HM Courts & Tribunals Service

First Tier Tribunal (Property Chamber)
Residential Property

Case reference	:	CHI/45UH/LRM/2014/0009
Property	:	8 Queens Road, Worthing, West Sussex BN11 3LX
Applicant	:	Queens Road Worthing RTM Company Limited
Representative	:	Coole and Haddock, solicitors
Respondent	:	Avon Ground Rents Limited (landlords)
Representative	:	Conway & Co, solicitors
Type of application	:	An application for the determination as to whether the applicant is entitled to acquire the right to manage (under Part 2 of the Commonhold and Leasehold Reform Act 2002)
Tribunal members	:	Judge Driscoll
Date of determination and venue	:	With the agreement of the parties the tribunal considered its decision on the basis of the papers filed and without an oral hearing.
Date of decision	:	5 January 2015

DECISION

The decision summarised

1. On the relevant date the applicant RTM company was entitled to acquire the right to manage the premises

Introduction

2. This is an application by the RTM company which seeks on behalf of its members (who are leaseholders of flats in the building) to acquire the right to manage the premises. The relevant statutory provisions are contained in Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the Act') and in various sets of regulations which have been made under these provisions ('the regulations'). Under the Act, a majority of leaseholders are entitled to take over the management of the premises from the landlord. The right to manage is a no-fault based right. Provided the building qualifies under the Act, the leaseholders may take over management of the building whether the landlord agrees to this or not. However, in order to make a valid claim, there are various procedural matters that the participating leaseholders must first attend to.

3. Before exercising the RTM, the participating leaseholders must first incorporate an RTM company, a company limited by guarantee with a prescribed constitution. All leaseholders are entitled to be members of the company (as is the landlord). Matters such as which buildings qualify, the proportion of leaseholders who should support the application, and which leaseholders qualify to participate are, broadly speaking, the same as they are for the collective right to enfranchise accorded by Part I of the Leasehold Reform, Housing and Urban Development Act 1993.

4. RTM is initiated by the company giving a claim notice to the landlord. Although the RTM is a no-fault based right landlords have the right in certain circumstances to object to the claim by giving a counter-notice to the company. Landlords may do this, for example, if they consider that the building does not qualify, or that the company has failed to follow the correct procedures. Where such a counter-notice is given, the company must (if it wishes to proceed) apply to this tribunal for a determination as to whether it is entitled to acquire the landlord's management functions under the RTM. This is the course that the applicant company has taken here as the landlords have given a counter-notice denying that the applicant was on the relevant date (that is the date on which the claim notice was given) entitled to exercise the right to manage.

This application

5. In this case the name of the RTM company is 8 Queens Road RTM Company Limited ('the company'). The respondent to the application is a company by the name of Avon Ground Rents Limited which owns the freehold of the premises and which is the landlord under the leases of the flats in the premises ('the landlords'). The subject premises (as the name of the company might suggest) is situated at 8 Queens Road, Worthing BN11 3LX. It appears that the premises consists of four flats each one held on a long lease.

6. Application was made to this tribunal on 14 July 2014. Directions were given on 22 July 2014. Later the parties agreed that the application could be dealt with on a consideration of the papers rather than by an oral hearing.

7. A bundle of documents was sent to the tribunal. It consists of various documents relating to the claim. Four of the key documents appear to be the claim notice, the counter-notice, a statement of case filed on behalf of

the landlord and a reply filed on behalf of the applicant company. From these (and other documents in the file) the following chronology appears.

8. A claim notice was given by the applicant company seeking to exercise the right to manage. The notice itself was not dated. It was sent to the landlord at its registered office by special delivery on 9 May 2014 and it was signed for by on behalf of the landlord on 14 May 2014. (It was sent with a covering letter dated 9 May 2014). Solicitors acting for the landlord wrote to the solicitors advising the company that they had received a copy of the claim notice.

9. The claim notice was given on behalf of the leaseholders of three of the flats. (It appears that the fourth leaseholder is Sanctuary Housing Association). It gave the landlord until 16 June 2014 for the landlord to give a counter-notice and stated that the company intended to acquire the right to manage on 16 September 2014. A counter-notice signed by the landlord's solicitors dated 9 June 2014 was given to the applicant company. It is drafted in the first person and it expressed the objections to the acquisition of the RTM by starting each objection with the words 'I allege'.

10. These objections were 'allegations' that (a) participation notices had not been given to each of the leaseholders, (b) a copy of the claim notice was not given to each of the leaseholders and (c) that the claim notice itself did not contain the particulars required by the regulations. It is noteworthy that none of these 'allegations' were supported by any statements of fact and that objection (c) did not state in what respects the claim notice was deficient.

11. It appears that the applicant's solicitors sent documents relating to the participation notices. In the landlord's statement of case they withdrew the allegation that no participation notices were given. However, they

continued with allegation (b). They elaborated on allegation (c) by first suggesting that that the claim notice should not have been given to the landlord at its registered office as the landlord had given a different address for notices to be served (by notice given under sections 47 and 48 of the Landlord and Tenant Act 1987) and second by alleging that the claim notice was not dated as it should have been (and third that is mistakenly refers to this tribunal under its previous name).

