FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/45UG/LRM/2021/0009**
Property	**:**	**Phoenix House 23-25 Cantelupe Road East Grinstead RH19 3BE**
Applicant	**:**	**Phoenix House RTM Company Ltd**
Representative	**:**	**The RTM Company, Mr Crossfield**
Respondent	**:**	**Mr O P J D Jory (1)** **Ezytrac Block Management Ltd (2)**
Representative	**:**	**Blocksphere Property Management,** **Ms Davies**
Type of Application	**:**	**Application in relation to the denial of the Right to Manage**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Mr K Ridgeway MRICS**
Date and venue of hearing	**:**	**CPV:REMOTE** **27 May 2022**
Date of Decision	**:**	**31 May 2022**

DECISION

The Tribunal declares that on the relevant date of 12 August 2021 the Applicant RTM company was entitled to acquire the right to manage the property known as Phoenix House 23-25 Cantelupe Road East Grinstead RH19 6BE under the provisions of the Commonhold and Leasehold Reform Act 2002.

Reasons

1 On 12 August 2021 (the relevant date) the Applicant served notice on the Respondents claiming the right to manage the property situate and known as Phoenix House 23-25 Cantelupe Road East Grinstead RH19 6BE (the property) with effect from 28 December 2021 (page 50).

2 The Respondent acknowledged that they had received the Applicant's notice but disputed its validity in a counter-notice dated 10 September 2021. The counter notice (pp 69 and 77) cited a number of sections of the Commonhold and Leasehold Reform Act 2002 and related Regulations which the Respondent alleged had not been satisfied.

3 The Applicant therefore issued an application with the Tribunal on 07 October 2021 (page 45) seeking a declaration that on the relevant date it was entitled to exercise their right to manage the property under the provisions of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).

4 Directions were issued by the Tribunal on 03 December 2021, 10 February 2022 and 24 February 2022 (pp 88, 92, 97) and the CVP remote video hearing of this matter, to which all parties had consented or not objected took place on 27 May 2022. Mr Crossfield appeared for the Applicant and Ms Davies for both Respondents.

5 An electronic bundle of documents, pages of which are referred to below, was prepared by the Applicant and submitted to the Tribunal for its consideration.

6 A statement of reply was served by the Respondent on 14 February 2022 (p179).No separate evidence bundle was supplied by the Respondent neither did they file any witness statements or reports in support of their position.

7 The Tribunal inspected the property immediately prior to the hearing. Mr Rocliffe from the Applicants was present at the inspection. The Respondent had been notified of the date and time of the inspection but did not attend.

8 The 26 residential units comprising Phoenix House have been constructed by conversion from a former office building with appurtenant ground and parking and is situated in the centre of East Grinstead within easy walking distance of all amenities. The main entry to the building is via a coded doorway at street level to a carpeted lobby. A staircase and lift provide access to the upper two floors. On each level an emergency staircase is situated at the end of one corridor and exits down to street level in the rear parking area. Individual access to units 25a and 25b is from separate doors each at street level, situated one on either side of the emergency exit staircase at the rear of the building. These two units were added as an extension to the building at a later date after the main conversion and are each laid out over two floors. The rear wall of each of these added units is part of the structure of the building and part of the roof of each unit forms the balcony/terrace area of the second floor units numbers 19 and 20. The emergency exit staircase serving the building runs as a core through the middle of the rear wall separating units 25a and 25b from each other. The Tribunal inspected the interiors of both units 19 and 20 but only in order to establish the relationship between their terraces/balconies and the roofs of units 25a and 25b as described above. Both visually and structurally units 1-25b

inclusive give the appearance of comprising one single undivided construction/building.

9 The Respondents' only challenge to the validity of the Applicant's claim is based on their assertion that s72 of the 2002 Act (see below for text) only applies to flats, not houses, and that units 25a and 25b are town houses not flats. This is contradictory to the position taken by the Respondents in response to an earlier notice (page 36) served on them (but discontinued) where they challenged the validity of the notice apparently on the ground that units 25a and 25b had been omitted from the property included in the claim.

10 When asked by the Tribunal to explain her reasoning Ms Davies said that the disputed units were called houses in their leases. This is factually incorrect as the leases of the two disputed units describe the demised premises as 'the property' (Definitions clause 1.1) (Annexe 2 page 4) and refers throughout to 'flats'. The words 'house' or 'town house' do not appear.

10 The Tribunal also asked the Respondent if they could substantiate their assertion that the two disputed units were 'houses' by citing precedents on the interpretation of the definitions in the 2002 Act and or from an expert report about the construction of the building. No such evidence was forthcoming. The Tribunal notes that the tenants units 25a and 25b must consider their dwellings to be 'flats' within the statutory definition because they have consented to the application and have subscribed to membership of the RTM company.

11 Ms Davies did accept however that a residential unit laid out on more than one level could be defined as a 'maisonette' (which she accepted was a variety of 'flat'). She also conceded that the building of which the disputed units formed part were structurally attached to each other, they were all part of the same property as demonstrated by the roof of units 25 a and b forming the balconies of the units above them. When asked by the Tribunal how she would deal with the service charge if units 25a and 25b were separated out from the remainder of the units she said that she could not do it. The service charge was integral to the block.

