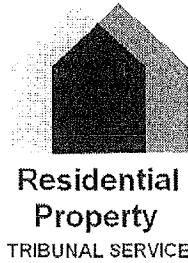


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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL
for the
LONDON RENT ASSESSMENT PANEL**

Commonhold and Leasehold Reform Act 2002

LON/00AZ/LRM/2010/0003

Premises: 376 Stanstead Road, London SE6 4XB
Applicant: Stanstead RTM Company Limited
Represented by: Samuels & Co, Solicitors
Respondent: Assethold Limited

Decision

- A. The tribunal does not have jurisdiction to determine the application as no counter notice under section 84(1) of the Act was given.

Reasons for decision

- B. The tribunal's jurisdiction arises from section 84(3) which provides that "*where the RTM company has been given one or more counter notices containing a statementthe 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*"
- C. Section 80(6) requires that "*the claim notice 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”

- D. Section 90(2) provides that “Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice....” and section 90(3) “For the purposes of this chapter there is no dispute about entitlement if (a) no counter notice is given under section 84”
- E. It is clear that compliance with the specified date is essential for a counter notice to be given.
- F. The claim notice was dated 2 November 2009. It specified the date by which a counter notice must be given as 17 December 2010.
- G. The applicant asserts that a counter notice dated 15 December 2009 was posted on 17 December 2009 and delivered on 18 December 2009. In support they supplied a copy of a date stamped envelope. The envelope was stamped first class and also stamped with the date 18-12-09. This would normally be the date of posting but, whether it is the delivery date or the date the envelope was posted, the date the document was “given” was later than the 17th of December.
- H. There is also a fax copy of a counter-notice dated as signed on 15 December with the fax dated and timed 18/12 2009 15.23.
- I. In response to the submission that the counter notice was out of time the respondent said in a letter to the applicant “a counter notice was sent in time and we cannot comment on the post office and their pre Christmas arrangements”.
- J. In submissions to the tribunal the respondent said that a counter notice had been prepared and sent on the 15th December and would therefore have been deemed to be served on the 17th at the latest. On enquiry from the post office they believed that an industrial dispute in the area might have contributed to delay in delivery.
- K. There is no evidence before the tribunal that the disputed notice was posted on any date other than 18th December 2009. It does not follow that, because a document is dated and signed, it is necessarily posted on that day. The document could have been typed on the 15th and awaited signature on a later date. The most persuasive evidence of receipt is the copy of the stamped envelope, which is dated 18 December 2009.

- L. The tribunal accepts the applicant's interpretation of the Interpretation Act 1978 and refutes the respondent's argument that the date of posting is the date of service.
- M. Accordingly it appears under section 90(2) that the acquisition date is the date specified in the claim notice, section 84(3) is not engaged and the tribunal has no jurisdiction to consider the application.
- N. It is therefore unnecessary for the tribunal to consider the other issues raised by the parties.

Section 20C

- O. Since the tribunal lacks jurisdiction it is arguable that there have been no "proceedings" and accordingly the tribunal would have no jurisdiction to make an order under section 20C. Even if that were not the case the tribunal would in these circumstances have declined to make an order. The landlord made an error in missing the date for giving a counter notice but appears from the correspondence to have acted reasonably, including offering a compromise solution which would have accepted the RTM's acquisition of the right to manage.
- P. The tribunal does not agree that the respondent has acted frivolously, vexatiously, disruptively or otherwise unreasonably and, for that reason would not have made an award under paragraph 10 of Schedule 12.

Chairman



Mr J C Avery BSc FRICS

8 April 2010