



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

**Case reference** : **LON/00AC/LRM/2023/0005**

**Property** : **Tokyngton Court, 254 Colindeep Lane, London NW9 6DA**

**Applicant** : **Tokyngton Court RTM Company Limited**

**Representative** : **The Leasehold Advice Centre**

**Respondent** : **Ruben Property Investments Limited**

**Representative** : **Bahram Rezazadeh on behalf of Ramin Ghaderi, sole director of Respondent company**

**Type of application** : **Right to Manage**

**Tribunal members** : **Judge P Korn  
Mr J Naylor MRICS MIRPM**

**Date of determination** : **24 May 2023**

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**DECISION**

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## **Description of hearing**

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that it would be content with a paper determination, the Respondent did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decision made is described immediately below under the heading “Decision of the tribunal”.

## **Decision of the tribunal**

The Applicant was entitled on the relevant date to acquire the right to manage in respect of the Property.

## **The application**

1. The Applicant seeks a determination pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“**the Act**”) that on the relevant date it was entitled to acquire the right to manage the Property.

## **Background**

2. By a claim notice given on 7 November 2022 the Applicant gave notice to the Respondent that it intended to acquire the right to manage in relation to the Property on 16 March 2023.
3. The Respondent gave a counter-notice on 12 December 2022 alleging that the Applicant was not entitled to acquire the right to manage, and then on 24 January 2023 the Applicant applied to the tribunal for a determination that it was entitled to acquire the said right on the relevant date.

## **Respondent’s case**

4. The Respondent has raised various points in support of its contention that the Applicant was not entitled to acquire the right to manage on the relevant date. These are summarised below:
  - (a) The Respondent states that the total number of flats for which the Applicant seeks the right to manage is less than two-thirds of the total number of flats at the Property, as in addition to the existing 9 flats a further 7 flats were being built and “*were near completion on the relevant date*”.

(b) The Respondent states that *“light has also been shed on the relevance of section 96(5) of the Act and the implications thereof”*, and it goes on to make a point about the definition of “Management functions”.

(c) The Respondent submits that the tribunal should be provided with evidence that the lease held by each qualifying tenant fits the statutory definition of a “long lease”.

(d) The Respondent states that the Applicant’s Certificate of Incorporation *“promulgates the name of 5 members only, 3 of whom have provided the companies house with a different service address. That is to question, whether they are living at Tokyngton Court and fit the definition of qualifying tenants. It also reinforces the question over applicability of s.78.1”*. The Respondent goes on to state that *“One cannot form an RTM company and exempt themselves from the obligation to serve the invitation 14 days prior merely because the members of the RTM company had already become the members of the RTM company”*.

The Respondent then goes on to make a fifth point (numbered “5” in its statement of case), but that point appears just to be an elaboration on the previous point, the Respondent stating that under section 79(2) of the Act a claim notice may not be given unless each person required to be given notice of invitation to participate has been given a notice at least 14 days before service of the claim notice.

### **Applicant’s case in response**

5. The Applicant has made written submissions in response, and these are summarised below using the same lettering:

(a) The Applicant states that there are 9 actual flats. In or around April/May 2022 construction works began on what the Applicant understands to be additional units. However, on the date of service of the claim notice there were no additional flats.

(b) The Applicant makes no specific comment made on this point.

(c) The Applicant states that all of the leases are for a term of 999 years from 18 June 1962, as recorded on the freehold title, a copy of which is in the bundle.

(d) The Applicant states that when the claim notice was served all 9 of the qualifying tenants were already members of the RTM company, and no evidence has been produced by the Respondent to suggest otherwise. As regards the Respondent’s point about the Certificate of Incorporation, the Applicant submits that the Certificate of

Incorporation does not show what the Respondent claims and that the Memorandum of Association correctly states the names of the 5 subscriber members. This is not the total number of members but rather only those members whose flats are owned in single names, as Companies House will not allow joint owners to be members from the outset. Specifically in relation to Flat 9, there was an initial delay in the joint owners becoming members as they had not provided the necessary identity documents. However, states the Applicant, they immediately applied to become a joint member prior to the Applicant being able to serve a notice of invitation to participate on them. The Applicant adds, in response to another aspect of the Respondent's comments, that there is nothing in the legislation requiring a qualifying tenant to be resident.

