



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

Case reference	:	LON/00AG/LRM/2019/0015
Property	:	63Holmes Road, London NW5 3AN
Applicant	:	63 Holmes Road (London) RTM Company Limited
Representative	:	Prime Property Management
Respondent	:	Assehold Limited
Representative	:	Scott Cohen, Solicitors
Type of application	:	Right to Manage
Tribunal member(s)	:	Judge Robert Latham Kevin Ridgeway MRICS
Venue		10 Alfred Place, WC1E 7LR
Date of decision	:	31 July 2019

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act, and the Applicant will acquire such right within three months after this determination becomes final.
- (2) The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. On 12 June 2019, the Applicant issued this application to acquire the right to manage 63 Homes Road, London NW5 3AN under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). On 23 April 2019, the Applicant had served its Claim Notice. On 24 May 2019, the Respondent freeholder has served a Counter-notice disputing the claim on the grounds that the Applicant had failed to comply with sections 73(2); 78(1), 79(2), 79(3), 79(6), 79(8), 80(2), 80(3), 80(8) and 80(9) of the Act.
2. On 14 June, Tribunal gave Directions and set the matter down for a paper determination. Pursuant to these Directions:
 - (i) The Respondent has filed a Statement of Case in response to the Application, dated 24 June 2019;
 - (ii) The Applicant has filed a Statement in Reply, dated 12 July 2019. This was received on 17 July. Strictly, it should have been received on 12 July.
3. On 23 July 2019, the Respondent requested that the Directions be amended to provide an opportunity to respond to the Applicant's Statement in Reply. On 24 April 2019, the Respondent had requested a quantity of information to assess the merits of the claim. The Applicant declined to provide this information. They have justified it on the grounds that in their experience, the provision of such information to this Respondent achieves nothing as the Respondent opposes RTM applications as a matter of course. Such correspondence merely increases costs. On 25 July, a Procedural Judge refused this application on the ground the Applicant has responded to all issues raised by the Respondent in their Statement of Case. The Respondent was informed that it was open to it to renew its application. On 29 July, the Respondent renewed the application. We refuse it as we are satisfied that the Respondent has had an opportunity to put its case. We note that in its Counter-notice, the Respondent took every procedural point that was open to it without providing any factual averments to support its ground of challenge. The Respondent has not established any evidential basis for suggesting that there has been any procedural error.
4. We have regard to the decision of the Court of Appeal in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] QB 571. The Court of Appeal noted that the Government's policy was that the RTM procedures should be as simple as possible to reduce the potential for challenge by obstructive landlords on purely technical grounds and that the legislation should be construed having regard to this legislative intent.

Our Determination

Definition of the Premises – Section 73(2) and 80(2)

5. The first point taken by the Respondent is the description of the premises in the articles of association, claim notice and associated documentation. The Respondent relies on Section 73(2) and 80(2) and the decisions of *59 Hutington Street RTM v Assethold Limited* (LON/00AU/LRM/2014/0017 and *Avon Ground Rents Ltd v 51 Earls Court Square RTM Co Ltd* [2016] UKUT 22 (LC).
6. The claim notice describes the premises as “63 Holmes Road, London NW5 AN to include the building and all appurtenant property”. The articles of association define the premises as “63 Holmes Road, London NW5 3AN”.
7. The Respondent produce the Official Copy of Register of the Freehold Title (R10). This defines the freehold land as “61, 61A and 63 Holmes Road”. A screenshot (at R46 also refers to “61 – 63 Holmes Road”. This suggests two alternative definitions.
8. The Applicants respond that there is no such address as 61-63 Holmes Road. The building is now known at “63 Holmes Road”. This is the address used by the Royal Mail (see A4-5). It is also the address used in the Official Copy of Register of the Leasehold Title of their flats (see A6-25).
9. We agree with the Applicant that the premises are correctly defined in the articles of association, claim notice and associated documentation. The decision in *59 Hutington Street RTM v Assethold Limited* does not assist the Respondent. In that case there was potential ambiguity as to whether any non-residential part of the premises are included. The same applies to the decision in *Avon Ground Rents Ltd v 51 Earls Court Square RTM Co Ltd*. There is no such ambiguity in the current case.

Membership – Section 79(3)

10. There are eight flats at the premises. The Respondent takes the point that Louise Keet (Flat 1), Graeme Sands (Flat 5), Maryia Kvach (Flat 7) and Patrick Ibbotson (Flat 8) are described as both qualifying tenants and members of the company in the Claim Notice. However, these tenants were not subscribers to the company. The Respondent suggests that the Applicant is unable to establish that its membership comprises not less than 50% of the flats occupied by qualifying tenants. It is to be noted that the Respondent is on a fishing expedition. They have no evidence that any of the 7 lessees named as qualifying tenants and members are not members of the company.

11. The Applicant has produced the Register of Members (at A26). This confirms that 7 qualifying tenants are members of the company. The Applicants further produces the signed application forms from the four tenants in question (at A28-31).

Notice of Invitation to Participate – Section 78(1) and 79(2)

12. Flat 6 is occupied by a qualifying tenant who is not a member of the company. The Respondent contends that there is no evidence that he was served with the requisite Notice of Invitation to Participate. Again, this is a fishing expedition. There is no evidence that he was not.
13. The Applicant has resolved this by producing the necessary Notice of Invitation to Participate which was served (at A32).

Service of Claim Notice - Section 79(8)

14. The Respondent contends that there is no evidence of service of the Claim Notice on the qualifying tenants. Stephen Wiles (at A38) deals with the issue of service.

Particulars and Requirements of a Claim Notice – sections 80(3), 80(8), 80(9)

15. The Respondent suggests that there may be errors in the Claim Notice in that qualifying tenants may be wrongly described as members of the Applicant company. The Applicant has satisfied the Tribunal that they were members of the Company.

Conduct of the Applicant

16. The Respondent criticises the Applicant for failing to provide the information which was requested on 24 April. It contends that any landlord is entitled to investigate any application for RTM and that unnecessary expense has been incurred by the approach adopted by the Applicant.
17. The Applicant responds that it would normally welcome a sensible and reasoned exchange of correspondence. However, in its experience, this Respondent appears focussed on steadfastly opposing all RTM claims and consistently forcing the matter to tribunal.
18. Neither side has requested an oral hearing of this application. In such circumstances it would not be appropriate for this Tribunal to comment on the conduct of either party. It is for a RTM Company to satisfy a tribunal that it has established the statutory RTM. We are satisfied that the Applicant has done this. We note that the Respondent has sought a

delay of this determination to enable it to respond to the material filed by the Applicant. However, the Respondent has not established any evidential basis for suggesting that there has been any procedural error.

19. If the Respondent is able to adduce any new evidence that there has been any procedural irregularity that defeats the statutory RTM, it is open to it to seek permission to appeal. On any such application, this Tribunal has jurisdiction to review its decision. It is the duty of this Tribunal to determine any application fairly and in a proportionate manner. Had we adjourned the application there would have been delay and additional cost to both parties and to the tribunal.

Tribunal Fees

20. The Applicant has paid tribunal fees of £100. In the light of our findings, we are satisfied that it is appropriate to order the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Robert Latham
31 July 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).