



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

Case reference : **CAM/36UF/LRM/2022/0001**
HMCTS Code : **P: PAPER REMOTE**

Property : **221 Regent Street Kettering NN16
8QH**

Applicant : **Regent Street RTM Company
Limited**

Representative : **The Leasehold Advice Centre**

Respondent : **Assethold Limited**

Representative : **Scott Cohen Solicitors**

Type of application : **Application in relation to the denial
of the Right to Manage**

Tribunal member(s) : **Judge Wayte**

Date : **20 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not necessary and all issues could be determined on paper, using the bundle of 169 pages provided by the applicant. The order made is described below.

(1) The tribunal determines that the applicant was on the relevant date entitled to acquire the right to manage the relevant premises pursuant to section 84(5)(a) of the Commonhold and Leasehold

Reform Act 2002, and the applicant will acquire such right three months after this determination becomes final.

(2) The tribunal also orders the respondent to pay the applicant £100 in respect of their tribunal fees.

The application

1. This was an application under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) for a determination that, on the relevant date, Regent Street RTM Company Ltd was entitled to acquire the Right to Manage (“RTM”) premises known as 221 Regent Street, Kettering, NN16 8QH.
2. By a claim notice served by first class post on 29 December 2021, the applicant gave notice to the respondent that it intended to acquire the right to manage the premises on 10 May 2022.
3. By counter-notice dated 31 January 2022, the respondent disputed the claim. Two objections were raised under the 2002 Act: that the notice of invitation inviting participation in the RTM had not been given to each person required by sections 78(1) and 79(2); and that the company was not entitled to acquire the RTM as the claim notice did not correctly provide the information required by section 80(3), which refers to qualifying tenants.
4. The application was dated 24 February 2022. Directions were issued on 11 April 2022 for a paper determination in the absence of a request for a hearing. No such request was received.

The respondent’s case

5. The respondent’s statement of case is dated 5 May 2022. They stated that Matthew Stephen Jones, the qualifying tenant named in the claim notice who remains a member of the applicant company, sold his interest in his flat (number 6) on 30 November 2021. As evidence they produced a copy email chain and office copy entries of the leasehold title showing applications pending. They relied on the Upper Tribunal decision in *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Company Ltd and another* [2020] UKUT 358 (LC) in support of their case that failure to give notice of invitation to a qualifying tenant invalidated the claim notice.
6. The emails had been redacted and it was therefore impossible to see the name of either the alleged purchaser of the flat or their solicitors, however they appear to confirm that flat 6 was sold on 30 November 2021. The office copy entries of the leasehold title were dated 17 December 2021 and confirmed that applications were pending against the title, with the application enquiry detailing JS Law Limited as the company that had lodged the application.

7. It followed that if Matthew Stephen Jones was no longer a qualifying tenant, there was an error in the claim notice which identified him as such (section 80(3) of the 2002 Act).

The applicant's reply

8. The Leasehold Advice Centre responded to that statement of case on 13 May 2022 reiterating that Matthew Stephen Jones remained the qualifying tenant as at that date, enclosing office copy entries issued on 9 May 2022 which still showed Matthew Stephen Jones as the proprietor of the lease to flat 6.
9. The statement and further particulars of their application dated 24 February 2022 stated that the respondent's allegation that the flat had been sold and registered to another party was incorrect. It also applied for the reimbursement of any tribunal fees on the basis that the objection should have been withdrawn at an earlier stage.

The tribunal's decision and reasons

10. This case is something of a puzzle as the respondent's evidence appeared to support their claim that the flat had been sold, with an application pending with the Land Registry back in December 2021. That said, the office copy entries dated 9 May 2022 still show Matthew Stephen Jones as the leasehold owner of flat 6 and in the circumstances, the respondent has failed to establish its objection to the satisfaction of this tribunal. It follows that the applicant was on the relevant date entitled to acquire the right to manage the property pursuant to section 84(5)(a) of the Act.
11. Therefore, in accordance with section 90(4), the acquisition date is the date three months after this determination becomes final. According to section 84(7):
 - “(7) A determination on an application under subsection (3) becomes final—
 - (a) if not appealed against, at the end of the period for bringing an appeal, or
 - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.”
12. Although there would appear to have been grounds to raise a query as to entitlement in this case, given the failure to engage with the applicant's rebuttal of their objection at an earlier stage, I also agree with the applicant that this is an appropriate case to exercise the tribunal's discretion under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to order the respondent to reimburse the application fee of £100.

Name: Judge Wayte

Date: 20 June 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).