



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

Case Reference : CHI/00MR/LRM/2021/0001
P: REMOTE

Property : 1-5 Duncan Road, Southsea, Hants PO5 2QT

Applicant : 1-5 Duncan Road RTM Company Limited

Representative : Coles Miller Solicitors LLP

Respondent : Assethold Limited

Representative : Scott Cohen Solicitors Limited

Type of Application : Right to manage

Tribunal Member : Judge F J Silverman MA LLM

Date of paper consideration : 28 May 2021

DECISION

The Tribunal declares that on the date of the Application the Applicant was entitled to acquire the right to manage the property.

REASONS

1. The Applicant seeks a determination that it is entitled to exercise the right to manage the property known as 1-5 Duncan Road, Southsea, Hants PO5 2QT.
2. On 23rd March 2021 the Tribunal directed that the application to be dealt with on the papers to which neither party has objected. The parties did not request an oral hearing.
3. The Applicants' notice of claim was served on 05 January 2021, the counter-notice on 01 February 2021 and the application to the Tribunal lodged on 10 February 2021.
4. Directions were issued by the Tribunal on 23 March and 13 May 2021.
5. Regulations issued pursuant to the current Covid -19 pandemic prevented the Tribunal from inspecting the property in person. The Tribunal considered that all issues in this application could be resolved without a physical inspection. A street view of the property was available on Google Maps.
6. In their counter notice the Respondent alleged that the Applicant is not entitled to a declaration from the Tribunal on account of a number of defects in its initial notice of claim.
7. It is common ground that the property comprises 5 units and that being so, an application for the right to manage must be made by a minimum of three qualifying tenants who are members of the RTM company (joint tenants count together as a single member). The Respondent appears to assert that the Applicant's application is defective in this respect although it accepts that the company's register of members is prima facie evidence of membership.
8. The company's register of members shows that three of the five unit owners (including Nicholas and Natalie Baum, counted together as one member) are registered as members of the RTM company (page 60) Their signed applications for membership are shown on pages 76-78. This appears to satisfy the requirements of the Act. The Tribunal does not accept that the Applicants have to show any further evidence of membership. If the Respondent asserts an irregularity in the process they need to support their concerns with detailed allegations and evidence. They have not done so. Further, this allegation was not raised in the Respondent's counter-notice but appears to have been added as a purported defence only for the purpose of these proceedings. The Tribunal is satisfied that the Applicant RTM company was properly constituted with the

correct number of participating members as at the relevant date and finds the Respondent's allegation unfounded.

9. The Respondent's next allegation (para 18 page 55) follows from their previous assertion: they say that because the RTM company did not have the requisite three members, it had an insufficient number of members to make the claim which must therefore fail. Since the Tribunal finds (above para 8) that the RTM company did have a sufficient number of members at the relevant time, it follows that this objection by the Respondent has no foundation and must fail.
10. The Respondent's final objection (para 19 page 55) is that the Applicant's use of a claim form which described the Tribunal as 'Leasehold Valuation Tribunal' (a former name of the present Tribunal) instead of its current title of First Tier Tribunal (Property Chamber) invalidated the claim. They have not supported that argument by any statutory or case authority. The Tribunal does not accept this argument. The title of the Tribunal apart, the remainder of the form was correct in content and wording and its meaning and intent were abundantly clear to the recipient (the Respondent) who responded to it in less than one week (page 58). Further, the wording of the form used by the Applicant is that prescribed by statutory instrument and it is therefore unarguable that the form is correct (SI 2010/825).
11. Having considered the Applicant's case and the Respondent's objections the Tribunal concludes that the Respondent's objections are not proven. The Tribunal is satisfied that the Applicant has fulfilled the necessary statutory conditions to succeed in its application for a declaration that it has the right to manage the property and makes that declaration accordingly.
12. The Law

Commonhold and Leasehold Reform Act 2002

'S78(1)

Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given –

- (a) is the qualifying tenant of a flat contained in the premises, but**
- (b) neither is nor has agreed to become a member of the RTM company.'**

's84(2)

A counter -notice is a notice containing a statement either –
(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice; or

- (b) alleging that, by reason of a specified provision of this**

Chapter, the RTM company was on that date not so entitled.'

'S84(3)

Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection 2(b) , the company may apply to a leasehold valuation tribunal (sic) for a determination that it was on the relevant date entitled to acquire the right to manage the premises'

Judge F J Silverman
Date 28 May 2021

Note:

RIGHTS OF APPEAL

1. 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.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.