



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

Case reference : **LON/00AF/LRM/2019/0018**

Property : **23 Hammelton Road, Bromley, Kent
BR1 3PZ**

Applicant : **23 Hammelton Road (Bromley) RTM
Company Limited**

Representative : **Mr Stephen Wiles of Prime Property
Management**

Respondent : **Assthold Limited**

Representative : **Mr R Gurvits of**

Type of application : **Right to manage**

**Tribunal
member(s)** : **Tribunal Judge Dutton
Mrs E Flint FRICS**

Date of decision : **27th November 2019**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines the notice of invitation to participate given to the leaseholder of flat 2, Nejmi Dagli is valid and there was no evidence to suggest that it had not been properly served upon the non-participating leaseholder, or that (s)he had not kept fully informed about the progress of the right to acquire by the participating leaseholders;
- (2) 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.

The application

1. This was an application to acquire the right to manage 23 Hammelton Road, Bromley, Kent BR1 3PZ (“the premises”) under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The Respondent freeholder has served a counter-notice asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage.
2. Directions were initially issued on 13th August 2019 providing for a paper determination in the week commencing 30th September 2019. A tribunal met to consider the matter but were unable to determine the applicants right to manage for the reasons set out in a decision and directions of that date.
3. In particular, information was sought concerning the invitation and involvement of the lessee of flat 2.
4. The matter came before us for hearing on 27th November 2019

The law

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

The counter-notice

6. In its counter-notice, the Respondent raised a number of issues but it is not necessary for us to consider those as Mr Gurvits helpfully confirmed that the only matter in issue related to the Notice of Invitation to participate in the right to manage directed to the leaseholder of flat 2.
7. Notwithstanding the clear directions given by the tribunal in September the applicant had failed to include in the bundle before us a Notice of Invitation for flat 2. Mr Wiles accepted that this was an oversight for which he apologised. He produced at the hearing a copy of the Notice, which is in the same format as the other Notices that were included in the bundle, to which no exception had been taken by the respondent.
8. Mr Gurvits was not prepared to concede that the applicants had made its case. He said that the Notice was not signed, there was no proof as to service and it being produced late in the day did not give him time to consider the matter., It was pointed out to him that it mirrored those notices in the bundle to which no exception had been taken but he had no real comment to make.
9. Having considered the documents in the bundle, the tribunal has made the following decision. Whilst we criticise the failure of the applicant to

produce a copy of the relevant Notice until the hearing it is, we find, not fatal to the claim. The Notice is in the same format as those within the bundle to which no exception was raised. An adjournment to give Mr Gurvits time to consider the matter would only serve to increase costs. Mr Gurvits is an experience managing agent and well used to these applications.

Summary

10. Overall, 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.
11. Therefore, in accordance with section 90(4), within three months after this determination becomes final the Applicant will acquire the right to manage these premises. According to section 84(7):
 - “(7) A determination on an application under subsection (3) becomes final—
 - (a) if not appealed against, at the end of the period for bringing an appeal, or
 - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.”
12. Mr Gurvits asked that we consider whether an order for costs should be made under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Mr Wiles confirmed it would be difficult to defend the non-inclusion of the Notice.
13. The failings of the applicant to produce a copy of the Notice until the hearing, when it was put on notice in September that it was required, is inexcusable. It may well have been the case that this matter could have been dealt with as a paper case if the Notice was produced to the respondent when it should have been.
14. Having reviewed the previous directions in September 2019 and the failing of the applicant to attend to those directions properly we find that there has been unreasonable conduct as envisaged in the Upper Tribunal case of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), and the three steps have been met.
15. We set out below the directions to enable this element to be determined on the papers. We consider that the claim should only relate to the preparation for the hearing today and the attendance at same as costs before would not, we find, be construed as unreasonable, although we do suggest to the applicant that it might wish to revisit the method by which it deals with objections raised by the current respondent in any future cases.

Directions

1. The tribunal considers that this application may be determined by summary assessment, pursuant to rule 13(7)(a).
2. The application is to be determined without a hearing and on the basis of the written submissions from the parties. However, any party may make a request to the tribunal that a hearing should be held or the tribunal may decide that a hearing is necessary for a fair determination of the application. Any such **request for a hearing should be made by 18th December 2019**, giving an indication of any dates to avoid. The tribunal will then notify the parties of the hearing date. The hearing will have a time estimate of two hours.

The respondent's case

3. By **6th December 2019** the respondent shall send to the applicant a statement of case setting out:

Full details of the costs being sought, including:

- A schedule of the work undertaken;
- The time spent;
- The grade of fee earner and his/her hourly rate;
- A copy of the terms of engagement with respondent;
- Supporting invoices for solicitor's fees and disbursements;
- Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate; and
- Expert witness's invoices, the grade of fee earner, details of the work undertaken and the time spent, with his/her hourly rate.
- hourly rate.

The applicant's case

4. By **20th December 2019** the applicant shall send to the respondent a statement in response setting out:
 - (a) Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;
 - (b) Details of any relevant documentation relied on with copies attached.

The respondent's reply

5. By **6th January 2020** the respondent shall send to the applicant a statement in reply to the points raised by the applicant.

Documents for the hearing/determination

6. The respondent shall be responsible for preparing the bundle of documents (in a file, with index and page numbers) and shall **by 17th January 2020** send one copy to the other party and send **four** [two if paper track] copies to the tribunal.
7. The bundle shall contain copies of:
 - The tribunal’s determination in the substantive case to which this application relates;
 - These directions and any subsequent directions;
 - The respondent’s statements with all supporting documents;
 - The applicant’s statement with all supporting documents.

Determination/hearing arrangements

8. The tribunal will determine the matter on the basis of the written representations received in accordance with these directions in the **week commencing 27th January 2020**.
9. If an oral hearing is requested, the Tribunal will notify the parties the details of the hearing.
10. Any letters or emails sent to the tribunal must be copied to the other party and the letter or email must be endorsed accordingly. Failure to comply with this direction may cause a delay in the determination of this case, as the letter may be returned without any action being taken.

NOTES

- (a) **If the applicant fails to comply with these directions the tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).**
- (b) **If the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.**

Name: Tribunal Judge Dutton **Date:** 27th November 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).