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

Case Reference : LON/00AA/LRM/2014/0024

Property : 8/9 Botolph Alley Botolph Lane
London EC3R 8DR

Applicant : Botolph Alley RTM Company
Limited

Representative : Mr McCain

Respondent : Mr Y Bhaliok

Representative : N/A

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

Tribunal Members : Judge Carr
Mr Hugh Geddes
Ms Lorraine Hart

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 8th December 2014

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the Applicant is entitled to acquire the Right to Manage 8/9 Botolph Alley.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision

The application

1. Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the Act') makes provision for RTM companies, the members of which are qualifying tenants of premises to which the provisions apply, to acquire the right to manage the premises. A landlord who is given a notice claiming the right to manage an RTM company may give the company a counter-notice alleging that the company is not entitled to acquire the right to manage the premises (section 84(2)), and the RTM company may then apply to the LVT for a determination that it was on the relevant date entitled to acquire such right (section 84(3)).
2. By a claim notice dated 18th August 2014 the Applicant, Botolph Alley RTM Company limited, an RTM Company, gave notice to Respondent, Yousuf Bhaliok, the freehold owner of 8/9 Botolph Alley, the premises which are the subject of this determination, that it intended to acquire the Right to Manage the premises.
3. By a counter-notice dated 19th September 2014 the Respondent disputed the claim alleging that by reason of section 72 of the Act the Applicant was not entitled to acquire the Right to Manage the premises.
4. The Applicant has therefore applied to the Tribunal pursuant to section 84 of the Commonhold and Leasehold Reform Act 2002 for a determination that it was, on the relevant date, entitled to acquire the Right to Manage 8/9 Botolph Alley.
5. On 24th October 2014 the LVT issued directions in this matter and determined that the matter be decided on the basis of an inspection and a short oral hearing. The Applicant was represented at the hearing by Ms Haug. The Respondent did not appear. He asked for the case management conference to be postponed due to ill health, but that request was refused by the Tribunal.

The issues

6. The Tribunal has identified the relevant issue for determination as follows:

- (i) Whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the premises specified in the notice? More particularly whether the non-residential part of the building exceeds 25% of the total floor area.

The law

7. Sections 71 – 94 of the Act set out the statutory framework for the acquisition of the Right to Manage. For the convenience of the parties the salient provisions are set out below.
8. Section 72(1) provides that the right to manage applies to premises if –
 - (i) they consist of a self-contained building or part of a building, with or without appurtenant property
 - (ii) they contain two or more flats held by qualifying tenants, and
 - (iii) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises
9. There is a further significant limitation on the ability to acquire the RTM which is set out in Paragraph 1 of Schedule 6 to the Act. Premises where the non-residential parts exceed 25% of the internal floor area of the premises are excluded. It is this limitation on the RTM which is the focus of the current application.

The Inspection

10. The Tribunal inspected the premises on the morning of the hearing in the presence of representatives of the Applicants, but not of the Respondent. It found a seven storey building on basement ground, plus five floors, apparently built within the past ten years. Approximately 25% of the ground floor and all of the basement are occupied by a commercial takeaway food outlet; the remainder of the ground floor and all the upper parts contain the five flats and residential common parts. In the bundles the Applicant had provided copies of the computer-generated lease plans with a schedule of areas derived from them.

The Hearing

11. Ms Haug, Ms Dixon, Mr McCain and Mr Marshall, all members of the RTM company attended the hearing. Mr McCain represented the Applicant. Mr Bhaliok attended and represented himself.
12. The Tribunal noted that Mr Bhaliok had not complied with the directions issued at the case management conference. Mr Bhaliok explained that he had asked for an adjournment to allow his surveyor access to carry out measurements but that this application had been refused.

Arguments in connection with the notice of claim

13. The Applicant provided the Tribunal with full documentation including plans. Mr McCain informed the Tribunal that the plans were taken from the plans attached to the leases at the time of the purchase of the leasehold interests. The Applicant has attempted to work out the various ways in which the accommodation in the property could be described as residential or non-residential. In the opinion of the Applicant, supported by the Schedule, in whatever permutation the accommodation is categorised, the non-residential provision falls below 25%.
14. The Respondent argues that he had asked on numerous occasions if a surveyor could access the premises and measure the accommodation. The Tribunal asked for evidence of these requests. He informed the Tribunal that he had not got that evidence with him. He stated that he had delegated the management of the property to his team. The Applicant stated that it had received no requests for access.
15. The Respondent considered that the Applicant's case was based upon plans drawn up before the building was completed and that those plans could therefore not be relied upon.
16. He argued that the best resolution was for the Tribunal to appoint an independent surveyor to measure the residential and non-residential areas. He stated that he was happy to bear the cost of any appointed surveyor. In his opinion this would solve the problem amicably and speedily. The Applicant made it clear that it was not prepared to accept any further delay in the resolution of this dispute.
17. The Tribunal asked the Respondent a number of questions:
 - (i) Had the Respondent or any agent on his behalf inspected or surveyed the property prior to purchase, or any time subsequently? There had been no such inspection or survey.

- (ii) Had the Respondent chosen to use his powers of access under the lease? He had not, wishing to cooperate with the lessees, and therefore he had left it to his team to sort out.
- (iii) Who was his surveyor? The answer was MIMAR, an architect but that he knew that the architect had not attempted to arrange access with the lessees.

The tribunal's decision

The Tribunal determines that the Applicant is entitled to acquire the Right to Manage 8/9 Botolph Alley

Reasons for the tribunal's decision

- 18. The Respondent asserted that the plans on which the Applicant based its case were historic and unreliable, and that he had been refused access to the property to get accurate measurements, but he provided no evidence in support of these assertions.
- 19. In the absence of any evidence to the contrary the Tribunal accepts the evidence of the Applicant, which was not contradicted by the inspection of the premises.
- 20. The Applicant raised three other matters. The Tribunal suggested that these matters could and should be resolved by negotiation but that if necessary further applications could be made to the Tribunal.

Name: Helen Carr

Date: 9th December 2014