12 Having inspected the subject property, read the leases and other documents filed by both parties and heard the arguments from both parties the Tribunal is of the firm view that units 25a and 25 b are split level flats forming part of part of a single residential building known collectively as Phoenix House. Structurally they form part of the building and cannot be separated from it. They are integrally part of a single building as demonstrated by the column of the emergency staircase running through the core of the building and the dual user of the roof of units 25 a and 25b as balconies for units 19 and 20. The leases of units 25a and 25 b describe them as flats and the wording of those leases closely mirrors the contents of the leases of other non-disputed units with minimal variations to account for context.

17 The Tribunal will therefore grant to the Applicant a declaration that it is entitled to acquire the right to manage the property known as Phoenix House (including all flats 1-25b inclusive, common parts, grounds and parking areas) Cantelupe Road East Grinstead RH29 3BE under the provisions of the Commonhold and Leasehold Reform Act 2002.

18 The Law (Commonhold and Leasehold Reform Act 2002)

72 Premises to which Chapter applies

(1) This Chapter applies to premises if—
(a) they consist of a self-contained building or part of a building, with or without appurtenant property,
(b)they contain two or more flats held by qualifying tenants, and
(c)the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
(2)A building is a self-contained building if it is structurally detached.
(3)A part of a building is a self-contained part of the building if—
(a)it constitutes a vertical division of the building,
(b)the structure of the building is such that it could be redeveloped independently of the rest of the building, and
(c)subsection (4) applies in relation to it.
(4)This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
(a)are provided independently of the relevant services provided for occupiers of the rest of the building, or
(b)could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.
(5)Relevant services are services provided by means of pipes, cables or other fixed installations.
(6)Schedule 6 (premises excepted from this Chapter) has effect.

74 RTM companies: membership and regulations

(1)The persons who are entitled to be members of a company which is a RTM company in relation to premises are—
(a)qualifying tenants of flats contained in the premises, and
(b)from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.
(2)The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.
(3)A RTM company may adopt provisions of the regulations for its memorandum or articles.
(4)The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.
(5)A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.
(6)The regulations have effect in relation to a memorandum or articles—
(a)irrespective of the date of the memorandum or articles, but
(b)subject to any transitional provisions of the regulations.
(7)The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTM company—

(a)sections 2(7) and 3 (memorandum), and
(b)section 8 (articles).

75 Qualifying tenants

(1)This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.
(2)Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.
(3)Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.
(4)Subsection (2) does not apply where—
(a)the lease was granted by sub-demise out of a superior lease other than a long lease,
(b)the grant was made in breach of the terms of the superior lease, and
(c)there has been no waiver of the breach by the superior landlord.
(5)No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.
(6)Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.
(7)Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat.

79 Notice of claim to acquire right

(1)A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
(2)The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
(3)The claim notice must be given by a RTM company which complies with subsection (4) or (5).
(4)If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
(5)In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
(6)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,
(b)party to such a lease otherwise than as landlord or tenant, or
(c)a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.
(7)Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at

all, section 85 applies.
(8)A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
(9)
Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

80 Contents of claim notice
(1)The claim notice must comply with the following requirements.
(2)It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
(3)It must state the full name of each person who is both—
(a)the qualifying tenant of a flat contained in the premises, and
(b)a member of the RTM company,
and the address of his flat.
(4)And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
(a)the date on which it was entered into,
(b)the term for which it was granted, and
(c)the date of the commencement of the term.
(5)It must state the name and registered office of the RTM company.
(6)It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
(7)It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
(8)It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
(9)And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

81 Claim notice: supplementary
(1)A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
(2)Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.
(3)Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—
(a)the premises, or

(b)any premises containing or contained in the premises,
may be given so long as the earlier claim notice continues in force.
(4)Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—
(a)been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
(b)ceased to have effect by reason of any other provision of this Chapter.

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Counter-notices
(1)A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).
(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,
and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.
(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 for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
(4)An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
(5)Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—
(a)on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
(b)the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.
(6)If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.
(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.
(8)An appeal is disposed of—
(a)if it is determined and the period for bringing any further appeal has

ended, or
(b)if it is abandoned or otherwise ceases to have effect.

90 The acquisition date
(1)This section makes provision about the date which is the acquisition date where a RTM company acquires the right to manage any premises.
(2)Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice under section 80(7).
(3)For the purposes of this Chapter there is no dispute about entitlement if—
(a)no counter-notice is given under section 84, or
(b)the counter-notice given under that section, or (where more than one is so given) each of them, contains a statement such as is mentioned in subsection (2)(a) of that section.
(4)Where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final.
(5)Where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the acquisition date is the date three months after the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees in writing that the company was on the relevant date entitled to acquire the right to manage the premises.
(6)Where an order is made under section 85, the acquisition date is (subject to any appeal) the date specified in the order.

Judge F J Silverman
31 May 2022

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.