



Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL**

**THE LEASEHOLD VALUATION TRIBUNAL**

**IN THE MATTER OF AN APPLICATION MADE UNDER SECTION 84 COMMONHOLD  
AND LEASEHOLD REFORM ACT 2002 ('THE ACT')**

**CASE REFERENCE: LON/OOBG/LRM/2009/0009**

**Applicant: 417 Wick Lane RTM Company Limited**

**Respondent: Henley Homes Limited**

**Premises: 417 Wick Lane, London E3 2JJ**

**Date of Application: 12 June 2009**

**Date of Oral Pre-trial Review: No oral pre-trial review**

**Date of Tribunal's Directions: 17 June 2009**

**Date of Hearing: 22 September 2009**

**Appearances: Mr Roger McElroy (Director, Canonbury Management)  
for the applicant**

**The respondents did not attend and were not  
represented**

**Date of Decision: 17 November 2009**

**Leasehold Valuation Tribunal: Professor James Driscoll, LLM, LLB, Solicitor,  
Mr Christopher Kane and Ms Jayam Dalal**

## **DECISION**

**The tribunal determines that the applicant is entitled to exercise the RTM in accordance with the provisions in Part 2 of the Act.**

## The Application

- 1 This is an application made under Section 84(3) of the Act by those representing the applicant RTM company. The respondents are the owners of the freehold and the landlords under various leases of units in the subject premises which is a block of flats. Where the RTM is established the landlord's management functions pass to the company on the acquisition date.
- 2 The applicant was incorporated as an RTM company in accordance with the provisions in Part 2 of the Act and the subject property is a purpose built block of flats which was previously in local authority ownership but which was sold to the respondents in 2002. It was later redeveloped and in 2005 the flats in the building were all sold on long leases. These leases are qualifying long leases under the Act (section 76).
- 3 Shortly after the applicant was incorporated as an RTM company it gave notice to the respondent seeking to exercise the RTM. The RTM often referred to as a no-fault based right. This is because provided the building qualifies, and a sufficient proportion of the leaseholders support the claim, the RTM can be exercised as of right regardless of whether the landlord is managing the premises properly or not. It may, therefore, be contrasted with the right to apply to this tribunal under Part 3 of the Landlord and Tenant Act 1987 for a manager to be appointed. In such applications, fault on the part of the landlord or current managing agents must be proved by the applicants.
- 4 Although the facts of this application are not entirely clear, it appears that there are some 92 units in the premises of which 73 are held on qualifying long leases. The remainder of the units are either leased for parking purposes or are for some other non-residential use. We were told that none of the units are held for commercial use. It therefore appears that as not less than two-thirds of the units are held under qualifying leases and there is no substantial non-residential use (see; section 72 of the Act) and none of the exceptional cases apply (see: schedule 6 to the Act) applies to this case, that the building qualifies for the RTM.
- 5 Under section 79 of the Act, a notice of claim (in the prescribed form) must be given to the landlord and to certain other parties. This notice

is given by the RTM company though the company must first serve any leaseholders who is not a member of the company a notice inviting them to become members. There is no requirement that the landlord has to give a counter-notice, but clearly a landlord which wishes to oppose the claim has to serve a counter-notice (under section 84). Where the landlord gives such a counter-notice the RTM company has to apply to this tribunal for a determination as to whether it is entitled to the RTM.

6 In this matter, a participation notice was given on the 3 March 2009 and on the 31 March 2009 a claim notice was given. A copy was also given to the previous managing agents. They are not a party to the leases. A counter-notice was given on behalf of the respondents on the 6 May 2009 stating that the applicants are not entitled to the RTM as their claim notice was not properly served and that it was not supported by the requisite number of leaseholders. In response those advising the RTM company applied to the tribunal for a determination under s 84 of the Act on 12 June 2009.

7 Directions were given by the tribunal on the 17 June 2009 and later a bundle of documents was prepared by the applicant's representative Mr Roger McElroy (Director, Canonbury Management) who attended the hearing on the 22 September 2009. The tribunal received a letter from the respondent's solicitors stating that they had no instructions to take further part in these proceedings. The tribunal has not received any communications from the respondents nor the current managing agents.

8 Mr McElroy told us that his company are experienced managing agents and that his company is a leading provider of advice and assistance on the RTM. He elaborated on how his company provides these services. The work is undertaken electronically. For example, the application for the formation of the RTM company is undertaken electronically as are the RTM notices.

9 We were not entirely satisfied with the bundle of documents. We pointed that all the dates did not appear to be accurate. Mr McElroy accepted this and later provided alternative documentation with the correct dates. He also provided documents issued by the Land Registry showing a schedule of the leases with brief details of one of the leases. His documents included the certificate of incorporation of the RTM company and the notice and counter-notice. After hearing his submissions and having considered the documentation we have reached the following conclusions;

- the subject premises qualify for the RTM

- the participation notices and the notice of claim were correctly served
- there is no evidence that it was not properly served (and the letter and count-notice given on behalf of the respondents undermines their case
- the RTM company was properly incorporated in accordance with the provisions in the Act
- the claim notice was given at a time when more than one-half of the leaseholders were members of the applicant RTM company.

Accordingly we determine that when the applicants made their claim, that they were entitled to the RTM. We delayed the giving of this determination pending the filing of additional documents and information on behalf of the applicant which have since been received.

Signed:



(James Driscoll, LLM, LLB, solicitor)

Dated: 17 November 2009

