



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

Case Reference : **LON/00AM/LRM/2013/0026**

Property : **38 Dunsmure Road, London N16
5PW**

Applicant : **38 Dunsmure Road RTM Company
Limited**

Representative : **Martin Hayton, Burton Woods,
solicitors**

Respondent : **Assethold Limited**

Representative : **Conway & Co, solicitors**

Type of Application : **Application under S84(3)
Commonhold and Leasehold
Reform Act 2002
(The Right to Manage)**

Tribunal Members : **Mr P M J Casey MRICS**

**Date and venue of
Hearing** : **27 November 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15 December 2013**

DECISION

Decision of the tribunal

- (1) The tribunal determines that the applicant company had at the relevant date the right to acquire the right to manage the premises.

The application

1. This is an application by 38 Dunsmure Road RTM Company Limited ("the Company") against Assethold Limited ("the Landlord") under S84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that the company was on the relevant date, which is defined by S79(1) of the Act as the date on which the notice of claim was given, entitled to acquire the right to manage 38 Dunsmure Road ("the property").

The hearing

2. With the consent of both the parties the tribunal decided to determine the application without a hearing in accordance with rule 31(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Both parties submitted written statements of case with attached exhibits for the tribunal's determination which took place on 27 November 2013.

The background

3. The property which is the subject of this application comprises a building containing three flats
4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Company gave notice of the claim to acquire the right to manage the property in accordance with S79(6) of the Act to the Landlord (and to its managing agent) on 31 July 2013. By a counter-notice dated 22 August 2013 the respondent denied that the Company on the relevant date had acquired the right to manage relying on several provision of the Act for their grounds though the only ground that they now maintain relates to S79(8) of the Act.

The Respondent's submission

6. The respondent's case for denying that the Company was entitled to acquire the right to manage rests on S79(8) of the Act which provides

that 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 within the property. By letter of 31 July 2013 the respondent's solicitor asked for confirmation as to persons upon whom the claim notice was served. In response the company's solicitor provided copy letters evidencing service solely upon the Landlord and the Landlord's agent. This basis of objection was detailed in correspondence with the Company's solicitor after service of the counter-notice who indicated that "subsequently notices of the claim notice had been provided to qualifying tenants". No details were given as to the date of such service or copies of any correspondence provided. There is no evidence the claim notices were served on or before the relevant date or prior to the counter-notice. It is the Respondent's position that at the date of the service of the claim notice and indeed at the date of giving the counter-notice there was a failure to comply with S79(8). The Company's representative has suggested the claim notices may be served at any time however if at the date of counter-notice no copy had been served the Respondent is entitled to rely on it as a ground in the counter-notice. In the Respondent's submission it is a matter for the Applicant to show that no prejudice was caused by the failure to comply with this mandatory requirement and for support referred to *Assethold Limited v 7 Sunny Gardens Road RTM Company Limited* a decision of the Upper Tribunal reference [2013] UKUT0509(LC).

The Applicant's submission

7. For the Company it is said that the Leaseholders of all three flats are members of the RTM Company. There are no qualifying tenants who are not members. Moreover, those Leaseholders had prior to service of the notice of claim been sent pre-dated copies of the claim form to approve the content. Each has provided and included with the papers a statement of truth confirming these facts and that they had been kept fully apprised of all stages of the process and had suffered no prejudice. They also confirm that a signed copy of the claim notice was sent to each on 1st August 2013. The case for the Company is that the Act is silent as to when a copy of the claim notice is to be served on a qualifying tenant. If the requirement were for a copy to be served simultaneously with service of the original on the Landlord and other relevant parties it would be reasonable to expect reference to the qualifying tenants to be included in the list of people to be served with the claim notice referred to in S79(6) of the Act and for the requirement to be referred to in S79(8). In support reference was made to two cases one given in 2006 by the Midland Leasehold Valuation Tribunal in respect of a property at 9-29 Wiltshire Drive, Halesowen, West Midlands B63 2XU under reference BIR/00CR/LRM/2005/002 and also to a decision of the Upper Tribunal in *Assethold Limited v 14 Stansfield Road RTM Company Limited* reference [2012] UKUT262(LC).

The tribunal's decision

8. The Midland LVT decision on 9-29 Wiltshire Drive was a decision on precisely the point taken by the Respondent. It has not as far as this tribunal is aware been overturned by the Upper-tier Tribunal and this tribunal is happy to adopt the reasoning for that decision. Accordingly the tribunal is satisfied that the Company had on the relevant date the right to acquire the right to manage. There is no support in the Act or in any Regulations for the Respondent's contention that the Company's entitlement to the right depends upon copies of the claim notice having been given to the tenants by the relevant date although from the evidence it is clear that they had unsigned pre-dated copies sent to them prior to service on the Respondent. S79(2) of the Act provides:

“the claim notice may not be given by a RTM company unless each person required to be given a notice of invitation to participate had been given such a notice at least 14 days before”.

Had there been a requirement as to the giving of notice on or before the relevant date or indeed the date of the counter-notice one would have expected to find it similarly clearly expressed in S79(8). Indeed it is not surprising to see that such a requirement is not in the section, the interests of the tenants being clearly protected by the requirements as to notices inviting participation in S78 and the provision of S79(2). Clearly as the only qualifying tenants at the property are all members of the RTM and have been kept fully informed of all steps taken in the process to acquire the right to manage there has been no prejudice to any party.

9. Accordingly the tribunal is satisfied that the Company had at the relevant date the right to acquire the right to manage the premises. By S84(7) of the Act, this determination becomes final:
- (a) if not appealed against, at the end of the period for bringing an appeal in accordance with the 2013 rules or
 - (b) if appealed against at the time when the appeal (or any further appeal) is disposed of.

Name:



Date:

15 December 2013