FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00MR/LRM/2015/0007**
Property	:	**Bransbury Mews, 161 Henderson Road, Southsea, Hampshire, PO4 9FZ**
Applicant	:	**Bransbury Mews Residents Management RTM Co Ltd**
Representative	:	**Woodgate & Co, Solicitors**
Respondent	:	**Harford Properties Ltd**
Representative	:	**Comptons, Solicitors**
Type of Application	:	**Section 84(3) of the Commonhold & Leasehold Reform Act 2002**
Tribunal Members	:	**Judge I Mohabir**
Date of determination	:	**10 September 2015**
Date of Decision	:	**21 September 2015**

DECISION

Introduction

1. This is an application made by the Applicant pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination that it was on the relevant date entitled to acquire the right to manage the property known as Bransbury Mews, 161 Henderson Road, Southsea, Hampshire, PO4 9FZ ("the property").

2. The members of the Applicant company are the long leaseholders of Flats 1-3, 5-6, 8-9, 11 and 14 in the property.

3. By a claim notice dated 8 April 2015 given to the Respondent pursuant to section 79(1) of the Act, the Applicant exercised its entitlement to acquire the right to manage the property.

4. By a counter notice dated 8 May 2015, the Respondent denied that the Applicant was entitled to acquire the right to manage the property for 3 reasons:

   (a) that the Applicant had failed to serve a notice on invitation on the leaseholders of Flats 4, 10 and 12 ("the non-participating tenants") pursuant to section 78 of the Act.
   (b) that the claim notice failed to comply with the requirements of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 ("the 2010 Regulations").
   (c) that on the relevant date the membership of the Applicant was not comprised of more than one half of the total number of qualifying tenants.

5. By a letter dated 1 July 2015, the Applicant's solicitors made this application to the Tribunal for a determination that it was entitled to acquire the right to manage the property.

6. Each of the issues set out above is considered in turn below.

Decision

7. The Tribunal's determination of this application took place on 10 September 2015. There was no oral hearing. The Tribunal's decision is based solely on the written submissions made by the parties and the documentary evidence filed.

8. It is perhaps trite to note that for a RTM company to acquire the right to manage a property, it must comply with all of the statutory requirements of sections 72-81 of the Act, which includes any relevant regulations. Otherwise, this will result in a failure to acquire the right to manage.

9. In the present case, no issue arises that the Applicant is an RTM company within the meaning of the Act nor that the participating leaseholders are qualifying tenants with long leases. The Applicant must, therefore, prove that it has validly served a notice inviting participation under section 78, that the procedural requirements set out in section 79 have been complied with and that a valid claim notice has been served under section 80 of the Act.

Failure to Serve a Notice of Invitation

10. The Respondent's case is that on 16 April 2015 a request was made to the Applicant to disclose copies of the Notices of Invitation to Participate that had been served on the non-participating tenants and it did not do so. Therefore, the Respondent submits that the Applicant has not complied with section 78(1) of the Act.

11. At paragraph 3 of its supplementary statement dated 3 August 2015, the Applicant asserts that the relevant notices were served on the non-participating tenants on 4 February 2015 at the registered addresses of their respective flats and this amounts to good service.

12. Section 78(1) of the Act provides:

> *"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 the flat contained in the premises, but*
> *(b) neither is nor has agreed to become a member of the RTM company."*

13. Save for the bare assertion of good service, it is surprising that the Applicant has failed to provide a copies of the relevant notices inviting participation that were served on the non-participating tenants or any detailed evidence as to the method and timing of service of the notices.

14. Section 111 of the Act deals with the serving of notices under the Act. It provides:

> *"(1) Any notice under this Chapter-*
> *(a) must be in writing, and*
> *(b) may be sent by post*
>
> *(2)...*
>
> *(3)...*
>
> *(4)...*
>
> *(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."*

15. There was no evidence before the Tribunal that the Applicant had been notified by any of the non-participating tenants of a different address other than the registered addresses of their respective flats to which service of the notice inviting participation should be effected. Indeed, the Respondent does not contend that the Applicant had been so notified. The presumption, therefore, is that the notices had been validly served on the non-participating tenants.

