



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

Case reference : LON/00AC/LRM/2015/0035

Property : 708 Finchley Road London NW11
7ND

Applicant : 708 Finchley Road RTM Company
Limited

Representative : Urban Owners

Respondent : Triplerose Limited

Representative : Scott Cohen Solicitors

Type of application : Application in relation to the denial
of the Right to Manage

Tribunal member(s) : Prof Robert M. Abbey (Solicitor)
Mr Alan Manson FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 29 January 2016

Decision

BACKGROUND

- A. The tribunal has received an application under chapter 1 (Section 84 (3)) of the Commonhold and Leasehold Reform Act 2002 ("the Act") relating to (no fault) Right to Manage.
- B. The tribunal has identified a single issue for determination namely whether on the date on which the notice of claim was given, the applicant was entitled to acquire the Right to Manage the premises specified in the notice.
- C. Directions were given on 25 November 2015 including a direction that the case was suitable for determination without a hearing and thus on paper.
- D. The parties are referred to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

THE LAW

- 1. Section 78(1) of the Act states as follows: *"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"*.
- 2. The relevant part of Section 79(1) of the Act states as follows: *"A claim to acquire the right to manage any premises is made by giving notice of the claim ..."* and the relevant part of Section 79(6) of the Act states as follows: *"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 ..."*.
- 3. The relevant part of Section 79(2) of the Act states as follows: *"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"*
- 4. The relevant parts of Section 84(1) and (2) of the Act entitle a person given a claim notice by a RTM company to give a counter-notice alleging that by reason of a specified provision of the Act the RTM company was not entitled on the relevant date to acquire the right to manage the premises specified in the claim notice (the right of the Respondents to serve the counter-notice is not in dispute in this case).

5. Section 84(3) of the Act states as follows: *“Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned [in the relevant part of Section 84(2)], the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises”.*
6. Sections 80(8) and 80(9) of the Act state as follows *“(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”.*

THE RESPONDENT’S CASE

7. In its counter-notice the Respondent raised the following objections:-
8. that the Applicant failed to “comply with section 78(1) and 79(2) as more particularly described in the Respondents Statement of Case;
9. that the Applicant failed to “comply with section 80(8) and 80(9) as more particularly described in the Respondents Statement of Case
10. The Respondent also submitted a statement of response to the applicant’s case as set out below. The points raised therein are where necessary referred to subsequently in this decision.

THE APPLICANT’S CASE

11. In its written submissions dated 7 January 2016 the Applicant says there is no breach of 78(1) and 79(2) as they were able to produce copy documents confirming the issue of an appropriate notice and method of service.
12. The applicant also submitted that in regard to the purported breach of 80(8) and 80(9) that a reasonable recipient would understand that the claim notice does not suggest a counter notice must use an Oyez form RTM3. It says that the claim notice clearly states that a counter notice must be in the form set out in schedule 3 of the Regulations.

DECISION

1. The tribunal is of the view that the invitation to participate was properly served upon Mr David Moskovitz the leaseholder of Flat 1 708 Finchley Road. The tribunal was shown a copy of the invitation, a copy of the covering letter included with the notice and a stamped certificate of posting confirming that it was sent. The letter and notice were sent

to the tenant at the property address namely Flat 1 708 Finchley Road. The Act simply requires the notice to be sent to each person who is a qualifying tenant and the tribunal is of the view that this was accomplished by the giving of the notice in the format described above. Bearing in mind that this is a notice by a new RTM company it appears to the tribunal that in the absence of any definitive information to the contrary the addresses it would utilise would be those at the subject property for the various leaseholders concerned.

2. Moreover, the registered title for Flat 1 708 Finchley Road registered under title number AGL 113124 where the registered proprietor is indeed Mr David Moskovitz shows the address for that gentleman as being Flat 1 708 Finchley Road London NW11 7ND. Had a notice been issued by the Land Registry they would have served it at this address and the tribunal is of the view that this holds good for a notice under the Act.
3. In the alternative please also see the decision very much in this area being *Avon Freeholds Limited v Regent Court RTM Co Limited [2013] UKUT 0213 (LC)* in which it was said, at paragraph 56, that “Parliament cannot have intended that in circumstances such as these the whole of the right to manage process will be defeated by the RTM company failing to comply fully with the provisions for giving notice of invitation to participate. But in this case the Respondent’s omission to give the Chapman’s notice at their flat in the premises was not, in my view, fatal to the process”.)
4. The tribunal is of the view that the inclusion of the words “Oyez Form RTM3” does not invalidate the nature and or purpose of the Claim Notice. A reasonable recipient would understand what is required and that the form reference is there to assist should a printed form be desired. The Claim Notice clearly states that the Counter Notice must be in the form set out in Schedule 3 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. The tribunal is of the view that a recipient would clearly understand what was required should they wish to make a counter notice. Moreover, if the Oyez form was adopted it would in fact potentially comply with the Regulations and as such there can be no prejudice caused by the inclusion of these words.

Name: Prof R M Abbey

Date: 29th January 2016