### **Relevant legislation**

6. *Commonhold and Leasehold Reform Act 2002*

*Section 74*

*(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 ... landlords under leases of the whole or any part of the premises.*

*Section 78*

*(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.*

*Section 79*

*(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.*

*Section 96*

*(5) “Management functions” are functions with respect to services, repairs, maintenance, improvements, insurance and management.*

## Section 112

*(1) ... “flat” means a separate set of premises ... (a) which forms part of a building, (b) which is constructed or adapted for use for the purposes of a dwelling, and (c) either the whole or a material part of which lies above or below some other part of the building.*

### **Tribunal’s analysis**

7. As the Respondent states only that the additional flats “*were near completion on the relevant date*”, it is common ground between the parties that on the date of service of the claim notice there were only 9 fully constructed flats at the Property. Under section 74(1) of the Act (leaving aside the rights of landlords which are not relevant for the purposes of this specific challenge), “*the persons who are entitled to be members of a company which is a RTM company in relation to premises are ... qualifying tenants of flats contained in the premises*”. Under section 112(1) of the Act, a “flat” is defined (for the purposes, inter alia, of section 74(1)) as “*a separate set of premises ... which is constructed or adapted for use for the purposes of a dwelling ...*”.
8. The evidence indicates that no additional flats had actually been fully completed on the date of service of the claim notice and that at most there were additional flats in the course of construction. The exact stage of construction is not entirely clear from the information before us, but we are not persuaded that they were yet “flats” for the purposes of the RTM legislation. The flats had not yet been fully ‘constructed’, and the partially constructed flats cannot be properly characterised as having been “*adapted for use for the purposes of a dwelling*” as this would only be the case if they had previously been used for other purposes and were now usable for the purposes of a dwelling and there is no evidence to indicate that this is the case. Furthermore, the Respondent has offered no analysis on the question of who (if anyone) would be the qualifying tenant of each of these incomplete flats. Therefore, the Respondent’s objection in 4(a) above fails.
9. The Respondent’s comment on section 96(5) of the Act referred to in 4(b) above is irrelevant to the question of whether the Applicant acquired the right to manage. If it is a challenge to the Applicant’s right to manage, it too fails.
10. As regards the Respondent’s submission that the tribunal should be provided with evidence that the lease held by each qualifying tenant fits the statutory definition of a “long lease”, the tribunal is satisfied that the copy documentation contained in the bundle demonstrates that each lease is a long lease for the purposes of the Act. Therefore, the Respondent’s objection in 4(c) above fails.

11. The Respondent's point about the Certificate of Incorporation is difficult to follow but certainly seems misconceived. The Respondent also suggests that a leaseholder cannot be a qualifying tenant if they do not live at the premises which are the subject of the RTM claim, but the Respondent does not explain how it has arrived at this conclusion and there is nothing in the legislation to support this view.
12. The Respondent then goes on to state that *"One cannot form an RTM company and exempt themselves from the obligation to serve the invitation 14 days prior merely because the members of the RTM company had already become the members of the RTM company"*. What the Respondent appears to be arguing is that a notice of invitation to participate ("**NIP**") must be served on each qualifying tenant even if the qualifying tenant in question is already a member of the RTM company. However, under section 78(1) of the Act *"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"*. The RTM company is therefore only required to serve a NIP on qualifying tenants who are not members and who have not yet agreed to become members.
13. Insofar as the Respondent's reference to there only being 5 subscriber members is a separate basis of challenge, we accept the reasons given by the Applicant as to why there were only 5 subscriber members.
14. In relation to Flat 9, the evidence indicates that the joint qualifying tenants agreed to become members of the RTM company on 3 August 2022, well before the date on which the claim notice was given, and there was therefore no requirement to give a NIP to them as they had *"agreed to become a member of the RTM company"* within the meaning of section 78(1) of the Act.
15. Therefore, the Respondent's objection in 4(d) above also fails.
16. All of the Respondent's objections having failed, it follows that the Applicant acquired the right to manage on the relevant date.

**Name:** Judge P Korn

**Date:** 24 May 2023

## **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.