

407



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

Case Reference : **LON/00AZ/LRM/2014/0001**

Property : **17 Eastdown Park London SE13
5HU**

Applicant : **17 Eastdown Park RTM Ltd**

Representative : **Ms A Adojutelegan, Solicitor**

Respondent : **Powell & Co Property Ltd**

Representative : **Mr M Lee, Paralegal**

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

Tribunal Members : **Mrs F J Silverman Dip Fr LL.M
Mr I Holdsworth MSc FRICS**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
12 March 2014**

Date of Decision : **12 March 2014**

DECISION

The Tribunal declares that on the relevant date of 12 November 2013 the Applicant RTM company was entitled to acquire the right to manage the property known as 17 Eastdown Park London SE13 5HU under the provisions of the Commonhold and Leasehold Reform Act 2002.

Reasons

- 1 On 12 November 2013 (the relevant date) the Applicant served notice on the Respondent claiming the right to manage the property situate and known as 17 Eastdown Park London SE13 5HU (the property) with effect from 18 March 2013 (sic).
- 2 The Respondent acknowledged that they had received the Applicant's notice but disputed its validity in a letter dated 13 December 2013 which purported to be a counter-notice to the Applicant's claim.
- 3 The Applicant therefore issued an application with the Tribunal on 9 January 2014 seeking a declaration that on the relevant date they were entitled to exercise their right to manage the property under the provisions of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).
- 4 Directions were issued by the Tribunal on 13 January 2014 and the hearing of this matter took place before a Tribunal on 12 March 2014.
- 5 A bundle of documents prepared by the Applicant was submitted to the Tribunal for its consideration.
- 6 The Applicant contended that the Respondent had failed to serve its counter-notice by 14 December 2013 as required by the Applicant's notice.
- 7 The Respondent's letter containing its objections was dated 13 December 2013 but the Applicant said they had not received it until 6 January 2014. The Respondent was unable to provide any proof of posting, equally the Applicant was unable to provide any evidence of the actual date of receipt. In the absence of any conclusive evidence about this matter the Tribunal is prepared to allow the letter dated 13 December 2013 to stand as a document representing the Respondent's objections to the Applicant's notice. It cannot be a valid counter-notice because it is not in the prescribed form and does not contain the information prescribed by the 2002 Act.
- 8 The Tribunal examined each of the four objections contained in that letter and heard representations from both parties in respect of them.
- 9 None of those objections related to the three reasons for disputing the claim set out in the 2002 Act and no 'specified provision' of the 2002 Act was referred to (see S 84(2)(b)).
- 10 The Respondent challenged the validity of the Applicant's notice firstly on the ground that it failed to contain the correct name of the Respondent company. The Tribunal does not accept this as a valid objection because the notice was addressed to 'Powell & Co of 153 Praed St London W2 1RL' which is sufficiently clear to identify both the intended recipient and their correct postal address. The objection is therefore overridden by the provisions of s81(1) of the 2002 Act which provides that 'A claim is not invalidated by any inaccuracy in any of the particulars required by or by virtue of s 80'.
- 11 The Respondent's second and third objections (that the notice did not have the correct name of the Applicant and was incorrectly signed) were both withdrawn by the Respondent during the course of the hearing.
- 12 The Respondent's final objection was that the lessees' details were not correctly set out in the notice. The 2002 Act requires the notice to contain details of the participating lessees and this it does. Ms

Adojutelegan's husband is not a member of the RTM nor a participating lessee and his name was therefore correctly omitted from the notice, Ms Adojutelegan's name being cited because, being a joint tenant, she is both jointly and severally liable under the lease. Even if this view is not correct the Tribunal will hold that the details supplied in this schedule to the notice are sufficiently clear to identify the relevant lessees and therefore the provisions of s81(1) of the 2002 Act as cited above will apply to regularise this minor defect.

- 13 A typographical error in the date stated in paragraph 6 of the notice is similarly regularised by s81(1). This error was brought to the Tribunal's attention by the Applicant's representative and had not previously been noticed by the Respondent who had not cited it as one of the grounds of their objection. The date on which the Applicant will assume the right to manage is therefore 18 March 2014.
- 14 The Respondent argued that the notice was also invalid because Ms Adojutelegan's lease had been forfeited and she was no longer a tenant. He produced no evidence of forfeiture but said it had occurred in January 2014. The Tribunal reminded the Respondent that the 'relevant date' for the purposes of this application was 12 November 2013 and anything which had occurred subsequently was not relevant to the issues before the Tribunal.

15 The Law

79 Notice of claim to acquire right

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(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.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(6) The claim notice must be given to each person who on the relevant date is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

80 Contents of claim notice

(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.

(3) It must state the full name of each person who is both—

(a) the qualifying tenant of a flat contained in the premises, and

(b) a member of the RTM company,

and the address of his flat.

(4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—

(a) the date on which it was entered into,

(b) the term for which it was granted, and

(c) the date of the commencement of the term.

(5) It must state the name and registered office of the RTM company.

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.

(7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.

(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.

81 Claim notice: supplementary

(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.

(2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained

in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.

(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—

(a) the premises, or

(b) any premises containing or contained in the premises,

may be given so long as the earlier claim notice continues in force.

(4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—

(a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or

(b) ceased to have effect by reason of any other provision of this Chapter.

84 Counter-notices

(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 not 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 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 to a leasehold valuation tribunal 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 the 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 not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases 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 any 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.

Judge F J Silverman

12 March 2014