



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

**Case Reference** : **MAN/OOFB/LRM/2017/0002**

**Property** : **1 Acklam Court, Beverley HU17 0FL**

**Applicant** : **Acklam Court Beverley RTM Limited**  
**Representative** : **RPMS Letting**

**Respondent** : **Sinclair Gardens Investments  
(Kensington) Limited**  
**Representative** : **W H Matthews & Co**

**Type of Application** : **Commonhold & Leasehold Reform Act 2002  
Section 84(3)**

**Tribunal Members** : **L Bennett (Tribunal Judge)  
J Holbrook (Tribunal Judge)**

**Date of determination** : **29 August 2017**

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**DECISION**

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## **Application**

1. Acklam Court Beverley RTM Company Limited applies for a determination under Section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the Act) that it was entitled to acquire the right to manage 1 Acklam Court, Beverley HU17 0FL (the Property) on 14 August 2017.

## **Background**

2. The Property is a building and a pertinent property comprising residential flats.
3. The Applicant is a company formed to acquire the right to manage the Property.
4. Following invitation to the Lessees of all flats to participate in the right to manage and notice to them under Section 78 of the Act a claim notice under Section 79 of the Act dated 4 April 2017 was served on the Respondent on 5 April 2017 . The claim notice required any counter notice to be given no later than 8 May 2017.
5. A counter notice dated 2 May 2017 was received by the Applicant. The counter notice alleged that “The Applicant was not entitled to acquire the right to manage the premises specified in the claim notice” for reasons set out therein. The notice was signed by the Respondents’ representatives.
6. The application was made to the Tribunal on 1 June 2017. In accordance with directions made by a Tribunal Judge on 21 June 2017 both parties have provided written submissions. Neither requested an oral hearing of the application.
7. The Respondent’s statement of case provides a chronology and identifies the issue that the notice inviting participation provides that the Company’s Articles of Association may be inspected between 09.00 and 17.00 from 31 January to 7 February 2017. The commencement date of 31 January 2017 is not the date following the service of the Notice inviting participation.
8. The Respondent submits reasons why Parliament might have considered time periods are important and quotes extensively from relevant case law concluding that “..... the RTM Company must comply strictly with what the Act requires. The Landlord is not able to waive defects.....”
9. The Applicant’s statement of case in response to a further direction following the Respondent’s case draws attention to Section 78(5)(b) of the Commonhold & Leasehold Reform Act 2002 which provides that times of inspection of at least 2 hours on each of at least 3 days within the 7 days are required to be specified.

10. The Applicant submits that the Respondent's statement of case accepts that the Invitations to Participate contained that the inspection may take place between 009.00 and 17.00 from 31 January to 7 February 2017. Although 31 January 2017 is not the date following the Notice, the following dates of inspection remain: 1-7 February 2017. This constitutes compliance.
11. The Tribunal convened on 29 August 2017 without the parties to make its determination.

### **The Law**

12. The relevant law is found in Sections 71 to 113 in Chapter 1 of Part 2 of the Act.
13. Section 74 sets out the persons entitled to be members of a right to manage company. Section 75 specifies who is a qualifying tenant of a flat within the relevant premises. Section 78 makes provision for the notice that must be given by an RTM company to each person who is a qualifying Tenant.
14. Section 79(6) states that 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. The relevant date is stated by Section 79(1) as: "The date on which notice of the claim is given."
15. Section 84 provides for the service of a counter notice alleging that the RTM company was not entitled to acquire the right to manage. Section 84(3) enables an RTM company that has been given such a counter notice to apply to the Tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

### **Tribunal's conclusions**

16. The Tribunal has noted the detailed submissions and authorities provided by the Respondents. It has given close attention to the copies of the original notices served. It finds as submitted by the Applicant that at least 3 days for inspection within 7 days beginning with the day following the date the Notice inviting Participation is given were informed disregarding 31 January 2017. This is clear compliance with Section 78(5)(b).
17. We conclude that the counter notice is ineffective to deny the Applicant's right to manage claim on the effective date set out in the claim notice

### **Order**

18. The Tribunal determines that the Applicant was entitled to acquire the right to manage the Property on the relevant date 14 August 2017.