



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

Case Reference : **MAN/30UF/LRM/2017/0004**

Property : **111, St Anne's Road East,
Lytham St Anne's FY8 3NF**

Applicant : **111, St Anne's Road East RTM Company
Limited (represented by Elaine Greaves)**

Respondent : **Angela Coombs**

Type of Application : **Commonhold and Leasehold Reform Act
2002, Section 84: Right to manage**

Tribunal Members : **Mr J R Rimmer
Mr J Rostron**

Date of Determination : **4th December 2017**

Date Decision issued : **9th January 2018**

DECISION

- (c) Relevant services by way of pipes, cables and other fixed installations are provided independently to the rest of the building or could be so provided without causing significant disruption to the occupiers of the rest of the building.
- 10 Sections 73-74 set out the requirements of a right to manage "RTM" company what members are required, being qualifying tenants and the freeholder my join if and when the right to manage is acquired.
- 11 Sections 75-77 set out the criteria for being a qualifying tenant for the purposes of the exercise of the right to manage, being an appropriate leaseholder, holding a long lease of a flat that satisfies the criteria set out in Sections 76-77. They are not set out at length here as they did not relate to any issue raised by the parties, or raised any issues that the tribunal was required to address.
- 12 Section 79 provides for what is necessary for a notice of claim to acquire the right to manage a property to be valid and with particular relevance to this instant case Subsection (5) provides that on the relevant date the RTM company must have as its members the two qualifying leaseholders, Ms Greaves and Mr Oliver. The "relevant date" according to Subsection (1) is the date upon which the notice of claim is given.
- 13 Section 80 sets out certain criteria in respect of which the claim notice must be comply (according to the relevant sub-sections):
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which (the Act) applies
- (3) It must state the name of each person who is both:
- (a) The qualifying tenant of a flat contained in the premises and
- (b) A member of the RTM company.
- And the address of his flat
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including-
- (a) the date on which it was entered into
- (b) the term for which it was granted, and
- (c) the date of the commencement of the term.
- 14 Section 84 provides for counter notices served by the Respondent and requiring them to contain a statement either
- (a) Admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) Alleging that by reason of a specified provision of the (Act) the RTM company was on that date not so entitled.

15 Schedule 6 of the Act should also be considered as it relates to the issue of whether or not there is a resident landlord and whether the right to manage is therefore excluded. Paragraph 6 of the Schedule excludes the right to manage in respect of premises if there is a resident landlord and the premises do not contain more than four flats. The term "Resident landlord" refers to a situation where the premises are not a purpose built block of flats and either the freeholder, or an adult member of his family occupy a qualifying flat as his or her only, or main residence.

Hearing and Determination

16 Later on the morning of 4th December 2017 the Tribunal met at the Tribunal Hearing Centre for a hearing requested by the parties.

17 Ms Greaves, assisted by her partner addressed quite simply the issue raised by the Respondent that she was a resident landlord: she was, however, a long leaseholder, not a freeholder to which the entitlement to object to the claim was granted.

18 It then became apparent to all present, including the members of the Tribunal that a further significant issue had arisen in the interval between the issue of the claim notice, the application and the hearing. Michael Oliver, the other shareholder in the Applicant company and the long leaseholder of Flat 2 had since sold his leasehold interest to a new purchaser. It was not immediately apparent, what, if any, effect this had upon the validity of the application. There were no other significant issues raised during the course of the hearing and effectively the Respondent accepted the situation relating to the position of resident landlord and sought to have the Tribunal to consider instead the change of ownership of of Flat 2. The Applicant, in the person of Ms Greaves, accepted that the Tribunal should consider the application from that perspective.

Determination

19 The Tribunal is satisfied that for the purposes of this application and within the terms of the legislation applicable to it the Respondent, although indeed resident in Flat 3, is not a freeholder and able to benefit from the provisions of Schedule 6 to defeat the application.

20 The Tribunal has considered the situation in relation to the sale of Flat 2. This apparently occurred in August 2017, being a date after the claim notice was issued and the application made (see paragraph 4, above).

- 21 The Tribunal can find nothing within the Act to suggest that the right to acquire the right to manage is lost if, after the relevant date, one of the members of the company then ceases to be a qualifying tenant, even if there are only two members. In this case the relevant date is 19th May 2017 and at that time Mr Oliver is a qualifying tenant. This is consistent with the philosophy of the right to manage provisions as there is the prospect that on larger developments there will be a constant flux of sales and purchases.
- 22 In the absence of any other specific objections being raised against the right to manage and the Tribunal finding nothing untoward in the papers submitted to it to suggest any procedural irregularity in the notice, or the service of it, the Tribunal dismisses the objection to the notice and the right to manage is therefore available to the Applicant.