

		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/00/BB/LRM/2014/0004
Property	:	1 - 17, Rudyard Court, 127 Long Lane, London SE1 4PW
Applicant	:	Rudyard Court RTM Company Limited
Representative	:	Williams, solicitors
Respondent	:	Parkbrace Limited (landlords)
Representative	:	Estates and Management Limited, managing agents.
Type of Application	:	Application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ('the Act') for a determination that the applicant was on the relevant date entitled to acquire the right to manage
Tribunal Members	:	Professor James Driscoll, solicitor, (Tribunal Judge), and Mr Trevor Johnson FRICS (Tribunal Member)
Date and venue of Hearing	:	The tribunal considered the application on the basis of the papers filed by the parties without an oral hearing.
Date of Decision	:	7 April 2014

DECISION

The Decision summarised

1. The tribunal determines that on the relevant date the applicant was entitled to acquire the right to manage.
2. A copy of the statutory provisions referred to in this decision is contained in the appendix.

Background to the application

3. This application relates to a right to manage claim ('RTM'). The RTM was introduced by Part 2 of the Commonhold and Leasehold Reform Act 2002. It allows for a qualifying group of flat leaseholders to take over the management of their block of flats. Unlike the right to apply to this tribunal under Part 2 of the Landlord and Tenant Act 1987, the RTM is a no-fault based right.
4. A company must be incorporated as a RTM company to make the claim which if successful will result it in managing the building. The landlord's powers and obligations under the flat leases will then pass to the RTM company. A RTM company is a company limited by guarantee which must have a memorandum and articles of association which conform to regulations made under the Act.
5. The Act sets out the procedures that apply to a RTM application. Amongst other things, it requires the RTM company to invite all of the leaseholders in the block of flats or who are not already members to become a member of the company (section 78 of the Act). Under section 79 a copy of the claim notice must be given to the landlord and the date the notice was given is called the 'relevant date'. In addition a copy of the claim notice must be given to all of the leaseholders in the block concerned, whether they are members of the company and participating in the claim, or not.
6. The landlord may give a counter-notice under section 84 and if the landlord does not admit the claim it must say so in the counter-notice. In such a case the RTM company must apply to this tribunal for a determination as to its entitlement to acquire the RTM.

Reasons for our decision

7. In this case the applicant was incorporated on 12 July 2013 as a RTM company. A claim notice was given on 15 November 2013 and it was sent to the address of the registered office of the landlord Parkbrace and also to another address of the landlord. A counter-notice dated 18 December 2013 was given on behalf of the landlord denying that the applicant was entitled to claim the RTM.
8. In response an application was made to this tribunal on 17 February 2014. Directions were given on the 24th February 2014. Neither party having sought an oral hearing the tribunal considered the application on 7 April 2014. The response of the RTM company was dated 21 March 2014.
9. We now summarise each objection, the response of the RTM company and our decision on each point in turn.
10. The first objection is that a copy of the notice was not given to the landlord at its registered office at Molteno House, 302 Regents Park Road, London N3 2JX.
11. In response the RTM company states that a copy of the claim notice was posted to the registered office and to an address of the landlord at 131-133 Ballards Lane, London N3 1GR. It attaches to the response proof of postal service to both addresses.
- 12. The tribunal is satisfied that a copy of the claim notice was given to the landlord.**
13. The second point made by the landlord is that they had no response to a letter seeking more information dated 20 November 2013.
14. In response those advising the RTM company exhibit a letter of reply dated 27 November 2013.
- 15. We do not consider that the landlord's point is a valid objection to the RTM and in any event there is proof that a letter in response was in fact sent.**
16. Turning to the next objection the landlord contends that the application to this tribunal was not made within two months of the date of the counter-notice as required by section 84(4) of the Act. However, the RTM company has shown that the application was received by the tribunal on 17 February 2014 which is within the two month period stipulated by section 84(4) of the Act as the counter-notice was given on 19 December 2013. They exhibit a signature of the tribunal representative given on 17 February 2014.
- 17. We are satisfied that the application to this tribunal was made in time.**

18. The next objection is that the members and non-members of the RTM company may not have been given sufficient notices under the Act.

19. In response the RTM company contend that the participation notices required under section 78 of the Act were given. They exhibit to their response proof of these notices having been posted to the non-participating leaseholders. They also exhibit evidence that copies of the claim notice were given to each of the leaseholders (as required by section 79(8) of the Act) by post.

20. We are satisfied that the RTM company gave participation notices to the non-member leaseholders and that they also gave a copy of the claim notice to all of the leaseholders whether they were participating or not.

21. The final objection made on behalf of the landlord is that relying on a previous decision of this tribunal (LON/OOBB/LRM/2013/0024) where the tribunal found that the claim notice was invalid as it did not allow at least one month after the date of the notice for the landlord to give a counter-notice.

22. In response those advising the RTM company point out that the claim notice which was given on 15 November 2013 allowed for the giving of the counter-notice by 22 December 2013 and it therefore (and unlike the facts of the previous decision cited) it gave sufficient time for service of the counter-notice under section 80(6) of the Act.

23. We are satisfied that the claim notice gave sufficient time for the giving of a counter-notice as required by section 80(6) of the Act.

Summary

24. On the relevant date the RTM company was entitled to acquire the right to manage the premises.

James Driscoll
9 April 2014

Appendix of the relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 78

Notice inviting participation

(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.

(2)

A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—

(a)

state that the RTM company intends to acquire the right to manage the premises,

(b)

state the names of the members of the RTM company,

(c)

invite the recipients of the notice to become members of the company, and

(d)

contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.

(3)

A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.

(4)

A notice of invitation to participate must either—

(a)

be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or

(b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.

(5)

A statement under subsection (4)(b) must—

(a)

specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,

(b)

specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,

(c)

specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and

(d)

specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.

(6)

Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.

(7)

A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

Section 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.

Section 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.

Section 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

13. (1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a)

must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b)

may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a)

a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b)

notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a)

summary assessment by the Tribunal;

(b)

agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c)

detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(1), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(2) and the County Court (Interest on Judgment Debts) Order 1991(3) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.