



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CHI/45UD/LRM/2021/0012
Property	:	14 North Street (incorporating 14B and Flat C), Midhurst, GU29 9DJ
Applicant Represented by	:	North Street Midhurst RTM Co. Ltd. The Leasehold Advice Centre
Respondent Represented by	:	Assethold Ltd. Scott Cohen Solicitors Ltd.
Date of Application	:	13th December 2021
Type of Application	:	For an Order that the Applicant is entitled to acquire the right to manage the property (Section 84(3) Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”))
The Tribunal	:	Judge Bruce Edgington
Date of Decision	:	16th June 2022

DECISION

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1. This Application succeeds and the Applicant therefore acquires the right to manage the property as set out in Section 90(4) of the 2002 Act.
2. The Respondent is ordered to reimburse the application fee of £100 to the Applicant by 4.00 pm on the 14th July 2022.

Reasons

Introduction

3. The Respondent clearly accepts that the Applicant is a right to manage company (“RTM”). Such RTM gave the Respondent a Claim Notice on or about the 16th September 2021 seeking an automatic right to manage the property. A Counter-notice dated 24th November 2021 was served on behalf of the Respondent denying the right to acquire the right to

manage. It alleged that there had been a failure to comply with sections 78 and 79 of the 2002 Act.

4. In the Tribunal's directions order dated 9th February 2022, it was decided that the single issue to be determined was "*whether on the date on which the notice of claim was given, the Applicant was entitled to acquire the Right to Manage the premises specified in the notice*".
5. In its final submissions, the Respondent says, in effect, that the only matter in dispute is the identity of the Qualifying Tenant of Flat C. Was it Anneka King, as claimed by the Applicant or Dee Blundell as claimed by the Respondent? Whoever is correct, succeeds.

Procedure

6. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. At least 28 days' notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties and (b) an oral hearing would be considered if either party requested one. No such request was received.

The Law

7. Subsection 78(1) of the 2002 Act says that if, on the relevant date, a qualifying tenant is not a member of the RTM or has not agreed to become a member, that person must be served with a Notice of Invitation to Participate. Anneka King is a member of the Applicant company and would not need a Notice of Invitation. Dee Blundell was not a member of the company and was not served with such a notice.
8. The issue to be determined is whether the lease held by Dee Blundell comes within the definition of a 'long lease' because section 75 states that "*a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease*". In addition, it is stated that "*where a flat is being held 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*". In this case, Anneka King's lease is superior to that of Dee Blundell.
9. Section 76 then says that under that section and section 77, a lease is a long lease if (amongst other things), "*(a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise...(c) it takes effect under section 149(6) of the Law of Property Act 1925 (c 20)(leases terminable after a death or marriage or the formation of a civil partnership)*".
10. Section 77 says that "*(1) a lease terminable by notice after a death or marriage or the formation of a civil partnership is not a long lease if (a) the notice is capable of being given at any time after the death or marriage or formation of a civil partnership by the tenant (b) the length of the notice is not more than 3 months, and (c) (not relevant)*".

Discussion

11. A copy of the sublease in favour of Dee Blundell is in the bundle and is described as a 'Home for Life Lease'. It is for 90 years from the 21st May 2015 subject to the termination right particularised in clause 2 on page 6 of the lease which says:

“2.1 This Lease may be determined by not less than one month’s written notice served by the Provider upon the Personal Representatives of the Lifetime Owners or left at the Property. This notice may not be served until the death of the Lifetime Owners or it two of them until the death of the survivor, but may be served at any time thereafter”

