



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

Case reference : **LON/00AH/LRN/2020/0027**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **18 Langdale Road, Thornton Heath, Croydon, Surrey CR7 7PP**

Applicant : **18 Langdale Road RTM Company Limited**

Representative : **Ms Lorna Morgan
Hamens
(Ref: LM49-01)**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors Limited**

Type of application : **In relation to the denial of the right to manage**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb
Mr A Fonka MCIEH CEngH M.Sc**

Venue : **Remote**

Date of decision : **15 September 2021**

DECISION

Covid-19 pandemic: description of hearing: This has been a remote paper hearing {P: Paper Remote}, which had not been objected to by the parties. The documents the Tribunal referred to are in a single bundle comprising 52-pages submitted jointly by the parties.

Determination

1. **The Tribunal has determined the Right to Manage Claim Notice served on the Freeholder is defective and invalid.**

Application

2. This is an application relating to a right to manage Claim Notice served pursuant to Chapter 1, Commonhold & Leasehold Reform Act 2002 (**'the Act'**) seeking rights to manage 18 Langdale Road, Thornton Heath, Croydon, Surrey CR7 7PP (**"the Property"**).

Background

3. The Applicant, the *18 Langdale Road RTM Company Limited* (**'RTM Company'**) made an application dated 18 June 2020 to seek a determination that on the relevant date, the RTM Company was entitled to acquire the right to manage the Property.
 4. The Property comprises two dwellings situate at 18 Langdale Road, Thornton Heath, Croydon, Surrey CR7 7PP.
 5. The RTM Company issued a Notice of Claim dated 14 May 2020, signed by the qualifying tenants, on Assethold Limited (**'the Respondent'**). Appended to the Notice were copies of the Memorandum & Articles of Association and Certificate of Incorporation of the RTM Company.
 6. The Freeholder's agent served a Counter Notice dated 16 June 2020. This alleged the Notice served by the RTM Company was invalid, because:
 - i. It did not comply with the requirements of the prescribed regulations.
 - ii. The RTM Company was not entitled to acquire the right to manage the premises specified in the Claim Notice because the Notice was not served on each qualifying person as required by the Act.
 - iii. It alleged that due to these defects in the Notice the RTM Company did not have the acquire right to manage the premises.
 7. The RTM Company made an application to the Tribunal on 18 June 2020 for this matter to be Determined.
 8. Directions dated 10 May 2021 were issued by the Tribunal. These identified a single issue to be decided, namely, whether on the date on which the Notice of Claim was served the RTM Company was entitled to acquire the right to manage the premises specified in the Notice.
 9. The Directions identify failures alleged in sections 80(8), 80(9) and 79(8) of the Act.
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10. The Respondent in its statement of reply dated 21 July 2021 withdrew the objection to the Notice under s.79(8).

Legislation

The relevant legislation is as follows:

Commonhold and Leasehold Reform Act 2002

Section 80: Contents of claim notice

- (1) The claim notice must comply with the following requirements.*
 - (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.*
 - (3) It must state the full 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.*
 - (5) It must state the name and registered office of the RTM company.*
 - (6) It 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.*
 - (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.*
 - (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.*
 - (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.*
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Section 81 Claim notice: supplementary

- (1) *A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.*

Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010/825

4: Additional content of claim notice

A claim notice shall contain, in addition to the particulars required by section 80(2) to (7) (contents of claim notice) of the 2002 Act—

- (c) *a statement that the notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act or this regulation, but that a person who is of the opinion that any of the particulars contained in the claim notice are inaccurate may—*
- (i) *identify the particulars in question to the RTM company by which the notice was given; and*
- (ii) *indicate the respects in which they are considered to be inaccurate;*
- (d) *a statement that a person who receives the notice but does not fully understand its purpose, is advised to seek professional help; and*
- (e) *the information provided in the notes to the form set out in Schedule 2 to these Regulations.*

8: Form of notices

- (1) *Notices of invitation to participate shall be in the form set out in Schedule 1 to these Regulations.*
- (2) *Claim notices shall be in the form set out in Schedule 2 to these Regulations.*
- (3) *Counter-notices shall be in the form set out in Schedule 3 to these Regulations.*

A copy of the prescribed Notice is appended at Annex A

The RTM Company's submission

11. The RTM Company referred the tribunal to authority **Elim Court RTM Company Limited –v– Avon Freeholds Limited**. This authority is relied upon by the Applicants as it directs that a claim notice that does not comply with all of the statutory requirements of the Act may still be valid. The RTM Company specifically referred to the following:

'Lastly, there may be a distinction to be drawn between the failure to satisfy jurisdictional or eligibility requirements on the one hand and purely procedural requirements on the other.'

