FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AZ/LRM/2019/0006**
Property	**:**	**245 Stanstead Road, London SE23 1HY**
Applicant	**:**	**245 Stanstead Road RTM Company Limited**
Representative	**:**	**Canonbury Management** (ref: TX1528733) (mail@canonburymanagement.co.uk)
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen solicitors** (ref: SC2723) (admin@scottssolicitors.co.uk)
Type of application	**:**	**Application in relation to the denial of the Right to Manage**
Tribunal member(s)	**:**	**Judge Timothy Powell**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**9 August 2019**

DECISION

Summary of the tribunal's decisions

(1) The tribunal determines the claim notice was not given to each person as required by section 79(6) of the 2002 Act and, therefore, the applicant was not entitled to acquire the right to manage the premises specified in the claim notice on the relevant date.

(2) The tribunal declines to award costs against the respondent or its legal representative under rule 13 of the 2013 Rules and section 29 of the 2007 Act.

The application

1. This was an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that, on the relevant date, the applicant RTM company was entitled to acquire the Right to Manage premises known as 245 Stanstead Road, London SE23 1HY ("the premises").

2. By a claim notice dated 9 January 2019, the applicant gave notice to the respondent, Assethold Limited, that it intends to acquire the Right to Manage the premises on 21 May 2019.

3. By counter-notice dated 11 February 2019, the respondent disputed the claim, alleging that the applicant had failed to establish compliance with sections 79(5), 79(6), 80(3), 80(4), 80(8) and 80(9) of the Act.

4. The application was dated 15 March 2019 and received by the tribunal on 19 March 2019. Directions were issued on 22 May 2019 for a determination without an oral hearing, as part of the tribunal's Digital Resolution Pilot, whereby all correspondence and documents were to be transmitted digitally.

The law

5. The relevant provisions of the Act are referred to in the decision below.

The determination

6. The tribunal received and considered the following documents:

   - The applicant's bundle containing the relevant notices, application form and supporting documents;
   - The respondent's statement of case and supporting documents;
   - The applicant's response to the respondent's statement of case, and application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") and section 29 of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"); and
   - The respondent's statement in response to the applicant's response and application for costs.

7. In its statement of case, the respondent states that "given the Applicant's responses to queries raised after issue of the counter notice", the respondent no longer pursues allegations that the applicant had failed to establish compliance with sections 79(5), 80(3), 80(4),

80(8) and 80(9) of the Act. However, the respondent maintains its allegation that the applicant had not complied with section 79(6), being the requirement 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…"

8. In response, the applicant "accepts that the RTM Claim may not be successful as it currently stands", but seeks to blame the respondent's conduct for this and applies for an order for costs against the respondent and/or their legal representative. Those costs were said to be:

- £750 fee paid for the preparation and service of the claim notice upon the freeholder, and
- £2,300 fee paid for the application to the tribunal to determine the right to manage, of which £100 is a disbursement fee paid to the tribunal.

The tribunal's decision on the RTM application

9. The tribunal determines the claim notice was not given to each person as required by section 79(6) of the 2002 Act and, therefore, the applicant was not entitled to acquire the right to manage the premises specified in the claim notice on the relevant date.

Reasons

10. Section 79(6) of the 2002 Act requires the claim notice to be given to each person who is a landlord under a lease of the whole or any part of the premises. On the relevant date the landlord was Badli Limited, which company was the registered proprietor of the freehold title at HM Land Registry. The claim notice was addressed and given to Assethold Limited, which company merely had a registered charge over the premises.

11. The requirement in section 79(6) is an absolute statutory prerequisite to making a valid RTM claim (save where the landlord is untraceable). The RTM scheme under the 2002 Act depends upon the giving of a claim notice to the landlord on the relevant date, who then has an opportunity to serve a counter-notice either admitting or denying the RTM; and statutory time limits and rights of application to the tribunal flow from such a counter-notice. The failure to give the claim notice to the landlord is fatal to the application and there is no saving provision for non-compliance with this requirement.

The tribunal's decision on rule 13 costs application

12. The tribunal declines to award costs against the respondent or its legal representative under rule 13 of the 2013 Rules and section 29 of the 2007 Act.

Reasons

13. The applicant makes several complaints about circumstances of the RTM application and the conduct of the respondent in this and in previous RTM claims, namely that:

- It was misled as to the identity of the freeholder by a service charge bill dated 3 December 2018, in which Eagerstates Limited, the managing agents for Assethold, stated unequivocally that the freeholder's name and address, and address for service, was Assethold Limited of 5 North End Road, London NW11 7RJ;
- As these details were provided to satisfy the requirements of section 47 and 48 of the Landlord and Tenant Act 1987, the applicant relied upon them when drafting the claim notice and serving it on Assethold Limited;
- The counter-notice contained many objections to the right to manage, which were not specific, but were a generic template, as used in "no less than 19 claims made by the Assethold/Eagerstates/ Scott Cohen collective", which the applicant suggested did not comply with the requirements of the Act and was unreasonable, "because it requires the Applicant to respond to many issues rather than only issues that actually apply in the case";
- The respondent failed to draw attention to a single issue in the case [namely the true identity of the freeholder] that could easily have been highlighted by the Respondent to the Applicant as being a problem, but was not;
- It was reasonable for the Applicant to have expected the Respondent and/or their solicitors to have notified the Applicant of the error in the section 47 and 48 notice, thus allowing the claim to have been withdrawn and re-served, but no such notification was provided; and
- There were no reasonable grounds for including the other objections in the counter-notice, the allegations being unreasonable either because the claim notice contained the information required to refute the allegation (such as the requirement in section 80(3) to provide the full name of each person who is both a qualifying tenant and a member of the RTM, and the address of his flat), or because it was unreasonably included without any basis (such as the requirement in section 80(8) that the claim notice must contain such other particulars as required by regulations).

