



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

Case Reference : CHI/21UD/HTA/2019/0001

Property : 24 Claremont Hastings East Sussex TN34 1HA

Applicants : Rebekah Gordon-Duffy, Anna Elliott, Lise Mayer

Representative : Not represented

Respondent : Stewart Dawkins

Representative : Not represented

Type of Application : Recognition of a Tenants Association

Tribunal Members : Judge N P Jutton

Date of Decision : 24 April 2019

DECISION

1 Introduction

- 2 The Applicants apply for a Certificate of Recognition of a Tenants' Association pursuant to section 29(1)(b) of the Landlord and Tenant Act 1985. The name of the proposed Tenants' Association is Claremont Residents Association.
3. Directions were made by the Tribunal on 12 February 2019. The Directions identified the following issues to be determined:
 - a. Does the Landlord object to the recognition?
 - b. Is the constitution of the Residents Association adequate having regard to clause 3 of the Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018?
 - c. Who are the current member of the Association?
4. The Directions further provided that the Application would be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the date of receipt of the Directions. No objection has been received and the Tribunal therefore proceeds to determine the Application on the papers without a hearing.
5. The papers before the Tribunal comprise a bundle of documents prepared by the Applicants which include the Applicants' Statement of Case, Directions made by the Tribunal, the Application, the Constitution of Claremont Residents Association, copy Minutes of a Meeting of the Members of the Residents Association, a form of letter signed by all three Applicants addressed to the Respondent dated 2 October 2018 notifying the Respondent of the formation of the Association and other email correspondence between the Applicants and the Respondent.

6. The Law

7. Section 29 of the Landlord and Tenant Act 1985 (the 1985 Act) provides as follows:

“29(1) A recognised tenants' association is an association of qualifying tenants (whether with or without other tenants) which is recognised for purposes of the provisions of this Act relating to service charges either -

(a) by notice in writing given by the landlord to the secretary of the association, or

(b) by a certificate—

(i) in relation to dwellings in England, of the First-tier Tribunal;..... “

8. The Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018 (the 2018 Regulations) set out matters to which the Tribunal is to have regard in giving a certificate. Regulation 3 provides as follows:

“3 the First-tier Tribunal must, in particular, have regard to the following matters in giving a certificate –

- (a) the composition of the members of the tenants' association;*
- (b) the tenants' associations rules regarding membership, including whether tenants who are not qualifying tenants are entitled to become members;*
- (c) the tenants' associations rules regarding decision making;*
- (d) the tenants' associations rules regarding voting;*
- (e) the extent to which any fees or charges payable in connection with membership of the tenants' association apply equally to all members;*
- (f) the extent to which the constitution of the tenants' association takes account for the interests of all members;*
- (g) the extent to which the tenants' association is independent of the landlord of the dwellings to which the association relates;*
- (h) whether the tenants' association has a chairperson, secretary and treasurer;*
- (i) whether the constitution of the tenants' association may be amended by resolution of the members and the rules regarding amendment;*
- (j) whether the tenants' association's constitution, accounts and list of members are—*
 - (i) kept up to date; and*
 - (ii) available for public inspection;*
- (k) the extent to which the association operates in an open and transparent way.*

9. The Applicants' Case

10. The Applicants say that the block in which their flats are situated contains four residential flats held on long Leases only one of which is not owner occupied. The Applicants formed the Claremont Residents Association in September 2018. It comprises three out of four of the

qualifying lessees at the property. The Applicants say that they pay variable service charges to the Respondent. They believe that their Association is fair and democratic and they have produced (annexed to the Application at page C9 of the bundle of documents) a form of constitution. The constitution is dated January 2019. The inaugural meeting of the Association was held on 4 October 2018 at which Ms Gordon-Duffy was appointed Secretary, Ms Anna Elliott, Chairwoman and Ms Lise Mayer a Member. There is no reference to a Treasurer being appointed.

11. The Applicants wrote to the Respondent on 2 October 2018 notifying the Respondent of the formation of the Association and seeking the Respondent's recognition of the Association. The Applicants list in their Statement of Case a number of reasons for forming the Association which include representing lessees on matters of common interest, inspecting accounts and receipts in relation to service charges, being consulted about the appointment or reappointment of managing agents and appointing a surveyor to advise on matters relating to service charges. (The Statement of Case makes reference to the 'articles of the Association' as being annexed, but there is nothing annexed to the Statement of case. It is assumed that is a defence to the 'Constitution' at page C9 of the bundle of documents before the Tribunal).

12. The Respondent's Case

13. The Directions of 12 February 2019 provided that the Respondent should by 5 March 2019 send to the Applicants confirmation as to whether or not he objected to the recognition of the Residents Association together with a signed and dated Statement of Truth setting out the Respondent's position together with copies of any documents that the Respondent relied upon.
14. In the bundle of documents before the Tribunal there does not appear to be a Statement of Case from the Respondent per se. There is however correspondence in the form of emails passing between the Applicants and the Respondent. On 6 March 2019 there is an email from the Respondent to Ms Gordon-Duffy which states "*I have agreed to recognise the Claremont Residents Association and will be sending out a letter to confirm this*". On the same day the Respondent wrote to the Tribunal to say that he was "*very close to reaching a resolution of this matter*". On 15 March 2019 the Respondent wrote to Ms Gordon-Duffy making reference to the definition of tenant contained within section 30 of the Landlord and Tenant Act 1985. The definition of tenant in section 30 includes a statutory tenant which the Respondent contended would include commercial tenancies. That there were commercial tenants at the property said the Respondent who paid variable services charges. The Respondent's argument presumably was that the commercial tenants should be included within the definition of qualifying tenants for the purposes of the formation and recognition of the Tenants' Association. His email of 15 March 2019 went on to say "*that being said, I am content to recognise the association without the need for there to be a Tribunal hearing, which will save all parties costs as I will intend to instruct a Barrister to represent my interests and claim costs if the*

Tribunal agrees with my submissions". The letter goes on to suggest a meeting to "*iron out the remainder of points and so all parties can be satisfied of the set up of the Residents Association*".