12. In reply, the applicant dealt with each allegation in turn. First, it relies on correspondence which it says shows that a copy of the claim notice was sent to each of the leaseholders.

13. As to the issue of service, the applicant simply states that it is common ground that the notice was given to the landlord. On this point the applicant relies on the decision of *Assethold Limited v 14 Stansfield Road RTM Company Limited* [2012] UKHT 262, a decision of the Upper Tribunal.

14. The applicant accepts that the claim notice was not dated (and that it incorrectly referred to this tribunal by its old title). However it points out that it is clear that the notice was given to the landlord and that the failure by dating is was cured by the covering letter which was dated. Here the the applicant relies on the decision of the Upper Tribunal in *Assethold Limited* (above) and in a decision of this tribunal in *237 Upper Richmond Road RTM Company Limited v Assethold Limited* [LON/OOBJ/LRM/2011/0281.

15. I can deal with the allegation of non-service of a copy of the claim notice on the landlord fairly shortly. The bundle (at at tab D) includes copies of emails and letters which show that a copy of the claim notice was served on all of the leaseholders. In the absence of any evidence to the contrary produced by the landlord this allegation is rejected.

16. Next is the allegation that the claim notice was not validly given. It is true that section 111 of the 2002 Act provides that a copy of a claim notice may be given by sending it to the address at which the leaseholders have been informed is the address for service given under the 1987 Act, I do not think that this mode of service excludes other methods. It is worth remembering that these 1987 Act provisions were enacted for the benefit of leaseholders who might otherwise have problems in serving notices on their landlord. Section 47 requires a landlord to give an address when it makes written demands on leaseholders and any amounts claimed from the leaseholders are not due until this requirement has been met (1987 Act, section 47(3)). Similarly, section 48 of the 1987 Act requires landlords to give leaseholders an address at which notices may be given and failure to comply has the same sanction as it does for section 47 of the 1987 Act.

17. Service of notices on companies is often effected by service at the registered office of the company concerned. This was the procedure chosen in this case. A copy of the covering letter (tab D of the bundle) shows that it was dated 9 May 2014 and sent by 'special delivery'. As noted above there is no doubt that it was received by the company and acted on by its advisors. I conclude that a copy of the claim notice was 'given' by the applicant's solicitors as required by the Act. As it is common ground between the parties that receipt of the communication was signed for on 14 May 2014 this is the date on which the notice was 'given' It was responded to by the giving of a counter-notice which has led to this application. I note also that the service point was not taken in the counter-notice but only raised later in the landlord's statement.

18. One of the final points is, in my view, the most substantial challenge to the validity of the claim notice. It is two parts but one part, in my opinion, has no substance to it. The reference in the claim notice to the previous name of this tribunal is clearly a mistake and one that should have been

avoided. However, I can see no prejudice to the landlord and I conclude that this mistake does not affect the validity of the claim notice. As it is stated in section 81(1) of the 2002 Act 'A claim notice is not invalidated by any inaccuracy in any of the particulars required ...' by the Act.

19. Those advising the applicant accept that the notice itself is not dated. However, it does contain the date by which a counter-notice can be given and the date on which it is proposed that the right to manage would be acquired. It is common ground that the notice given was timely and that the landlord and its advisors could have been left in no doubt as to the date on which any counter-notice should be given. Other than the date point, no other challenges are made to the validity of the claim notice.

20. As to the approach that should be taken when there is non-compliance with the statutory provisions I have read and considered the two Upper Tribunal decisions that are relied on. I have not considered the previous decision of this tribunal as this does not bind me.

21. I start with the observations the UT in the first case where the then President concluded that 'It is not sufficient for a landlord who has served a counter-notice to say that is puts the RTM company to 'strict proof' of compliance with a particular provision of the Act and then to sit back and contend that... that compliance has not been strictly proved' (paragraph 23). Putting the RTM company to strict proof does not create a presumption of non-compliance '..and the LVT will be as much concerned to understand why the landlord says that a particular requirement has not been complied with as to see why the RTM company claims that it has been satisfied' (ibid). As I stated above, in this case the landlord's counter-notice simply alleged various examples of non-compliance.

22. In the second case, the UT was also concerned with the effects of non-compliance. It decided that where there has been substantial compliance

with the statutory requirements one should examine the effects of the non-compliance to see if it justified a finding that the RTM claim should be defeated.

23. To put the history of the claim in context, this is an RTM claim made over an apparently modest building (in terms of its size) with four flats held on long leases where the claim is supported by the leaseholders of three of the flats. The landlord has not suggested, or alleged, that the building itself does not qualify for the RTM, or that any of the flats are not held on qualifying long leases. It accepts that a claim notice was sent to its registered office and that it and its advisors responded by serving a counter-notice.

24. All of its challenges have been to the procedural aspects of the claim. Most of these have either withdrawn, or I have concluded that they were of little significance and could be excused. The main objection, in my view, was the failure to date the claim notice which is one of the requirements of the regulations (see: Right to Manage (Prescribed Particulars (England) Regulations 2010, schedule 2). However, in light of the fact that there has been substantial compliance with the statutory procedural requirements and that the landlord did not suffer any prejudice I conclude that on the relevant date, the applicant was entitled to acquire the right to manage.

25. The applicant company was on the relevant date entitled to acquire the right to manage.

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.