



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

Case reference : **LON/00AH/LRM/2023/0025**

Property : **86 Addiscombe Road, Croydon, Surrey
CR0 5PP**

Applicant : **86 Addiscombe Road RTM Company
Limited**

Representative : **The Leasehold Advice Centre (ref 3137)**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors until 2 October
2023; thereafter the respondent was
unrepresented**

Type of application : **Right to manage**

Tribunal member(s) : **Mr Charles Norman FRICS
Valuer Chairman**

Date of decision : **1 December 2023**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the claim notice was properly served on the respondent, that it arrived on 3 April 2023 and that it gave the respondent the statutory one month in which to respond.
- (2) The respondent is ordered to reimburse the applicant's application and hearing fees incurred in the Tribunal within 28 days.

The application

1. This was an application to acquire the right to manage 86 Addiscombe Road Croydon Surrey CR0 5PP under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The applicant asserted that a claim notice dated 28 March 2023 was sent to the respondent on 31 March 2023. This specified that any counter-notice be served no later than 15 May 2023. On 15 May 2023, The Respondent freeholder served a counter-notice asserting that the applicant RTM company was not on the relevant date entitled to acquire the right to manage.
2. The applicant also sought reimbursement of fees paid to the tribunal in respect of the application.

Representatives

3. The applicant was represented by the Leasehold Advice Centre. The respondent was represented by Scott Cohen solicitors until 2 October 2023 when they informed the Tribunal that they were no longer acting.

Directions and Non – Compliance by the Respondent

4. By directions issued on 15 August 2023 the matter was set down for a determination on the papers unless either party requested a hearing which neither did. The application was treated as the applicant's case. The respondent was directed to serve a statement of case by 12 September 2023. The applicant was entitled to serve a reply by 3 October 2023.
5. The Respondent failed to serve a statement of case or provide any explanation.

The law

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

7. Service of notices is set out under section 111 of the Act, as follows.
- (1) Any notice under this Chapter—
 - (a) must be in writing, and
 - (b) may be sent by post.
 - (2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole or any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).
 - (3) That address is—
 - (a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or
 - (b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).
 - (4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.
 - (5) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.

The Applicant's Case

8. The applicant's case was that the Notice of Claim was served on the registered proprietor of the freehold, Assethold Ltd at the following addresses:
- (a) PO Box 1369, London NW11 7EH; (b) 5, North End Road, Golders Green, London NW11 7RJ; (c) C/o Eagerstates Limited, of PO Box 1369, London NW11 7EH; (d) C/o Ronni Gurvits of both Assethold Limited &

Eagerstates Limited admin@eagerstates.co.uk and (e) C/o Lorraine Scott - Scott Cohen Solicitors Limited admin@scottssolicitors.co.uk

9. These notices were sent by first class post with certificates of posting on 31 March 2023. The Notice provided for a response date of 15 May 2023. Subsequently, by an email dated 26 April 2023 from Scott Cohen, Land Registry, RTM company documents and copy correspondence was requested from the applicants. This was provided on 5 May 2023. The applicant submitted that deemed service had been effected, by reference to the Civil Procedure Rules (“CPR”).

The counter-notice

10. In its counter-notice, dated 15 May 2023 the Respondent, acting via Scott Cohen alleged that, by reason of section 80(6) of the Act, on 25 April 2023, the applicant was not entitled to acquire the right to manage the premises because the claim notice specified a date earlier than one month after the relevant date for response by counter-notice under section 84 of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002

The Tribunal's decision

11. In strict compliance with section 111(3), the original claim notice should have been served on the address last furnished to a member of the RTM company as the landlord’s address for service under section 48 of the 1987 Act. However, the Tribunal has no evidence from the applicant of which if any of the addresses given above is the relevant address
12. However, on 26 April 2023, Scott Cohen stated “We have been instructed by Assethold Limited in this matter, who have received a copy of a claim notice dated 28 March 2023”. Further, in *Avon Freeholds Limited v Regent Court RTM Limited* [2013] L & T R 23 (para 29) it was held that a party can waive strict compliance with a statutory provision. In my judgment, the freeholder waived strict compliance with section 111(3) when its solicitors sent the email, because it was an unequivocal admission of receipt of a copy of the claim notice and no point was taken on the mode of service. For the same reason, I find that a copy of the claim notice, rather than an original will suffice. I am also satisfied that the respondent suffered no prejudice as a result of the mode of service.
13. As to deemed service, the CPR does not apply to F-tT proceedings, as its procedure is governed by The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However, section 111 of the Act authorises service by post. In my judgment, therefore, section 7 of the Interpretation Act 1978 applied to the posting. This states:

where an act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be affected by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, to have been affected at the time at which the letter would be delivered in the ordinary course of post.

14. The applicant has produced certificates of posting, which I accept. The respondent has not engaged in the appeal or led any witness evidence to disprove that the notice was received in the ordinary course of post. I therefore find that the claim notice was deemed to be delivered to the respondent on the first business day after posting, (i.e. excluding Saturday), namely 3 April 2023.
15. I therefore find that the date by which the counter-notice was to be served of 15 May 2023 exceeded one month from the date of deemed service of 3 April 2023.
16. Accordingly I find the claim notice to be valid.

Summary

17. 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.
18. 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.”

Costs

19. Section 88(3) of the Act states:
 - “(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.”

20. In the light of the Tribunal's decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed.

Reimbursement of application and hearing Fees

21. In view of the outcome I order that the respondent reimburse the applicant's application and hearing fees within 28 days.

Name: Charles Norman FRICS

Date: 1 December 2023

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).