



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

**Case Reference** : **LON/00AY/LRM/2019/0002**

**Premises** : **102 Landor Road, London SW9  
9NX**

**Applicant** : **102 Landor Road RTM Company  
Limited**

**Representative** : **Fidelity Law Limited**

**Respondent** : **Assehold Limited**

**Representative** : **Scott Cohen Solicitors**

**Type of Application** : **S84(3) Commonhold and  
Leasehold Reform Act 2002 (the  
Act) – determination whether the  
applicant has acquired the right to  
manage**

**Tribunal Members** : **Judge John Hewitt  
Mrs Sarah Redmond MRICS**

**Date and venue of  
Determination** : **19 March 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **19 March 2019**

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**DECISION**

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### **The issue before the tribunal and its decision**

1. The single issue before the tribunal was whether the applicant was, on the relevant date, entitled to acquire the right to manage the subject premises
2. The decision of the tribunal is that the applicant was, on the relevant date, entitled to acquire the right to manage the subject premises.

Accordingly, the acquisition date of the right to manage is the date specified in accordance with the provisions of s90 of the Act.

3. The reasons for this decision are set out below.

### **Procedural background**

4. The premises comprise two self-contained flats both of which have been sold off on long leases. The respondent is the landlord. The two lessees promoted the formation of the applicant company with a view to acquiring the right to manage conferred in Part 2, Chapter 1 of the Act.
5. By claim notice dated 16 October 2018 given pursuant to s79 of the Act the applicant sought to acquire the right to manage on 5 March 2019.
6. By a counter-notice dated 22 November 2018 given pursuant to s84 of the Act the respondent alleged that by reason of s80(8) and (9) the applicant was not entitled to acquire the right to manage the specified premises. Rather unhelpfully the counter-notice was in generic form and did not provide to any details explaining clearly (or at all) the reasons why it was alleged the requirements of s80(8) and (9) had not been met.
7. On 17 January 2019 the tribunal received an application from the applicant pursuant to s80(3) of the Act. Directions were given on 24 January 2019. The parties were notified of the intention of the tribunal to determine the application on the papers to be provided by the parties and without an oral hearing, unless either party requested an oral hearing. The tribunal has not received any such request.
8. The tribunal had before it:
  - 8.1 The application form – to stand as the applicant’s opening statement of case;
  - 8.2 The respondent’s statement of case in answer; and
  - 8.3 The applicant’s statement of case in reply.

### **The points in issue**

9. In its statement of case in answer, the respondent has raised two very technical points arising from the procedure concerning the acquisition

of the right to manage as set out in the Act and regulations made thereunder.

- 9.1 The first in that claim notice was not in the current prescribed form; and
- 9.2 A new point, not mentioned in the counter-notice concerning the address of the lessee of 102B Landor Road given in The Schedule. Part 1 of the claim notice.

**Claim notice - the prescribed form**

10. S80(9) of the Act provides that a claim notice must comply with such requirements (if any) about the form of the claim notices as may be prescribed by regulations so made.
11. The current regulations are the Right to Manage (Prescribed Particulars and Forms) (England) Regulations SI 2010/825. Schedule 2 to those regulations sets out the prescribed form of a claim notice. Provision is made for four notes to appear at the end of the notice.  
  
Note 1 provided that where a claim notice was to be given to a person who could not be found, the RTM company may apply to the *“leasehold valuation tribunal for an order ...”*
12. By the Transfer of Tribunal Functions Order 2013 SI 1036 the wording of note 1 was amended to delete the words *“leasehold valuation”* and to substitute the words *“a first-tier”*.
13. The respondent does not in terms submit that the claim notice dated 16 October 2018 is not a valid notice but asserts a claim notice *“should reflect this change...”*.
14. The applicant does not deny that an outdated form was used. The applicant denies that the claim notice given was not a valid notice.
15. The applicant relies upon the provisions of s81(1) of the Act which provides that a claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of s80.
16. The applicant also relies upon *Assethold Limited v 14 Stansfield Road RTM Company Ltd* [2012] UKUT 262 (LC) in which the President discussed the technical issues raised and considered a number of authorities concerning the use of an out of date prescribed form in the context of the 2010 regulations. In that case the President held that there was no material difference in the substance of forms used and the nature of the error and the appeal on that ground failed.

We infer that the respondent is well aware of this authority and this raises the question why such an unmeritorious point such as this was raised at all.

17. We prefer and adopt the submissions of the applicant on this point and determine that claim notice was not invalidated by the use of the (only very slightly) incorrect form. In any event, in case it be relevant, the note in question was a note for the benefit of the RTM Company and this was not a case where the person on whom the claim notice was to be served could not found.

**Address for service**

18. The point taken was very oblique and it was not a point raised in the counter-notice.
19. Part 1 of the Schedule to the claim notice is required to set out the full names of the qualifying tenant of a flat and the address of that flat.

The subject claim notice states:

*“(1) Kevin Hughes and Katherine Mary Adelaide Hughes (joint tenants) – Flat 102B Landor Road, London SW9 9NX*

*Both of Flat 11 Park House, Shore Road, London E9 7TB”*

That of itself does not appear to specify or concern an address for service. At most it may be nothing more than a statement of fact.

20. The respondent has raised s111(5) of the Act which provides:

*“A ... RTM company ... may give a notice under this Chapter to a ... qualifying tenant of a flat ... at the flat unless it has been notified by the qualifying tenant of a different address ... at which he wishes to be given any such notice.”*

The respondent does not appear to have evidence that the claim notice was not given to the tenant of flat 102B Landor Road or that the tenant of that flat has complained about a failure to give the notice to a correct address. It is therefore puzzling why the respondent should trouble to raise this point at such a late stage, or what objective the respondent seeks to achieve in doing so.

In paragraph 7 of its statement of case the respondent simply says it:

*“... seeks clarification on this issue to ensure valid service of the claim notice ...”.*

21. The applicant, in its statement of case in reply, exhibits a copy of the claim notice given to the tenant of flat 102B. It was addressed to Flat 11, Park House.
22. There is no evidence before us from which we can conclude that the notice was not properly given to the tenant of flat 102B.

## **Conclusion**

23. The two points taken by the respondent are without merit. For the reasons set out above we determine that on the relevant date the applicant was entitled to acquire the right to manage the specified premises.

Judge John Hewitt  
19 March 2019

## **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.