



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

Case reference : **LON/00AM/LRM/2022/0028**

HMCTS code : **P:PAPERREMOTE**

Property : **Flats 1-9 (inclusive) Nonet House, 131-133 Lower Clapton Road, London E5 0NP**

Applicant : **Nonet House RTM Company Ltd**

Representative : **The Leasehold Advice Centre**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors Limited**

Type of application : **Right to Manage**

Tribunal member(s) : **Judge D Brandler
Mr S Mason FRICS**

Venue : **10 Alfred Place, London WC1E 7LR
(remotely)**

Date of determination : **31st October 2022**

DECISION

Description of the hearing

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE. An oral hearing was not held because the Applicant confirmed that it would be content for a determination on the papers. The Respondent did not object. The tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in an electronic bundle prepared by the Applicant of [134] pages, the contents of which have been noted. The decision made is described below.

Decision of the tribunal

- (1) The Applicant was entitled on the relevant date to acquire the right to manage the Property; and**
- (2) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the Respondent is ordered to pay £100 to the Applicant to reimburse the tribunal application fee paid**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

The application

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that on the relevant date it was entitled to acquire the right to manage the property known as Flat 1 – Flat 9 (inclusive) Nonet House, 131-133 Lower Clapton Road, London E5 0NP (“the property”)

Background

2. By a claim notice dated 21/04/2022 the Applicant gave notice to Assethold Ltd (“the respondent”) that it intended to acquire the Right to Manage the property on 7/09/2022

3. By a counter notice dated 27/05/2022 the Respondent freeholder disputed the claim alleging that the Applicant had failed to establish compliance with section 78(1) of the Act.

4. By an application form dated 11/07/2022 the Applicant applied to the tribunal for a determination that it was entitled to acquire the said right on the relevant date.

5. Directions were issued on 22/07/2022

Respondent's case

6. The Respondent states as its primary objection that under section 78(1) of the Act, the Applicant “*was not entitled to acquire the right to manage*”

the premises specified in the claim notice because the notice of invitation to participate was not given to each person required by that section” [58].

7. In its statement of case the Respondent specifies that they have not had *“sight of evidence that the Applicant has served the proper Notice inviting Participation (‘NIP’) on all qualifying tenants. In relation to flat 6, it is noted by the Respondent that the Applicant served the NIP on JONATHAN ANDREW HORNING and CLIODHNA WALSH. Following the sale of the flat on 26 November 2021, NIP was served on CHALOTTE MADILL, however it appears that the Applicant has failed to also serve same on FRASER PETER REAS” [59]*

The Applicants’ case

8. By a letter dated 13/05/2022 the Applicant provides a detailed reasoned response to the objection by the respondent, confirms that Notices of Invitation were served on Jonathan Andrew Horning and Cliodhna Walsh as well as on Charlotte Madill, and provide copies of the Notices of Invitation. Nevertheless the respondent lodged his statement of case on 19/08/2022

9. In the Applicant’s statement of case, they again detail the service on Mr Horning and Ms Walsh, who were the registered proprietors of the leasehold interest of Flat 6 at the date of serving the claim, and continued to be so at the date of the applicant’s statement of case dated 24/08/2022 [62].

10. In response to the lack of service on Fraser Peter Reas, the Applicant makes clear that although it was known that Flat 6 was in the process of being sold, but without a Land Registry Title, the accurate names were not known. However, to avoid a situation whereby the Registration was completed post serving the Notice of Claim but backdated to the date of the application, the Registered Proprietor at the time was served, in addition to service on “Charlotte Madill Or the Qualifying Leaseholder if Different”, as well as service on simply “The Qualifying Leaseholder”. [61].

11. It is a matter of fact that Charlotte Madill and Fraser Peter Reas could not at the time be admitted as a Member of the RTM Company in respect of Flat 6 until such time as their registration at the Land Registry had been perfected given that they were not named on the lease. Therefore the only persons who are the ‘Qualifying Tenant’ who are both registered and named on the lease are the persons who were invited, as admitted by the Respondent, namely Andrew Horning and Cliodhna Walsh. [62]

12. The Applicant further argues that this is a case where the Respondent did not have a case and they ask whether the driving factor behind this *“pointless waste of time is merely to retain the control, management, management fees etc for as long as possible given takeover should have been on 7th September 2022 whereas this matter is not due to be determined until 7 days commencing 31st October 2022 and therefore any*

takeover by the RTM Company cannot be before 3 months & 28 days thereafter, namely late January 2023". [62]

FINDINGS

13. The Applicant was not in breach of s.78(1) of the Act as evidenced by the letter dated 13/05/2022 and the applicant's statement of case dated 24/08/2022. The Applicant was entitled to acquire the said right on the relevant date.

14. The Respondent is also ordered to repay to the applicant the sum of £100 being the tribunal fees paid by her in relation to this application.

Name: Judge D. Brandler **Date:** 31st October 2022

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.