Chair
14.12.04