12. For the avoidance of doubt the 'Provider' is the then landlord and the 'Lifetime Owner' is Dee Blundell.
13. The written submissions of the Respondent set out section 76 of the 2002 Act which says that a long lease is defined in section 76 and section 77. However, for some reason which I cannot follow, the submissions do not set out or make any further reference to section 77. It is the words in that section upon which this decision turns, as the Applicant has made clear.
14. In simple terms, do the words “*not less than one month’s written notice*” of termination take the lease outside the definition of a long lease under subsection 77(1)(b) because the length of the notice can be more than 3 months?
15. It is also important to refer to section 149(6) of the **Law of Property Act 1925** (“the 1925 Act”) because this is referred to in subsection 76(2)(c) of the 2002 Act as mentioned above. It deals with the definition of a long lease terminable after a death or marriage or the formation of a civil partnership.
16. The Applicant has included in the bundle a copy of the case of **Skinns v Greenwood** [2002] EWCA Civ 424. The facts in that case were not the same as this one. However the termination clause was similar as it provided:

“At any time after the death of the last to die of the two persons comprising the tenant his executors or administrators or other person in whom the Term is vested or the landlord may at any time by giving not less than one month’s notice to the other party require that the term shall cease and upon expiration of such notice the Term shall determine...”

17. The lease in that case was for 90 years. Under the Leasehold Reform Act 1967 a tenant who has a long lease can seek to purchase the freehold and

she served a notice on the landlord to that effect. The landlord refused, contesting that it was not a long lease because of the termination clause. Section 3 of that Act defines a long lease to include one taking effect pursuant to section 149(6) of the 1925 Act which is what subsection 76(2)(c) of the 2002 Act says.

18. In the county court, Judge Brunning decided that it was a long lease. In the High Court, Mr. Justice Hughes came to the opposite conclusion. The Court of Appeal dismissed the appeal against that decision. The judgment is detailed and goes into a history of this definition. Perhaps the most useful conclusion it draws is in paragraph 17 which is some 27 lines long in the copy judgment I have. I do not set out the whole paragraph but consider that the most relevant point is:

“As Mr. Gallagher submits ‘section 3(1) is concerned with the actual terms of the tenancy agreement, not how the parties may voluntarily elect to act consistent with the latitude afforded by those terms.’ Furthermore, because a decision as to whether or not a tenancy is a long tenancy within section 3(1) is a decision to be made by reference to the terms of the lease, rather the terms of any notice which may be given pursuant to the lease, it is instructive to note that in paragraph (b) the length of the notice is referred to in the present tense. As Mr. Gallagher points out, paragraph (b) does not say ‘the length of notice shall be three months or less’ or ‘the length of the notice shall not be capable of being more than three months’ either of which would be appropriate if the appellant’s submissions were correct, and the words ‘capable of being given’ appear in paragraph (a) which is addressing itself to a possible future event”.

19. As indicated this is lengthy and detailed but, in essence, Lord Justice Kennedy in giving the leading judgment is saying that if one looks at the terms of the lease and one sees no end to the provision of a notice to terminate, then the lease cannot come within the requirement to have no more than 3 months’ notice. Lord Justice Mantell and Sir Swinton Thomas agreed.

Conclusion

20. I consider that I must follow the Court of Appeal. It was considering the provisions of section 149(6) of the 1925 Act, as am I because section 76 of the 2002 Act says that I must. Section 77 of the 2002 Act says that a lease enabling termination after a death, a marriage or formation of a civil partnership is not a long lease if the notice of termination can be given more than 3 months after one of those events.
21. The long lease in this case makes it clear that notice of termination can be given more than 3 months after one of those events. Section 77 makes it clear that the lease held by Dee Blundell is therefore not a long lease for

these purposes. Thus Anneka King is the qualifying tenant and this application must therefore succeed.

22. I also take the somewhat unusual step of ordering the Respondent to reimburse the Applicant for the application fee of £100 within 28 days from the date hereof. The Applicant has made its position throughout very clear and the Respondent has chosen not to deal with section 77 of the 2002 Act or the case of **Skinns**.



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Judge Bruce Edgington

16th June 2022

ANNEX - RIGHTS OF APPEAL

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. 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.
- iii. 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.
- iv. 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.