FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KA/LRM/2023/0013**
Property	**:**	**Napier House, 17-21 Napier Road, Luton, LU1 1DU**
Applicant	**:**	**Napier House (LU1) RTM Company Limited**
Representative	**:**	**RTMF Services Limited**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Scott Cohen Solicitors**
Type of application	**:**	**Application in relation to the denial of the right to manage**
Tribunal	**:**	**Judge Katie Gray** **Judge David Wyatt**
Date of decision	**:**	**10 December 2024**

DECISION

Decision

The Tribunal:

(1) determines that the Applicant was on the relevant date entitled to acquire the right to manage the Property; and

(2) orders the Respondent to pay £100 to the Applicant to reimburse the tribunal application fee paid by it.

Reasons

Application

1. By an application dated 6 November 2023, the Applicant RTM company (registration number 14957005) applied to the tribunal under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (the "**Act**") for a determination that, on the relevant date, it was entitled to acquire the right to manage the Property.

Background

2. The Property is a residential block, freehold title to which is registered at HM Land Registry under title number BD46428. It contains 26 flats.

3. By a claim notice dated 6 September 2023, said to have been given on the same date, the Applicant gave notice that it intended to acquire the right to manage the Property on 20 January 2024.

4. By counter notice dated 4 October 2023 signed by Scott Cohen Solicitors Limited, the Respondent disputed the claim on various grounds.

Procedural history

5. Directions were given on 4 September 2024. The Respondent was directed to produce a fully detailed statement of case together with any relevant supporting evidence, setting out the basis of its objection in full. The Applicant was directed to file a statement of case in response. The Respondent was given permission to file a reply and did so.

6. On 29 October 2024, the Applicant sought permission to file and serve further submissions addressing the recent decisions in A1 Properties (Sunderland) Ltd v Tudor Studios RTM Company Ltd [2024] UKSC 27 and Avon Freeholds Limited v Cresta Court E RTM Company Ltd [2024] UKUT 335 (LC). By further directions given on 30 October 2024, both parties were given permission to sequentially file and serve concise written submissions.

7. The parties complied with the directions and both prepared detailed and helpful statements of case, as well as a 342-page hearing bundle which the tribunal considered in detail.

8. The directions as varied on 30 October 2024 provided that the tribunal would determine this matter on or after 3 December 2024 based on the documents provided unless either party requested a hearing.

9. Neither party requested a hearing. Accordingly, by Rule 31(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**"), the parties are taken to have consented to this matter being decided without a hearing. We are satisfied that a hearing is not necessary to determine the issues in this case.

Issues

10. It was apparent that the following issues remain in dispute and require resolution namely:

    a) whether the Applicant was required to serve notice under section 78(1) of the Act on the qualifying tenants of Flats 1, 10, 22 and 29 inviting them to participate and, if so, whether its failure to do so meant that no notice of claim to acquire the right to manage could be served by the Applicant.

    b) whether the Applicant failed to serve the claim notice on a person who was at the relevant date the landlord under a lease of the whole or any part of the Property in accordance with section 79(6)(a) of the Act and if so, whether failure to do so prevented the Applicant from acquiring the right to manage.

    c) whether the membership of the Applicant on the relevant date included a number of qualifying tenants of flats contained in the Property which was not less than one-half of the total number of flats therein, as required by sections 79(3) and (5) of the Act.

    d) whether the notices served on the qualifying tenants inviting them to participate accurately stated the names of the members of the Applicant company as required by section 78(2) of the Act.

11. The Respondent's assertion made in its statement of case dated 26 September 2024 that there is already a RTM company in relation to the Property was withdrawn in the Respondent's reply dated 24 October 2024.

Failure to serve notice on the qualifying tenants of Flats 1, 10, 22 and 29 – section 78(1), (2) and (3) and section 79(2)

12. It is not in dispute that the following leases of flats in the Property had been granted but had not been registered at HM Land Registry at the time that the qualifying tenants of the Property were served with notice of invitation to participate under section 78(1) of the Act:

    a) Lease dated 14 February 2019 for a term of 250 years between Via Project 3 Limited and Platinum Lifestyle Properties Limited relating to Flat 1;

    b) Lease dated 15 October 2019 for a term of 250 years between Via Project 3 Limited and Daniel and Georgina Wolfson relating to Flat 10;

    c) Lease dated 6 December 2018 for a term of 250 years between Via Project 3 Limited and RGNCE Limited relating to Flat 22; and

    d) Lease dated 20 December 2018 for a term of 250 years between Via Project 3 Limited and Chu Kwong Ivan Ng relating to Flat 29,

    ("the **Leases**").

