



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

Case number : CAM/22UG/LRM/2014/0007

Property : Pearce Court, Colchester CO2 7GB

Applicant Represented by : Pearce Court RTM Company Limited
: Williams Solicitors

Respondent(s) Represented By : Taylor Wimpey Developments Limited
: Trinity (Estates) Property Management Limited

Date of Application : 15th May 2014

Type of Application : For a determination that the Applicant was, on the relevant date, entitled to acquire the right to manage the property – Section 84(3) Commonhold and Leasehold Reform Act 2002 (“the Act”)

Tribunal : David S Brown FRICS (Chair)
Bruce M Edgington (Judge)

Date of Decision : 16th July 2014

DECISION

The application succeeds. The Applicant was, on the relevant date, entitled to acquire the right to manage the Property and it acquires the right to manage on 17th October 2014.

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STATEMENT OF REASONS

1. The Applicant served a Claim Notice on 28th March 2014. The RTM Company was incorporated on 6th June 2013. The registered Members of the company are the tenants of 8 of the 12 flats.
2. Trinity Estates (“Trinity”) responded with a Counter-Notice dated 29th April 2014 alleging that the Applicant was not entitled to acquire the

right to manage by reason of non-compliance with sections 78(1) and 79(2) of the Act.

3. The relevant sections deal with service of notices on the non-participating qualifying tenants, as follows:-

Section 78(1)

Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given –

- (a) is the qualifying tenant of a flat contained in the premises, but*
- (b) neither is nor has agreed to become a member of the RTM company.*

Subsection (2) requires that the notice shall include an invitation to the recipient to become a member of the RTM company.

Section 79(2)

The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.

4. Directions were issued on 27th May 2014, informing the parties that the Tribunal intended to determine the application on the papers, without a hearing, on or after 16th July, unless either party requested that a hearing should be held. No such request has been received.
5. The Applicant prepared and submitted a bundle of papers but it appears from a subsequent letter received from Trinity that this was not prepared in accordance with the Directions, in that its contents were not agreed between the parties. Moreover, Trinity state that the copies of the Notices Inviting Participation, which are included in the bundle, had not previously been provided to them, which is in contravention of the Directions. As a result, Trinity wrote to the Tribunal on 2nd July, requesting that the Tribunal take into account further representations contained in the letter and the enclosed office copy entries from the registered titles of four of the flats.
6. We find that this request is reasonable, under the circumstances. On 10th July the Tribunal received a response to these representations from the Applicant.
7. The only challenge to the applicant's right to acquire the right to manage the Property is the alleged failure to comply with the two sections of the Act referred to above. The grounds for the challenge are set out in Trinity's further representations, as follows.
8. In the case of Flat 8, the Notice under section 78(1) was served on Ms Helen Blake but the registered proprietor of that flat from 13.02.2013 was Miss Lesley Donnachie.
9. With regard to Flats 7, 9 and 10, the relevant notice was sent to each tenant at the flat in question but those tenants had provided Trinity

with an alternative correspondence address, which is also noted on the title register of flats 7 and 10. Trinity submit that this amounts to notification by the tenants of a different address pursuant to section 111(5) of the Act. They say that it was incumbent on the RTM Company to check with them, as the property manager, whether the tenant had an alternative address for correspondence and it was entitled to request such information pursuant to section 82. They say that there is no evidence that the Notice was received by these tenants, who are not members of the RTM Company. As they were not sufficiently served on 4 of the 12 tenants at the Property they submit that this amounts to sufficient prejudice to disentitle the Applicant from acquiring the right to manage.

10. The Applicant states that the addressing of the notice to Ms Blake was a typographical error and asserts that if Ms Blake received the notice she would have passed it to Miss Donachie. It also refers to section 78(7) of the Act. In respect of the other three notices, it refers to section 81(1) and 111(5).
11. The Applicant also encloses a copy of a letter purportedly written on behalf of the landlord from which it is clear that it does not oppose the RTM.

Discussion

12. Sections 78(7) and 81(1) refer to an "inaccuracy in any of the particulars required". The factors in the addressing of the notices are not inaccuracies.
13. We give little weight to the copy letter provided by the Applicant. It was submitted very late and the fact is that the Respondent did oppose the application in its Counter-Notice.
14. Section 111(5) of the Act provides that
A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is a qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.
15. There is nothing to indicate that, in relation to Flats 7, 9 and 10, the RTM company had been given any such notification. We do not accept the assertion that notification to the property manager and/or inclusion of a different address on the title register amounts to relevant notification, it is not notification to the RTM company. There is no obligation on the RTM company to seek out an alternative address from the property manager or anywhere else. Section 82 creates no such obligation.
16. Because the Land Registry is a register which is open to the public, it is sometimes said that people are 'deemed' to have notice of information in the register. However, section 111(5) is very specific in its wording. It places an obligation on the tenant to actually notify the RTM of any

alternative address for service. Thus, 'deemed' notice would not be sufficient

17. The Notices served at Flats 7, 9 and 10 were therefore properly served in accordance with section 111(5).
18. The same cannot be said about Flat 8. The Notice was clearly sent to the previous tenant instead of Miss Donnachie and so the Applicant failed to comply with section 78(1) in respect of that flat.
19. The question is whether that failure, to serve the relevant notice on the tenant of one flat out of twelve, is fatal to the Applicant's claim to acquire the right to manage the premises.
20. In *Avon Freeholds Ltd. v Regent Court RTM Co. Ltd.* [2013] UKUT 0213 (LC), the Upper Tribunal (per the President, Sir Keith Bloomsbury) determined that compliance with section 78(1) was not mandatory. Sir Keith's conclusion, at paragraph 56 of his decision, was to adopt a submission that "*Parliament cannot have intended that in circumstances such as these the whole of the right to manage process will be defeated by the RTM company failing to comply fully with the provisions for giving notice of invitation to participate....there has been – to adopt the expression used by Lord Woolf in R v Immigration Appeal Tribunal, ex parte Jeyanthan [1999] 3 AER 231 – 'substantial compliance' with the statutory requirements, and the consequences of non-compliance in this case were not such as to justify denying the respondent the right to manage the premises*".

We find that there has been substantial compliance by the Applicant in this case.

21. As to the question of prejudice. Miss Donnachie has not been deprived of her right to become a member of the RTM company. As stated by Sir Keith in the *Avon Freeholds* case, a qualifying tenant is entitled to become a member of a RTM company at any time, in accordance with section 74(1)(a). As far as the landlord is concerned, section 78(1) was not designed to protect landlords nor to aid them in opposing a right to manage process.
22. The Tribunal finds that there has not been substantial prejudice caused. The majority of the tenants are in favour of the RTM proposal and the consequences of the non-compliance do not justify denying the Applicant the right to manage the premises. In accordance with section 90(4) of the Act, the Applicant acquires the right to manage on 16th October, three months after the date of this determination.

Signed:

D S Brown FRICS (Chair)