12. The Respondent identified that the Claim Notice was submitted without the signatures of the RTM Company officers. The RTM Company claimed there was no explicit requirement in the Right to Manage Prescribed Particulars & Forms (England Regulations 2010) ('**the Regulations**') that a claim notice must be signed. A copy of the prescribed Claim Notice is appended to this decision at Annex A.
13. The RTM Company also relied on s.81(1) of the Act and note 9 of the prescribed form. This states that the notice is not invalidated by any inaccuracy in any of the particulars required under the Act. They assert the inaccuracies and errors in the Claim Notice are not fatal to the validity of the notice.
14. The RTM Company also referred the Tribunal to paragraph 4(c) of the Regulations, which require any person who is of the opinion that any of the particulars contained in a claim notice are inaccurate may identify the particulars in question and advise the Applicants.
15. The RTM Company alleges the first notification they received the Respondent had identified erroneous details or content within the Claim notice, was in the Respondent's statement of case. This was submitted in response to the application made by the RTM Company to the Tribunal.

The Respondent's evidence

16. The Respondent submits that the Claim Notice must be in the prescribed form and this includes all relevant notes.
 17. The Respondent has relied upon s.80(9) of the Act, which states:

'Must comply with such requirements, if any, about the form of claim notices, as may be prescribed by Regulation so made.'
 18. The form of a claim notice is prescribed by Schedule 2 of the 2010 Regulations.
 19. The prescribed Claim Notice form includes notes. The Claim Notice also has a signature space and requirement.
 20. Paragraph 8 of the 2010 Regulations specifies the form of notices for the purposes of the 2002 Act.
 21. Paragraph 8, (2) provides that:

'Claim notices shall be in the form set-out in schedule 2.'
 22. The Respondent alleges the failure to sign the document was in breach of s.80. The Respondent also alleges that the omission of an entire paragraph contained within the prescribed format invalidates the notice. The Respondent alleges it cannot be remedied by reliance upon s.81(1) of the 2002 Act.
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23. The Respondent asserts that the omission of a notes paragraph in the Claim Notice does not constitute an inaccuracy. The Respondents describe an inaccuracy as a spelling mistake or typographical error but the complete omission of a prescribed paragraph is not an inaccuracy but a failure in compliance with statute.
24. The Respondent referred to the decision **Triple Rose Limited –v– Mill Hill House RTM Company Limited 2006 (UKUT/80(LC))**. This Upper Tribunal decision, is prescriptive about the use of prescribed notes within any statutory notice. This Decision held that:

'As a matter of construction of the statutory scheme, the inclusion of the notes in a prescribed form is essential in the validity of a notice of invitation to participate.'

Discussion and conclusion

25. The Tribunal is satisfied that a number of inaccuracies and errors exist in the Claim Notice.
26. The Tribunal has identified two failures in the RTM Company's Notice, namely: -
- i. the lack of a signature by a registered authority of the Company (signature of authorised member or officer); and
 - ii. the omission of the paragraph 1 in the Notes section, which referred to appropriate procedure to be followed should a landlord not be traceable.
27. The Tribunal has carefully weighed the evidence presented by the parties and reviewed the relevant law and submitted authorities.
28. The Tribunal acknowledges that in the recent past, physical signature of notices has proven very difficult to achieve under Covid-19 restrictions.
29. The Tribunal does not see this as a fatal flaw, particularly as the covering letter was signed by an authorised officer of the RTM Company.
30. The Tribunal is concerned that the prescribed form for the Claim Form, as specified by the 2010 Regulations, was not used by the RTM Company in making the Notice. The paragraph note 1 was omitted from the submitted Notice.
31. The Tribunal relies upon the Upper Tribunal guidance that confirms the requirement to use a prescribed form in a statutory notice. This was not done by the RTM Company.
32. The Tribunal accepts that the lack of signature is not a fatal flaw in the Claim Notice. However, the Tribunal is unable to accept that failure to use the prescribed form is an error or an inaccuracy which can be remedied by s.81(1)(a) of the Act. The Claim Notice served by the RTM Company failed to satisfy the requirements of s. 80(9) of the Act and the Tribunal therefore determines that the Notice is invalid.
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Name: Ian Holdsworth **Date:** 14 September 2021
Valuer Chairman

Annex A Prescribed Notice

CLAIM NOTICE

To *[name and address]* **(See Note 1 below)**

1. *[Name of RTM company]* (“the company”), of *[address of registered office]*, and of which the registered number is *[number under Companies Act 2006]*, in accordance with Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) claims to acquire the right to manage *[name of premises to which notice relates]* (“the premises”).

