



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

Case Reference	:	CHI/00ML/LRM/2015/0009
Property	:	8 Southover Street Brighton East Sussex BN2 9UA
Applicant	:	8 Southover Street Brighton RTM Company Ltd
Representative	:	Dean Wilson LLP
Respondent	:	Westleigh Properties Ltd
Representative	:	Tolhurst Fisher LLP
Type of Application	:	Application in relation to the denial of the Right to Manage
Tribunal Members	:	Mrs F J Silverman Dip Fr LLM
Date and venue of hearing	:	Chichester 25 November 2015
Date of Decision	:	25 November 2015

DECISION

The Tribunal declares that on the relevant date of 23 June 2015 the Applicant RTM company was entitled to acquire the right to manage the property known as 8 Southover Street Brighton East Sussex BN2 9UA under the provisions of the Commonhold and Leasehold Reform Act 2002.

Reasons

- 1 On 23 June 2015 (the relevant date) the Applicant served notice on the Respondent claiming the right to manage the property situate and

- known as 8 Southover Street Brighton East Sussex BN2 9UA (the property) with effect from 03 November 2015.
- 2 The Respondent acknowledged that they had received the Applicant's notice but disputed its validity in a counter-notice dated 20 July 2015. The counter notice (p25) cited a number of sections of the Commonhold and Leasehold Reform Act 2002 which the Respondent alleged had not been satisfied but did not give any details of the Respondent's objections.
 - 3 The Applicant therefore issued an application with the Tribunal on 11 August 2015 (p1) 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 17 August and 2 October 2015 (pp 30 and 71) and the paper consideration of this matter took place before a Tribunal on 25 November 2015.
 - 5 A bundle of documents prepared by the Applicant was submitted to the Tribunal for its consideration.
 - 6 The Respondent failed to comply with the Tribunal's directions to file a statement by 7 September 2015 as a result of which the Applicant served and filed a supplementary statement (p34) in order to provide sufficient information on which the Tribunal might make its decision.
 - 7 A statement of reply was served by the Respondent on 15 September 2015 (p68) and a response by the Applicants on 8 October 2015 (p77).
 - 8 The Tribunal examined each of the objections contained in the Respondent's belated reply and considered the Applicant's representations in respect of them.
 - 9 The Respondent's substantive challenge to the validity of the Applicant's claim is based on the ground that the Applicant failed to comply with s80 of the 2002 Act in that their notice did not specify whether or not the premises had appurtenant property. The Respondent does not however dispute that the premises are in fact premises to which the 2002 Act applies. The Tribunal finds that on a common sense reading of the wording of the Applicant's notice of claim the extent of the property to which the application purports to relate is clear and unambiguous and contains an adequate description of the grounds on which the claim is based. It makes no difference whether or not appurtenant property was mentioned because there was none and therefore the Respondent cannot be said to have suffered prejudice as a result of the omission of these words in the notice. The Respondent do not in any event plead prejudice as part of their objections. The Tribunal does not therefore uphold this part of the Respondent's objections.
 - 10 Even if the Tribunal is in error as to this point, it finds that the omission of the reference in the notice to appurtenant property is a mere inaccuracy for the purposes of s81(a) of the 2002 Act which does not affect the validity of the notice.
 - 11 Further, the Court of Appeal in *Gala Unity Ltd v Ariadne Court RTM Company Ltd* (2102) held that no mention of appurtenant property is required in the notice of claim.
 - 12 Following the Upper Tribunal reasoning in *Assethold Ltd v 14 Stansfield Road RTM Co Ltd* (2012) the Tribunal finds that the notice of claim in

- this case was valid because it was not materially different in content to the mandatory language set out in the prescribed Regulations.
- 13 The Respondent's objections based on ss 75(7) and 79(5) of the Act were both withdrawn by point 11 of their Statement of reply. Their conduct in failing to specify fully the reasons for their objections, failing to respond to the Applicant's letters and failure to comply with the Directions issued by the Tribunal are noted.
- 14 The Tribunal did not consider it necessary to inspect the property because there was no dispute as to the extent of the property specified in the notice. The Respondent's only objections were technical as to the precise form of wording used by the Applicant and did not address the substance of their claim.
- 15 By paragraph 2 of their response to the Respondent's reply (p73) the Applicant asked the Tribunal to make an order for wasted costs under Rule 13 of the Tribunal Rules of Procedure. The Tribunal is unable to deal with that matter as part of the present paper consideration because there is no evidence that the Respondent has been put on notice of such an application and they have not been given the opportunity to respond to it. Equally, the Applicant states that they have incurred extra expenditure because of the Respondent's dilatory conduct but have neither quantified that expenditure nor supplied a breakdown of their wasted costs.

16 The Law (Commonhold and Leasehold Reform Act 2002)

72 Premises to which Chapter applies

- (1) This Chapter applies to premises if—
- (a) they consist of a self-contained building or part of a building, with or without appurtenant property,
 - (b) they contain two or more flats held by qualifying tenants, and
 - (c) 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.
- (2) A building is a self-contained building if it is structurally detached.
- (3) A part of a building is a self-contained part of the building if—
- (a) it constitutes a vertical division of the building,
 - (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
 - (c) subsection (4) applies in relation to it.
- (4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
- (a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
 - (b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.
- (5) Relevant services are services provided by means of pipes, cables or other fixed installations.
- (6) Schedule 6 (premises excepted from this Chapter) has effect.

74 RTM companies: membership and regulations

- (1) The persons who are entitled to be members of a company which is a RTM

company in relation to premises are—

- (a) qualifying tenants of flats contained in the premises, and
 - (b) from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.
- (2) The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.
- (3) A RTM company may adopt provisions of the regulations for its memorandum or articles.
- (4) The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.
- (5) A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.
- (6) The regulations have effect in relation to a memorandum or articles—
- (a) irrespective of the date of the memorandum or articles, but
 - (b) subject to any transitional provisions of the regulations.
- (7) The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTM company—
- (a) sections 2(7) and 3 (memorandum), and
 - (b) section 8 (articles).

75 Qualifying tenants

- (1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.
- (2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.
- (3) Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.
- (4) Subsection (2) does not apply where—
- (a) the lease was granted by sub-demise out of a superior lease other than a long lease,
 - (b) the grant was made in breach of the terms of the superior lease, and
 - (c) there has been no waiver of the breach by the superior landlord.
- (5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.
- (6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.
- (7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat.

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.

30 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.

31 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.

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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.

90 The acquisition date

- (1) This section makes provision about the date which is the acquisition date where a RTM company acquires the right to manage any premises.
- (2) Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice under section 80(7).
- (3) For the purposes of this Chapter there is no dispute about entitlement if—
- (a) no counter-notice is given under section 84, or
- (b) the counter-notice given under that section, or (where more than one is so given) each of them, contains a statement such as is mentioned in subsection (2)(a) of that section.
- (4) Where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final.
- (5) Where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the acquisition date is the date three months after the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees in writing that the company was on the relevant date entitled to acquire the right to manage the premises.
- (6) Where an order is made under section 85, the acquisition date is (subject to any appeal) the date specified in the order.

Judge F J Silverman
25 November 2015

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.