13. Nor was it disputed that, as the Leases were not yet registered, they were effective in equity but not at law until such time as they were registered. It was not suggested that there were any legal leases of the flats referred to above in existence at the date that notice under section 78(1) of the Act was served on the qualifying tenants. It was also not in dispute that the Applicant did not serve any notice under section 78(1) of the Act on the lessees under the Leases.

14. The Respondent's case is that the Applicant was required to serve notice under section 78(1) of the Act on these lessees as they were qualifying tenants and that failure to do so invalidated the claim notice later served by the Applicant. It argued that A1 applies only where the Act does not specify the consequences of non-compliance, and section 79(2) specifies that the claim notice may not be given unless each person required to be given notice of invitation to participate has been given such a notice at least 14 days before.

15. Both parties referred the tribunal to the decision in Cresta Court E, in which the Upper Tribunal held that:

    a) The meaning of a "long lease" in section 75(2) is capable of including both legal and equitable leases.

    b) Where there is an equitable lease and no legal lease, the equitable lessee is the qualifying tenant for the purposes of the Act.

    c) The failure to serve a notice under section 78(1) of the Act on a qualifying tenant did not render a claim notice served later wholly invalid, but voidable at the instance of the qualifying tenant, who may ask the court for a declaration that the notice is invalid, be joined in proceedings before the FTT, or seek judicial review of any decision made by the FTT.

    d) Unless the qualifying tenant takes one of these courses of action, no-one else can take advantage of the procedural failure; only the tenant directly affected by it can do so [139].

    e) There was no need to decide whether the difference between section 79(6) (the focus of A1) and 79(2) is that in the latter case there is no room for argument as to whether substantial compliance is sufficient in the absence of prejudice because the Act has set out the consequences of non-compliance (noting paragraph [69] of A1). Again, that point is only available to the relevant tenant(s), not anyone else [140].

16. It was not suggested that any of the lessees under the Leases have objected, let alone sought any declaration that the claim notice was invalid, and none have asked to be joined in these proceedings.

17. It was not the Respondent's case that the facts of the present matter would permit us to depart from the reasoning in Cresta Court E. Though the

Respondent maintained that the decision is wrong and liable to appeal, it recognised that this tribunal would "*likely*" be bound by it.

18. We find, in accordance with the decision in Cresta Court E, that the Applicant was required to serve notice under section 78(1) of the Act on the lessees of the Leases as qualifying tenants, but its failure to do so does not render the claim notice invalid because those qualifying tenants have not sought to avoid the notice.

19. The Respondent proposed that our decision be stayed pending the final determination of any appeal against the decision in Cresta Court E. We are not satisfied that it would be in accordance with the overriding objective to do so, particularly in view of the time taken so far in these proceedings and the first sentence of paragraph [143] in that decision.

Failure to serve the claim notice on a landlord – section 79(6)

20. It appears that, by a transfer dated 6 May 2021, the freehold interest in the Property was transferred to the Respondent by Via Project 3 Limited. However, we were shown an Official Copy of the register of title for the Property which showed that as at 11 June 2024, the freehold title to the Property had yet to be registered in the Respondent's name.

21. The delay in registration has not prevented the Respondent from assuming the role of the landlord from the point of view of the lessees. Indeed, we were shown a service charge demand sent by the Respondent's managing agent to the lessee of Flat 4 in the Property (on 31 May 2023, several months before the claim notice was given) in which the agent demanded service charges and stated under the heading "section 47 & 48 Landlord and Tenant Act 1987" that the landlord is the Respondent.

22. The Respondent's case is that a search at the Land Registry would have revealed that Via Project 3 Limited remained the registered freehold owner of the Property and that failure to serve notice on Via Project 3 Limited invalidates the acquisition of the right to manage under the Act.