2. The company claims that the premises are ones to which Chapter 1 of the 2002 Act applies on the grounds that *[state grounds]*. **(See Note 2 below)**

3. The full names of each person who is both—

- (a) the qualifying tenant of a flat contained in the premises, and
- (b) a member of the company,

and the address of that person’s flat are set out in Part 1 of the Schedule below.

4. There are set out, in Part 2 of the Schedule, in relation to each person named in Part 1 of the Schedule—

- (a) the date on which that person’s lease was entered into,

- (b) the term for which it was granted,
- (c) the date of commencement of the term
- (d) *such other particulars of the lease as are necessary to identify it.

*may be ignored if no other particulars need to be given.

5. If you are—

- (a) landlord under a lease of the whole or any part of the premises,
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 to act in relation to the premises, or any premises containing or contained in the premises,

you may respond to this claim notice by giving a counter-notice under section 84 of the 2002 Act. A counter-notice must be in the form set out in Schedule 3 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. It must be given to the company, at the address in paragraph 1, not later than *[specify date not earlier than one month after the date on which the claim notice is given]*. If you do not fully understand the purpose or implications of this notice you are advised to seek professional help.

6. The company intends to acquire the right to manage the premises on *[specify date, being at least three months after that specified in paragraph 5]*.

7. If you are a person to whom paragraph 5 applies and—

- (a) you do not dispute the company's entitlement to acquire the right to manage; and
- (b) you are the manager party under a management contract subsisting immediately before the date specified in this notice,

you must, in accordance with section 92 (duties to give notice of contracts) of the 2002 Act, give a notice in relation to the contract to the person who is the contractor party in relation to the contract and to the company. (**See Note 3 below**).

8. From the date on which the company acquires the right to manage the premises, landlords under leases of the whole or any part of the premises are entitled to be members of the company (**See Note 4 below**).

9. This notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act or regulation 5 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. If you are of the opinion that any of the particulars contained in the claim notice are inaccurate you may notify the company of the particulars in question, indicating the respects in which you think that they are inaccurate.

SCHEDULE

PART 1

FULL NAMES AND ADDRESSES OF PERSONS WHO ARE BOTH QUALIFYING TENANTS AND MEMBERS OF THE COMPANY

[set out here the particulars required by paragraph 3 above]

PART 2

PARTICULARS OF LEASES OF PERSONS NAMED IN PART 1

[set out here the particulars required by paragraph 4 above]

Signed by authority of the company,

[Signature of authorised member or officer]

[Insert date]

NOTES

1. A claim notice (a notice in the form set out in Schedule 2 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010 of a claim to exercise the right to manage specified premises) must be given to each person who, on the date on which the notice is given, is—

- (a) landlord under a lease of the whole or any part of the premises to which the notice relates,
- (b) party to such a lease otherwise than as landlord or tenant, or
- (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 to act in relation to the premises, or any premises containing or contained in the premises.

But notice need not be given to such a person if he cannot be found, or if his identity cannot be ascertained. If that means that there is no one to whom the notice must be given, the company may apply to a leasehold valuation tribunal for an order that the company is to acquire the right to manage the premises. In that case, the procedures specified in section 85 of the 2002 Act (landlords etc not traceable) will apply.

2. The relevant provisions are contained in section 72 of the 2002 Act (premises to which Chapter 1 applies). The company is advised to consider, in particular, Schedule 6 to the 2002 Act (premises excepted from Chapter 1).

3. The terms “management contract”, “manager party” and “contractor party” are defined in section 91(2) of the 2002 Act (notices relating to management contracts).

4. Landlords under leases of the whole or any part of the premises are entitled to be members of the company, but only once the right to manage has been acquired by the company. An application for membership may be made in accordance with the company’s articles of association, which may be inspected at the company’s registered office, free of charge, at any reasonable time.

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.