



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

**Case reference** : **CAM/00MG/LRM/2024/0001**  
**Property** : **Medina House, 302-340 Silbury Bvd, MK9**  
**Applicant** : **Medina House (Milton Keynes) RTM Co Ltd**  
**Representative** : **Prime Property Management**  
**Respondent** : **Assethold Ltd**  
**Representative** : **Scott Cohen solicitors**  
**Date of Application** : **14 December 2023**  
**Type of application** : **Application for determination that on the relevant date the RTM company was entitled to acquire the right to manage, pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002.**  
**The Tribunal** : **Tribunal Judge S Evans**  
**Date/ place of hearing** : **Paper determination**  
**Date of decision** : **31 October 2024**

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**DECISION**

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## DECISION

**(1) The Tribunal determines that on the relevant date the Applicant was entitled to the right to manage the Property, pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002.**

**(2) Pursuant to rule 13(2) of the Tribunal Procedure (First Tier Tribunal)( Property Chamber) Rules 2013, the Tribunal orders the Respondent to reimburse to the Applicant the application fee of £100.**

## REASONS

### Background

1. The Applicant is Medina House (Milton Keynes) RTM Co Ltd.
2. The Respondent is Assethold Limited, represented by Scott Cohen solicitors.
3. The Application is an application to determine that on the relevant date the Applicant was entitled to acquire the right to manage a block of flats called Medina House, 302-340 Silbury Bvd, Milton Keynes MK9 2AE (“the Property”).
4. UK Residential Heights Limited became the freeholder of the Property on 20 March 2018.
5. The Respondent’s interest in the Property is not stated, except as a “landlord”.
6. On 31 March 2021 a lease was granted regarding flat 8 in the Property for a term of 125 years from 1 February 2021. The landlord is the freeholder, and the tenant is Rashad and others.
7. This lease has never been registered at the Land Registry, to date, as shown by the absence of the same on the Schedule of Notices of Leases on the freehold title at the Land Registry.
8. On 6 June 2023 the Applicant was incorporated as a company.
9. On 12 September 2023 the Applicant served notices of invitation to participate in the right to manage, pursuant to section 78 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) on all qualifying tenants, except flat 8. On that date, in respect of flat 8, it served the notice under section 78 on the freeholder instead.
10. On the 12 October 2023 the Applicant served Notices of Claim under section 79 of the Act.
11. On 17 November 2023 the Respondent served a Counternotice which objected to the Notice of Claim, for 2 generic reasons, citing sections 78(1), and 79(2) of the Act. No point was specifically taken, nor particulars given, as to why the Respondent alleged that the Applicant had not satisfied those sections.

12. This Application was then made to the Tribunal on 14 December 2023.
13. Unfortunately, there was a delay in the giving of directions, due to shortage of staff. On 5 September 2024 procedural directions were given, which the parties have duly complied with.
14. The Tribunal directions indicated that a decision in this case would be communicated on or after 28 October 2024.
15. The parties have provided the Tribunal with an Applicant's bundle of 28 pages, a Respondent's bundle of 122 pages, and a statement of reply from the Respondent of 2 pages.

### **The Issues**

16. The Respondent's case, as set out in its Statement of Case, is simple; and there is really one issue for the Tribunal to decide. That is whether the omission of flat 8's tenants from the process of the right to manage by the Applicant leads to the conclusion that there has been non-compliance with both section 78(1) and 79(2) of the 2002 Act.
17. The Respondent contends that a "qualifying tenant" includes an equitable lessee – in this case the tenants of flat 8.
18. It also contends that the Tribunal is bound by the decision in *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd and another* [2020] UKUT 358 (LC), to the effect that failure to give notice of intention to a qualifying tenant who was not already a member, or who had not agreed to become a member of the RTM company, invalidated the claim notice.
19. In response, the Applicant contends it was unable to serve a notice of invitation to participate on flat 8 as there was no leasehold interest registered at the Land Registry; therefore it was impossible for the applicant to serve one as the Applicant considered flat 8 was not a qualifying tenant, since the flat was retained by the landlord.
20. The Applicant relies on *Elim Court Rtm Company Limited v Avon Freeholds Limited* [2017] EWCA Civ 89 [2018] QB 571, as being authority for the proposition that the failure to comply with the requirements for a notice of intention to participate does not automatically invalidate all subsequent steps.

### **Relevant Statute Law**

21. See Appendix 1 to this decision.

### **Discussion and Determination**

22. Neither party has drawn any case authority to the Tribunal on the meaning of "tenant" in the Act. The Applicant is not legally represented. The Respondent is.

23. The Respondent relies solely on s.112, which states, so far as is material:

“(2) In this Chapter “lease” and “tenancy” have the same meaning and both expressions include (where the context permits)—

(a) a sub-lease or sub-tenancy, and

(b) an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy),

but do not include a tenancy at will or at sufferance.

(3) The expressions “landlord” and “tenant”, and references to letting, to the grant of a lease or to covenants or the terms of a lease, shall be construed accordingly.”