15. On 19 March 2019 Ms Gordon-Duffy emailed the Respondent in reply and it appears from that email that she was not clear as to whether or not the Respondent had formally recognised the Residents Association.

16. The Tribunal's Decision

17. The Tribunal agrees with Ms Gordon-Duffy that the Respondent's position in the email correspondence is unclear. On 6 March 2019 he send an email saying that he has agreed to recognise the Claremont Residents Association and will send a letter to confirm. On the same day he writes to the Tribunal however saying that the parties were "*very close to reaching a resolution*". On 15 March 2019 he appears to argue that the commercial tenants on the property should be included and then goes on to suggest that he is nonetheless content to recognise the Association without the need for there to be a Tribunal hearing. However in the same sentence he makes the rather curious statement that he intends to instruct a Barrister to represent his interests and claim costs "*if the Tribunal agrees with my submissions*". In all the circumstances the Tribunal agrees with the Applicants that they were right to take the view that there had not been a recognition of the proposed Residents Association by the Respondent for the purposes of section 29(1)(a) of the 1985 Act and hence the Application to the Tribunal to seek a Certificate pursuant to section 29(1)(b)(i).
18. So for the purposes of the first issue identified above the Tribunal determines that the issue is not per se whether or not the Respondent objects to the Association. The question is whether or not the Respondent has recognised the Association and on balance the Tribunal's view is that the Respondent has not recognised the Association.
19. The Respondent appears to argue that commercial tenants at the property are for the purposes of the 1985 Act qualifying tenants and accordingly should be or qualify to be members of the Residents Association. Ms Gordon-Duffy makes the point in an email to the Respondent dated 8 March 2019 that Section 29A(8) of the 1985 Act for the purposes of that section defines the term "*relevant qualifying tenant*" by reference to the tenant of a dwelling and that commercial tenants are not tenants of dwellings and therefore not relevant qualifying tenants.
20. The reference in Section 30 of the 1985 Act to a statutory tenant is a reference to a statutory tenant or statutory tenancy within the meaning the meaning of the Rent Act 1977 or the Rent (Agricultural) Act 1976 (see Section 37 of the 1985 Act). As such the reference to a statutory tenant does not include as the Respondent contends commercial tenants at the property.

21. In determining whether or not a Certificate should be granted, the Tribunal must have regard to the matters set out at Regulation 3 of the 2018 Regulations.
22. There is annexed to the Application to the Tribunal (at page C9 of the bundle of documents) a document setting out the name and address of the Association and the membership fees. Paragraph 2 of that document is headed "*Our Claremont Constitution*". The paragraph sets out a number of laudable aims. The Tribunal has considered the document by reference to the matters to which it must have regard by reason of Regulation 3 of the 2018 Regulations
23. In the view of the Tribunal the 'Claremont Constitution' as drafted is not a Constitution as such but a list of aims and intentions. As stated while those are no doubt laudable there are a number of matters, having regard to Regulation 3 which the document does not appear to address or in the view of the Tribunal adequately address. Those include:
 1. The rules (if they are rules) regarding membership are vague. There is simply a reference to promoting membership to all people "*eligible to join*".
 2. The rules regarding decision making are not entirely clear. Although there is reference to a majority view and provision for there to be one vote per household, there is no clear mechanism per se for decision making or for governing the decision making process.
 3. There is no reference to there being a chairperson, secretary and treasurer. There is reference in the inaugural meeting of 4 October 2018 to Ms Gordon-Duffy being appointed as secretary and Ms Anna Elliott as chairwoman. There is no reference to a treasurer in those Minutes.
 4. There is no provision which provides as to how the Association's constitution may be amended or to rules governing the process for making amendments.
 5. There is no reference to in the papers before the Tribunal of how the Constitution being is to be up to date or made available for public inspection.
24. In all the circumstances, albeit with some reluctance, the Tribunal having considered carefully the papers before it and the matters to which it must have regard pursuant to Regulation 3 of the 2018 Regulations declines to grant a Certificate of Recognition of the Claremont Residents Association pursuant to section 29(1)(b)(i) of the 1985 Act.
25. It is entirely a matter for the Applicants but if they wish to proceed with their Association they may find it helpful to take advice as to the drafting of a Constitution for their Association having regard in particular to the matters listed at Regulation 3 of the 2018 Regulations. The Tribunal would encourage the parties to continue to communicate and for the

Respondent, Mr Dawkins in the event that a future request is made of him to recognise a Tenants' Association to be clear in his response to that request and if he is minded give notice recognising the Association not to seek to qualify such recognition or to make it conditional.

26. Summary of the Tribunal's Decision

27. The Tribunal declines to grant a Certificate of Recognition of the Claremont Residents Association for the purpose of section 29(1)(b)(i) of the Landlord and Tenant Act 1985.

Dated this 24 day of April 2019

Judge N P Jutton

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.