



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

**Case Reference** : **LON/00AG/LRM/2023/0033**

**Property** : **Banff House, Glenmore Road,  
London NW3 4DG**

**Applicant** : **Banff House RTM Co Ltd**

**Representative** : **RTMF Services Ltd**

**Respondent** : **Clegtone Properties Ltd**

**Representative** : **Prime Management (PS) Ltd**

**Type of Application** : **Right to Manage**

**Tribunal** : **Judge Nicol**

**Date of Decision** : **13<sup>th</sup> February 2024**

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**DECISION**

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The Tribunal has determined that:

- (1) The Respondent is barred from further participation in these proceedings;
- (2) The Applicant is entitled to exercise the Right to Manage; and
- (3) The Respondent shall reimburse the Applicant the fee paid to the Tribunal in respect of this application.

Relevant legislation is set out in an Appendix to this decision.

## **The Tribunal's reasons**

1. By claim notice dated 4<sup>th</sup> July 2023, the Applicant sought to exercise the right to manage the building in which its members are lessees, namely Banff House, Glenmore Road, London NW3 4DG, in accordance with the Commonhold and Leasehold Reform Act 2002 (“the Act”).
2. The Respondent served a counter-notice dated 7<sup>th</sup> August 2023 alleging that the Applicant was not entitled to acquire the right to manage the premises because the number of members of the company was not at least half the total number of flats in the premises.
3. On 22<sup>nd</sup> September 2023 the Applicant applied to the Tribunal for a determination of its entitlement to exercise the Right to Manage. The Tribunal issued directions on 26<sup>th</sup> October 2023 for the application to be determined on the papers. Neither party requested a hearing.
4. On 11<sup>th</sup> December 2023 the Applicant applied to bar the Respondent from further participation in the proceedings pursuant to rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 because they had not provided their case, contrary to paragraph 3 of the directions.
5. By letter dated 12<sup>th</sup> December 2023, the Respondent’s representative, Mr Stephen Wiles of Prime Management, apologised for the non-compliance and sought an extension to 4<sup>th</sup> January 2024. The Tribunal decided that it would be disproportionate to bar the Respondent at that stage and, instead, amended the directions giving the Respondent until 4<sup>th</sup> January 2024, as they had requested.
6. On 10<sup>th</sup> January 2024 the Applicant again applied to bar the Respondent because they had still not provided their case. The Tribunal has received no further word by or on behalf of the Respondent.
7. Paragraph 15 of the original directions and paragraph 16 of the amended directions warned the Respondent of the consequences of non-compliance. In the circumstances, the Tribunal is left with no realistic option but to bar the Respondent.
8. Therefore, the Tribunal has proceeded to make a decision using the bundle of documents comprising 88 pages, compiled by the Applicant.
9. There is one issue. The building consists of 8 flats. The Applicant company has two members, Ms Meredith Yates and Mr Nikolas Gilbert Bonellos. They each own two flats. Ms Yates owns Flats 1 and 5 while Mr Bonellos owns Flats 2 and 7.
10. Under section 79(5) of the Act, 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.

11. According to an email dated 14<sup>th</sup> August 2023, Mr Wiles's logic is simple. There are 8 flats but only 2 members of the company. He concludes that this is too few. This is a misunderstanding. The 2 members of the Applicant are the tenants of 4 flats. That satisfies section 79(5). (On Mr Wiles's logic, if there were 4 joint tenants of one flat, they *would* be able to exercise the right to manage.)
12. There being nothing in the Respondent's objection, the Applicant is entitled to exercise the Right to Manage accordingly.
13. The Respondent has unnecessarily delayed the Applicant's exercise of the right to manage and then has failed to comply with the Tribunal's directions. Therefore, it is entirely appropriate that the Respondent should reimburse the Applicant their Tribunal fee.

**Name:** Judge Nicol

**Date:** 13<sup>th</sup> February 2024

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **Section 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.