24. However, the above section, despite its wideness, does not say anything about legal or equitable interests.

25. It is notable that the Respondent solicitors have not cited *Assethold Ltd v 7 Sunny Gardens Road RTM Company Ltd* [2013] UKUT 0590 (LC), despite that authority having been cited by them to this Tribunal on behalf of the Respondent in the decision dated 29 March 2024 in CAM/22UE/LRM/2023/0007 (*80 High Street, Hadleigh, Benfleet, Essex SS7 2PB*), since in paragraph 29 of *Sunny Gardens* the Deputy President (emphasis supplied) held:

“29. To be the qualifying tenant of a flat a person must be a tenant of that flat. **The “tenant” referred to in section 75(1) of the 2002 Act is the person in whom, for the time being, the legal estate created by the lease is vested. As the LVT correctly observed, the 2002 Act is not concerned with beneficial interests.**”

26. As the Applicants contend, certain dispositions of a registered estate must be registered if they are to take effect at law and not merely in equity. These include leases over 7 years: see s.27 of the Land Registration Act 2002.

27. In addition, the Respondent, despite relying on the *Canary Gateway* case, has not addressed paragraph 87 of that decision, in which Fancourt J held:

“87. It is therefore very easy for the RTM company to serve each qualifying tenant and to identify them. Since, in virtually all cases, the qualifying tenants will be long lessees, their interests will be identifiable at the Land Registry. It is not necessary to investigate whether a long lessee has sub-let their flat in order to know that they are a qualifying tenant; only whether there is an inferior long lessee.”

28. It seems to this Tribunal to be inconceivable that Fancourt J would have held as he did, if “tenant” in section 75 of the Act did not mean to refer to the

registered leaseholder. The learned judge had clearly in mind that investigations into unregistered titles should not be necessary under the Act.

29. That, combined with the *Sunny Gardens* decision, leads this Tribunal to the conclusion that equitable tenants, who have only a beneficial interest, cannot be a qualifying tenant of a flat for the purposes of Part 2, Chapter 1 of the Act.
30. Accordingly, the Applicant did not need to give any notice under s.78 to the leaseholders of flat 8, and there has been no breach of section 79(2) of the Act.
31. As such, it is unnecessary for the Tribunal to decide what the effect of the non-service of a notice to participate on the equitable tenants of Flat 8 was. Based on *Canary Gateway* alone, the Tribunal would be likely to find itself bound to find that the Applicant does not have the right to manage. It is notable that Fancourt J in *Canary Gateway* had applied *Osman v Natt* [2015] 1 WLR 1536, a CA decision on the effect of procedural non-compliance in the context of collective enfranchisement. He also cited paragraph 52 of the *Elim Court* decision, finding at his paragraph 73 that its interpretative approach was of general relevance.
32. However, regrettably again, the Respondent's solicitors have not drawn to this Tribunal's attention relevant authority. In case reference CAM/OOKA/LRM/2022/0005 (*Highview Court, Dudley Street, Luton Bedfordshire, LU2 0FR*), as recently as 28 August 2024, the Respondent's solicitors cited to this Tribunal the very recent decision of the UKSC in *A1 Properties (Sunderland) v Tudor Studios RTM Co Ltd* [2024] UKSC 27. That decision at para. 61 held:

“We therefore consider that in the present statutory context *Osman v Natt* needs to be considered and applied with some caution, particularly in its suggestion that cases where it becomes necessary to infer the intended consequences of non-compliance can for that purpose be divided into distinct and watertight categories and its apparent suggestion (para 31) that in the second category the possibility of a middle position as identified in *Soneji* between outright validity or outright invalidity is excluded. Instead, it is appropriate to go back to the basic principled approach as explained in *Soneji*, as applied in light of the particular statutory context and the specific facts of the case.”
33. Further, at paragraph 66 the Supreme Court held that the approach of the Court of Appeal in *Elim Court* at para. 52 should not be endorsed in full.
34. Given this Tribunal's determination in paragraph 29 above, it is unnecessary for this Tribunal to consider whether *Canary Gateway* remains good law in the light of *A1*. The Tribunal has not heard any representations in relation to whether an application of the principled approach as explained in *Soneji* to

the facts of this case would lead to a different outcome. Those arguments must be left for another day.

## **Conclusions**

35. The Tribunal determines that on the relevant date the Applicant was entitled to the right to manage the Property, pursuant to s.84(3) of the Commonhold and Leasehold Reform Act 2002.
36. Pursuant to rule 13(2) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, the Tribunal orders the Respondent to reimburse to the Applicant the application fee of £100.

**Name:** Tribunal Judge S Evans

**Date:** 31 October 2024.

## **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).

## **Appendix 1**

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

Section 75 identifies qualifying tenants and provides, so far as it relevant, as follows:

#### “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.

...

(5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly;

...

(7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall... be regarded as jointly being the qualifying tenant of the flat.”

A long lease is defined in section 76 and includes a lease granted for a term of years certain exceeding 21 years.

#### “78 Notice inviting participation

(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.”

#### “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 until 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 sub-section (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,  
  
....
- (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.”

#### “80. Contents of the 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.”

### **Land Registration Act 2002**

“27. Dispositions required to be registered.

(1) If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met.

(2) In the case of a registered estate, the following are the dispositions which are required to be completed by registration—

(a) a transfer,

(b) where the registered estate is an estate in land, the grant of a term of years absolute—

(i) for a term of more than seven years from the date of the grant,

(ii) to take effect in possession after the end of the period of three months beginning with the date of the grant,

(iii) under which the right to possession is discontinuous,

(iv) in pursuance of Part 5 of the Housing Act 1985 (c. 68) (the right to buy), or

(v) in circumstances where section 171A of that Act applies (disposal by landlord which leads to a person no longer being a secure tenant),

(c) where the registered estate is a franchise or manor, the grant of a lease...”