16. In addition, the Applicant's supplementary statement contains a statement of truth signed by its Solicitor, Mr Young. As such, the Tribunal is entitled to regard the assertion made by him in relation to service as evidence. No doubt he was aware, when signing the statement of truth, of the serious professional consequences of misleading the Tribunal.

17. On balance, the Tribunal was satisfied that the Applicant had validly served the relevant notices inviting participation on the non-participating tenants under section 78 of the Act.

18. However, at paragraph 12 of its statement of case dated 29 July 2015, the Respondent raises a further issue, namely, that the Applicant did not serve the non-participating tenants with a copy of the claim form in breach of section 79(8) of the Act. Although, this was not an issue raised by the Respondent in its counter notice, the Tribunal was obliged to deal with it.

19. At paragraph 4 of its supplementary statement, the Applicant admits that it did not serve the non-participating tenants with a copy of the claim notice because it subsequently became aware that they "were no longer the addresses for service of such flat owners and that there was no purpose in sending a copy of the Claim Notice to them as required by the 2002 Act as they would not receive it..."

20. The inference to be drawn from this statement is that the Applicant had received notification of the non-participating tenants' alternative addresses within the meaning of section 111 of the Act. Moreover, being on notice, the Applicant was obliged to serve a copy of the claim notice on them. As the Respondent correctly submits, this is a mandatory requirement under section 79(8) of the Act. It follows that the failure to do so by the Applicant means that the application fails for this reason alone.

21. Although, in the circumstances, it is not necessary for the Tribunal to go on to consider the remaining issues raised in this application, it does for the sake of completeness.

Failure to comply with Regulations

22. The Respondent submitted that the form of the claim notice served by the Applicant is invalid because it fails to comply with the 2010 Regulations. It complies with the out of date 2003 Regulations. This point was not dealt with at all in the Applicant's supplementary statement.

23. The Tribunal accepted the Respondent's submission as being correct. Section 80(8) of the Act provides that a claim notice:

> *"...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."*

24. The 2010 Regulations came into force on 19 April 2010. Regulation 9(1) expressly revokes the 2003 Regulations. Regulation 9(2) goes on to provide that *"any notice served under the 2003 Regulations will be treated on or after the coming into force of these Regulations as if it had been served under them* (the 2013 Regulations)."

25. In addition, regulation 4 sets outs the additional content required in a claim notice. Regulation 8(2) states *"claim notices shall be in the form set out in Schedule 2 of these Regulations"*. Schedule 2 sets out the precise form and content of a valid claim notice to be served pursuant to section 80(8) of the Act. Having regard to the language of both the section and the 2010 Regulations, the requirements imposed by them are mandatory.

26. A careful consideration of the Applicant's claim notice reveals that, in whole or in part, it fails to comply with the requirements of regulation 4 or Schedule 2 and, indeed, only makes reference to the 2003 Regulations.

27. The Tribunal did not consider that section 81(1) of the Act saved the claim notice because the deficiencies in the claim notice were not simply inaccuracies of any particulars, but a failure to comply with the statutory requirements in the Act.

28. For the reasons set out above, the Tribunal found the claim notice served by the Applicant to be invalid and the application also fails on this basis.

Membership of the Company

29. The Respondent submitted that as at 8 April 2015, it could not ascertain by reference to the company's Register of Members under section 112 of the Companies Act 2006 if the number of qualifying members exceeded one half of the total number of flats. On this basis, the claim notice breached section 79(5) and was invalid.

30. The Tribunal did not accept the Respondent's submission as being correct for the reasons given by the Applicant, namely, there is no (statutory) obligation under the Act to record the names of the company members at Companies House. The obligation is to record them on the company's register of members, which is held at the company's registered office.

31. A perusal of the register of members provided by the Applicant reveals that in fact more than one half of the number of qualifying tenants were members of the Applicant on the relevant date and section 79(5) was satisfied in this regard.

32. Although, the Applicant raised a collateral issue about the validity of the counter notice, it was neither relevant nor necessary for the Tribunal to decide this point.

33. Accordingly, for the reasons set out above, the Tribunal determined that the claim notice is invalid and the Applicant is not entitled to acquire the right to manage the property.

Judge I Mohabir

21 September 2015

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.