23. In their answering statement of case, the Applicant relies on the decision of the Supreme Court in A1. In that case, it was held that a failure to give a claim notice to a visible landlord or other stakeholder under section 79(6) of the Act renders the transfer of the right to manage voidable, at the instance of the relevant landlord or other stakeholder who was entitled to, but not given, a claim notice. It does not render the transfer of the right void. The omission does not give other persons who are not so affected (for example, other landlords who have been properly served with a claim notice) a right to object if the party who is so affected has not sought to complain.

24. The Respondent gave no answer to this in its reply. It was not suggested that Via Project 3 Limited has taken any issue with the claim notice and nor did it ask to be joined in this application. In the circumstances, following A1, the Respondent is not in our judgment entitled to dispute entitlement under the Act on this ground.

Membership - section 79(5)

25. By s.79(3), a claim notice must be given by a RTM company which complies with subsection (4) (which does not apply here) or (5). By subsection (5), 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.

26. The Respondent asserts that the Applicant has not provided sufficient evidence that the qualifying tenants of 18 of the Flats (Nos. 2, 3, 5, 8, 9, 12, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, and 30) were members of the Applicant company on the relevant date. The Respondent had requested disclosure of the applications for membership of the company made by these tenants. It accepted there was no "*formal obligation*" to supply these but noted that the articles of association expect such applications and suggested that not providing them after two requests indicated that the register of members was "*questionable*". It referred to Southall Court Residents Limited & Ors v Buy our Freehold Limited and Ors (LRX/124/2007), but in that case there was no register.

27. The Applicant provided the tribunal with a certified true copy of its register of members as at 28 June 2023, signed by the Company Secretary. The qualifying tenants of the flats referred to above (and the qualifying tenants of Flats 4 and 23) were listed in the register. The Applicant said, and it was not disputed by the Respondent, that the same copy of the register was provided to the Respondent on 12 September 2023. The Applicant also provided the tribunal with a statement of case, signed with a statement of truth, which stated at paragraph 14 that "*on the relevant date the membership of the company included sufficient qualifying tenants*".

28. We do not consider that non-production of the requested applications for membership is sufficient to call this into question, let alone outweigh it. The Respondent has produced no competing factual evidence or other argument in relation to membership of the Applicant company on the relevant date.

29. Having considered the register of members and the Applicant's statement of case, we find that the Applicant has discharged the burden of proving that the membership of the RTM company on the relevant date included a number of qualifying tenants of flats contained in the premises which was not less than one half of the total number of flats so contained.

30. It follows that for the purposes of section 79(3) we are satisfied that the claim notice was given by a RTM company which complied with section 79(5) of the Act.

Membership - section 78(2)

31. Linked to the above ground of objection is whether the notices served on the qualifying tenants inviting them to participate in the acquisition of the right to manage accurately stated the names of the members of the Applicant as required by section 78(2) of the Act.

32. The Respondent asserts that the qualifying tenants of Flats 2, 3, 5, 8, 9, 12, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, and 30 were "not correctly entered as members of the Company" and that therefore the notice overstated the membership of the Applicant.

33. As set out above, we have seen a true copy of the Applicant's register of members as at 28 June 2023 which includes the qualifying tenants of these flats. We have also seen the Applicant's statement of case, signed with a statement of truth, which states at paragraph 19 that "*the s.78 notices of invitation to participate contain the names of twenty members of the company who at the time the notice was given were qualifying tenants of flats contained in the premises. The names of the twenty members stated in the notice are consistent with the register of members supplied to the Respondent on 12 September 2023*". The Respondent has produced no competing factual evidence or other argument to the contrary.

34. Having considered the register of members and the Applicant's statement of case, we find that the Applicant has discharged the burden of proving that the notices of invitation to participate accurately stated the names of the members of the RTM Company in accordance with section 78(2) and (3) of the Act.

Conclusion

35. We are satisfied for the reasons set out above that the Applicant was on the relevant date entitled to acquire the right to manage the Property.

Costs

36. Under Rule 13, the tribunal has discretion to order reimbursement of tribunal fees. The Applicant is the successful party in this application. We order the Respondent to pay £100 to the Applicant to reimburse the tribunal application fee paid by them.

Name: Judge Katie Gray **Date:** 12 December 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).