



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

Case Reference : **LON/00AY/LRM/2013/0011**

Property : **86 Edgeley Road, London SW4 6HB**

Applicant : **Woodstock RTM Company Limited**

Representative : **Samuels & Co Solicitors**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of Application : **Application in relation to the denial
of the Right to Manage**

Tribunal Members : **Mr Jeremy Donegan (Tribunal
Judge)
Mr Michael Taylor FRICS
(Surveyor Member)**

**Date and venue of
Paper Hearing** : **13 August 2013
10 Alfred Place, London WC1E 7LR**

Date of Determination : **17 August 2013**

DECISION

Decisions of the Tribunal

- A. The Tribunal determines that the Applicant was on 30 January 2013 entitled to acquire the right to manage 86 Edgeley Road, London SW4 6HB (“the Property”), pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). The acquisition date is 3 months after this determination becomes final.
- B. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) so that none of the landlord’s costs of the Tribunal proceedings may be passed to the lessees through any service charge for the Property.
- C. The Tribunal determines that the Respondent shall pay the Applicant the sum of £500 within 28 days of the date of this Decision, being costs incurred by the Applicant in connection with these proceedings, pursuant to Paragraph 10 of Schedule 12 to the 2002 Act.

Background

- (1) By a Claim Notice dated 30 January 2013, the Applicant gave notice that it intends to acquire the Right to Manage the Premises on 10 June 2013.
- (2) By a Counter-Notice dated 06 March 2013, the Respondent disputed the claim alleging that the Applicant had failed to establish compliance with subsections 80(2), (8) and (9) of the 2002 Act. The Counter-Notice did not give any particulars of the alleged non-compliance.
- (3) The Tribunal received an application under section 84(3) of the 2002 Act on 26 April 2013.
- (4) Directions were given on 26 April 2013 and the application was referred for a paper determination. No request for an oral hearing has been made by any of the parties.
- (5) The Respondent failed to serve its statement of case by 15 May 2013 in accordance with the directions. The Applicant filed a hearing bundle on 07 June 2013 and applied for costs orders under section 20C of the 1985 Act and paragraph 10 of schedule 12 to the 2002 Act.
- (6) On 26 June 2013, the Respondent’s representative wrote to the Tribunal stating that the landlord wished to withdraw the “RTM Notice” and proposing an acquisition date of three weeks from confirmation of the other party. The Applicant’s solicitors sent detailed representations to the Tribunal on 09 July 2013. The Respondent has not responded to these representations or filed any statement of case.
- (7) The matters to be determined by the Tribunal are the application under section 84(3) of the 2002 Act and the two costs applications.
- (8) The relevant legal provisions are set out in the Appendix to this decision.

The Applicant's Representations

- (9) The Applicant's representations, as set out in the letter from its solicitors dated 09 July 2013, can be summarised as follows:
- (9.1) There is no provision in Chapter 1 of Part 2 of the 2002 Act permitting the withdrawal of a Counter-Notice or for the parties to agree an Acquisition Date.
 - (9.2) If a negative Counter-Notice is served then the RTM company does not acquire the right to manage the premises unless the Tribunal makes a determination under section 84(5) of the 2002 Act.
 - (9.3) Section 90(5) of the 2002 Act provides that where the right to manage premises is acquired by an RTM company by virtue of section 84(5)(b) then the acquisition date is 3 months after the Tribunal's determination has become final.
 - (9.4) The Respondent has not admitted that the Applicant was entitled to manage the Property on the relevant date, being the date the Claim Notice was given. Rather it has expressed a desire that its Counter-Notice be withdrawn, which it is not entitled to do under the 2002 Act. It follows that a determination is required from the Tribunal.
 - (9.5) In relation to the costs applications, the Applicant relies upon letters from its solicitors dated 03 April and 31 May 2013. In the earlier letter they asked the Respondent's representative to particularise the allegations that the Applicant was not entitled to acquire the right to manage the Property (as stated in the Counter-Notice).
 - (9.6) In the second letter (also to the Respondent's representative) the Applicant's solicitors referred to the Respondent's failure to serve its statement of case and spelt out the manner in which the Claim Notice complied with subsections 80(2), (8) and (9) of the 2002 Act. The further letter also stated that the Applicant would be making an application for costs under paragraph 10 of schedule 12 to the 2002 Act, upon the basis that the Respondent had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with these proceedings.
 - (9.7) Neither the Respondent nor its representative responded to the letters dated 03 April and 31 May 2012.
 - (9.8) A schedule of the costs incurred by the Applicant's solicitors accompanied their letter to the Tribunal dated 09 July 2013.

