582

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00MB/LRM/2016/0003**
Property	:	**Saxon Court, Thatcham, Berks. RG19 3TF**
Applicant	:	**Saxon Court RTM Co. Ltd.**
Respondent	:	**Holding & Management (Solitaire) Ltd.**
Date of Application	:	**27th June 2016**
Type of Application	:	**For an Order that the Applicant is entitled to acquire the right to manage the property (Section 84(3) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"))**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair) Mr. David Brown FRICS**

DECISION

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1. This Application succeeds and the Applicant therefore acquires the right to manage the property on the 6th January 2017 (Section 90(4) of the 2002 Act).

Reasons

Introduction

2. The Respondent accepts that the Applicant is a right to manage company ("RTM"). Such RTM gave the Respondent a Claim Notice on or about the 30th March 2016 seeking an automatic right to manage the property. A Counter-notice dated 3rd May 2016 was served denying the right to acquire the right to manage.

3. In their statement of case within these proceedings, the Respondent says that the right to manage should not be allowed because there is no proof of service of a copy of the Claim Notice on all qualifying tenants. There is also mention of the fact that the Respondent was not served at

its current registered office but this is not being pursued as a ground for opposition.

Procedure

4. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. At least 28 days' notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties and (b) an oral hearing would be held if either party requested one. No such request was received.

The Law

5. Section 79(8) of the 2002 Act says that a copy of any Claim Notice must be "*given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises*".

Discussion

6. There is no doubt that the statutory and regulatory burden on an RTM is substantial. In the years since the relevant part of the 2002 Act has been in force, the emphasis on compliance has changed. Landlords took the view that the right to manage provisions are effectively a compulsory purchase of their right to manage their own properties and every possible technical objection was raised and often succeeded. It is fair to say that in recent times, the pendulum has started to swing the other way.

7. In the decision of **Assethold Ltd. v 14 Stansfield Road RTM Co. Ltd.**[2012] UKUT 262 (LC); LRX/180/2011, at the end of the judgment dismissing the landlord's appeal, the then President of the Upper Tribunal remarked:-

> *"It is not sufficient for a landlord who has served a counter- notice to say that it puts the RTM company to 'strict proof' of compliance with a particular provision of the Act and then to sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been strictly proved. Saying that the company is put to 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."*

8. The Respondent refers the Tribunal to the case of **Triplerose v Mill House RTM Co.Ltd.** [2016] UKUT 80 (LC) which deals with defects in the procedures by RTM companies and how they should be judged. The Tribunal in this case finds that there has been no procedural defect and this case therefore becomes irrelevant.

9. This is a slightly unusual case in the sense that all the qualifying tenants are members of the Applicant which means, of course, that they will all be fully aware that a Claim Notice is being served.

10. It is also of relevance to say that on the 5th April 2016, according to the Respondent's own statement of case, it was told by the Applicant, in writing, that all the qualifying tenants had been served by 1st class post. The Respondent clearly did not accept that assurance because it then decided to serve a counter notice alleging that no 'proof of service' had been given. There is no requirement to 'give' a copy of the Claim Notice by a specific method of recorded post. Having had an assurance that copies had been sent by 1st class post, one does really wonder what 'proof' the Respondent was looking for.

11. The bundle of documents provided for the Tribunal contains copies of letters written by the Applicant's agents to the qualifying tenants on 30th March 2016 enclosing a copy of the Claim Notice in each case.

Conclusion

12. The Tribunal is satisfied that there has been no procedural defect by the Applicant and it is therefore entitled to manage the property.

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Bruce Edgington
Regional Judge
7th October 2016

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.