14. The applicant addresses the three-stage test outlined in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC). Regarding the first test, whether a person has acted unreasonably, the applicant says that:

> "In the present case, the Applicant believes that both the error in the section 47/48 notice alone is simply wrong and may not be explained. There is no reasonable explanation as to why the error was not detected by the legal representative of the Respondent and notified to the Applicant upon its discovery. If it was simple negligence then the Applicant would suggest that this is unreasonable as it is clear that parties use the information in the section 47/48 notice to identify their landlord and serve notices such as the claim notice upon them."

15. The second test is whether an order should be made, to which the applicant points to: the seriousness of the section 47/48 notice error; the resulting avoidable costs that were incurred and the substantial delay to the acquisition of the RTM that was caused; and the "pattern of behaviour across 19 RTM determination claims with the same Respondent, where spurious issues are raised by counter notice objecting to a RTM claim made". The applicant's representative was unaware of a claim were any of the objections succeeded and complained that the respondent had not modified its behaviour, such that this was both further evidence of unreasonableness and a basis for making an order for costs.

16. As to the third test, the amount, the costs sought were those claimed in the application.

17. In its Statement of Reply, the respondent resisted the claim for rule 13 costs and the tribunal agrees that the respondent's conduct in this case does not reach the threshold of "unreasonable" in *Willow Court*.

18. In a claim for the right to manage, the primary responsibility for ascertaining the identity of the freeholder falls on the shoulders of the applicant and its representatives, either by consulting the freehold title at HM Land Registry or by exercising the statutory right to obtain information under section 82 of the 2002 Act.

19. It might have been a reasonable short-cut to rely upon the section 47 and 48 notice in the service charge bills to leaseholders, but it was a short-cut that carried risks. The information about the freeholder in the bills was patently incorrect, but the respondent has provided an explanation for the error, namely that: "the agent included the name of Assethold within the section 47/48 notification on demands to leaseholders, as it considered that Assethold was the appropriate party, being the party enforcing payment of the service charge from leaseholders under the terms of the legal charge." This is presumably a reference to clause 4.2 of the charge, by which the freeholder assigns to

Assethold all the service charges for the payment and discharge of the secured liabilities.

20. Not only would a search of the freehold title have revealed the true identity of the freeholder, and also the involvement of Assethold as chargee, but there were two requests by the respondent's solicitors, before the application was made, for evidence of service of the claim notice on the freeholder, the second of which, an email of 18 February 2019, even identifing the freeholder correctly as Badli Limited.

21. It is unfortunate that this was not spotted by the applicant prior to issuing the application, but notwithstanding the section 47/48 notice error, these circumstances do not go anywhere near the threshold of unreasonable conduct in *Willow Court*, which as is well known reflects conduct that is "vexatious and designed to harass the other side, rather than advance the resolution of the case".

22. As to the other complaints by the applicant about the form of the counter-notice, essentially that it contained many objections to the right to manage in an unspecific and generic fashion, the respondent has explained that the counter-notice is a prescribed form and that there are no saving provisions for inaccuracies. The respondents simply follow the prescribed form as closely as possible to avoid errors.

23. That is not to say that slavish adherence to the form would justify a scatter gun approach to include all possible allegations to object to the acquisition of the right to manage. There is some force in the applicant's complaint that the claim notice already contained the information required to refute some of the allegations in the counter-notice, and that others proved to be without any basis; but these were answered easily and eventually were dropped by the respondent in its statement of case, so their inclusion in the counter-notice do not, in this case, amount to conduct that is "vexatious and designed to harass the other side".

24. The tribunal is not willing to entertain an unparticularised allegation of a "pattern of behaviour" by the respondent over 19 other cases before the tribunal. The comments are more prejudicial than probative; and some of those challenges may well have been successful, in any event, as they were in this present case.

25. As the first stage of the *Willow Court* test has not been satisfied, there is no need for the tribunal to make a decision about the second or third stages.

Costs

26. The application form indicated, at page 6, that application was also being made under section 88(4) of the 2002 Act in respect of any question in relation to the amount of costs payable by a RTM company. However, as neither party addressed the issue of costs under the Act in their statements, the tribunal is unable to make a determination.

27. No doubt the parties will discuss this between themselves and, it is hoped, agree on the amount of any costs that may be payable. However, if they cannot agree, further application may be made to the tribunal.

Name: Timothy Powell **Date:** 9 August 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).