The Tribunal's Decision

- (10) The Tribunal is satisfied that the Claim Notice complies with subsections 80(2), (8) and (9) of the 2002 Act. It specifies the premises (the Property) and contains a statement of the grounds on which it is claimed that they are premises to which chapter 1 of part 2 of the 2002 Act applies. The Claim Notice contains the particulars and is in the form required by the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010.
- (11) The Counter-Notice did not particularise the alleged non-compliance with subsections 80(2), (8) and (9) and the Respondent and its representative have failed to provide any particulars, despite being asked to do so in the letter from the Applicant's solicitors dated 03 April 2013.
- (12) The Tribunal is satisfied that the Applicant was entitled to acquire the right to manage the Property on the date the Claim Notice was given, 30 January 2013. It follows that the Acquisition Date is the date three months after this determination becomes final.

Costs Applications

- (13) The Respondent's representative informed the Tribunal landlord that no costs would be passed through the service charge. For the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. In coming to this decision, the Tribunal took account of the Respondent's failure to:
 - (13.1) particularise the alleged breaches of subsections 80(2), (8) and (9) of the 2002 Act in the Counter-Notice;
 - (13.2) respond to the letters from the Applicant's solicitors dated 03 April and 31 May 2013;
 - (13.3) serve a statement of case in accordance with the directions; and
 - (13.4) failure to agree that the Applicant was entitled to the right to manage the Property, having purported to withdraw its Counter-Notice.
- (14) The Tribunal considers that the Respondent has acted unreasonably throughout this case; both before and after the proceedings were issued. It appears that the Respondent served a negative Counter-Notice to frustrate or delay the right to manage claim. It purported to withdraw the Counter-Notice at the 11th hour, by which time the current proceedings were well advanced.
- (15) The Respondent has acted unreasonably in connection with the proceedings. It did not serve a statement of case in accordance with the

directions, did not respond to the letter from the Applicant's solicitors dated 31 May 2013, there was a delay of two months between the date of the directions and the purported withdrawal of the Counter-Notice and at no point has it agreed the right to manage claim.

- (16) The Applicant's solicitors gave advance warning of the costs application in their letter dated 31 May 2013. They have incurred unnecessary costs in complying with the directions and in corresponding with the Respondent's representative that would have been avoided if the Respondent had agreed the claim.
- (17) At the very latest the Respondent should have agreed the claim by 06 June 2013. It follows that the Applicant is entitled to recover its costs from 07 June 2013 onwards. The costs claimed for this period, in the schedule from the Applicant's solicitors, amount to £503.33 plus VAT being 1 hour and 25 minutes spent on documents at £200 per hour and 11 units of correspondence at £20 per unit. In addition the Applicant's solicitors have incurred photocopying charges of £15.90 plus VAT for preparing the hearing bundle.
- (18) The total charges for the period from 07 June 2013 onwards are £623.08 (including VAT). The Respondent has not challenged the Applicant's costs schedule. The maximum sum that a party may be ordered to pay under paragraph 10(3) (a) of schedule 12 to the 2002 Act is £500. The Tribunal determines that the Respondent shall pay the Applicant the sum of £500 within 28 days of the date of this Decision.

Name: Jeremy Donegan

Date: 17 August 2013

APPENDIX OF RELEVANT LEGISLATION

Landlord and Tenant Act 1985

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Section 80

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this chapter applies.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

Section 84

- (1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).
- (2) A counter-notice is a notice containing a statement either –
 - (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice; or
 - (b) alleging that by reason of a specified provision of this Chapter, the RTM company was on that date so entitled,and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of the counter-notices, as may be prescribed by regulations made by the appropriate national authority.
- (3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection 2(b), the company may apply for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
- (4) An application under subsection (3) must be made not later than end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
- (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless –
 - (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
 - (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.
- (6) If on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, the claim notices cease to have effect.
- (7) A determination on an application under subsection (3) becomes final –
 - (a) if not appealed against, at the end of the period for bringing an appeal, or
 - (b) if appealed against, at the time when the appeal (or further appeal) is disposed of.

- (8) An appeal is disposed of –
 - (a) if it is determined and the period for bringing any further appeal has ended, or
 - (b) if it is abandoned or otherwise ceases to have effect.

Section 90 (4)

Where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final.

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed –
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.