FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LRM/2017/0011**
Property	:	**Charlotte Court, 68b Old Kent Road, London, SE1 4NU**
Applicant	:	**The Charlotte Court (London) RTM Company Limited**
Representative	:	**Colman Coyle Limited, solicitors**
Respondent	:	**Bernard Construction Limited**
Representative	:	**Residential Block Management Services Limited**
Type of application	:	**Application in relation to the denial of the Right to Manage**
Tribunal member(s)	:	**Judge Amran Vance**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of Interim Decision	:	**19 June 2017**
Date of Final Decision	:	**11 July 2017**

FINAL DECISION

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Final Decision of the tribunal

1. The tribunal's final decision is that it does not have jurisdiction to determine this application.

Background

2. This is an application by the applicant RTM company ("the Company") under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that it was on the relevant date (the date when notice of claim was given to the respondent) entitled to acquire the right to manage premises known as Charlotte Court, 68b Old Kent Road, London, SE1 4NU ("the Premises"). The Premises is a former school building that has been converted into 30 residential flats which are let on long leases.

3. I made an interim decision on this application on 19 June 2017 in which I concluded that my interim view was that the tribunal did not have jurisdiction to determine this application. A copy of that interim decision is annexed to this decision as Appendix 2.

4. Directions were issued by the tribunal on the same day which provided as follows:

> 1. *The **respondent** shall, by **4 July 2017**, send to the tribunal and to the applicant any further representations it wishes to make in respect of this application including any witness evidence and documents on which it intends to rely.*
>
> 2. *The **applicant** may send a supplementary reply together with any signed witness statements of fact and documents on which it intends to rely to the respondent and to the tribunal by **18 July 2017**.*
>
> 3. *Either party may request a hearing of this application, such request to be made by **11 July 2017**. If an oral hearing is requested, it will take place at 10 Alfred Place, London WC1E 7LR on **Wednesday 2 August 2017** from **1.30 pm** with a time estimate of 1 to 2 hours.*
>
> 4. *If no request for a hearing is made the tribunal will consider any further written representations and evidence submitted by the parties and will then issue its final decision.*

5. Neither party requested an oral hearing. I have therefore considered this application on the papers before me.

6. In my concluding comments at paragraphs 25 and 26 of the interim decision I explained that the reason why an interim decision was being issued was because: (a) the decision was being made without the benefit of an oral hearing; (b) because the respondent had not had the opportunity to respond to a witness statement served by Mr Eddis on behalf of the applicant and (c) because of the dispute of fact between the applicant and RBMS as to whether the relevant counternotice was served with the authority of the respondent.

7. The respondent was therefore accorded an opportunity to provide clear and compelling evidence in support of its contention that RBMS had the respondent's authority to serve a counternotice on the respondent's behalf. It also had the opportunity to request a hearing to adduce oral evidence on that point.

8. Despite this opportunity, the only document received by the tribunal from the respondent since the date of its directions of 19 June 2017 is a document entitled "Respondents Further Amended Statement" which was received on 20 June 2017. As the tribunal's directions were only sent to the parties on 20 June 2017 ,it is evident that this document was not sent by the respondent in response to the tribunal's directions of 19 June but, rather, that the respondent hoped that it would be considered by the tribunal before reaching its decision on the application. The tribunal had not previously granted the respondent permission to rely on further evidence, its previous directions providing that the respondent's statement in response should be sent to the applicant by 12 May 2017.

Decision and Reasons

9. I have, nevertheless, considered the contents of the respondent's Further Amended Statement before reaching this final decision. Much of its contents repeat points raised in its previous statement received by the tribunal on 18 May 2017. The only matter raised by the respondent in the Further Amended Statement which is relevant to the question of the tribunal's jurisdiction to determine this application concerns an email dated 3 March 2017 from RBMS to Mr Mario Bernard in the respondent company. In that email, Mr McDonnell at RBMS, responds to comments made by the applicant's solicitors disputing validity of the counternotice sent by RBMS to the applicant.

10. Whilst I accept that the contents of the email of 3 March 2017 evidences that RBMS sent a counternotice to the applicant and that it considered that service of the counternotice was valid, I am not persuaded that it amounts to evidence that RBMS were authorised to serve a counternotice *on behalf of the respondent* as opposed to RBMS serving

the counternotice on its own behalf. The respondent has had an opportunity to provide witness or other documentary evidence verifying that it acted with the respondent's authority and to request a hearing so that oral evidence to that effect can be presented to the tribunal but has elected not to do so.

11. I therefore see no reason to alter the conclusion I reached at paragraph 19 of my interim decision, namely that that RBMS were not a party to whom a claim notice needed to be served under Section 79(6) of the Act and that it was therefore not entitled, in its own right, to serve a counter-notice under section 84(1). As a result, and for the reasons stated in the interim decision, the tribunal does not have jurisdiction to determine this application.

12. The attached interim decision is therefore made final.

Name: Amran Vance **Date:** 11 July 2017

APPENDIX 1 - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

APPENDIX 2 – INTERIM DECISION DATED 19 JUNE 2017

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
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Tribunal member(s)	:	**Judge Amran Vance**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of Interim Decision	:	**19 June 2017**

INTERIM DECISION

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Interim decision of the tribunal

1. The tribunal's interim decision is that it does not have jurisdiction to determine this application.

Background

2. This is an application by the applicant RTM company ("the Company") under section 84(3) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that it was on the relevant date (the date when notice of claim was given to the respondent) entitled to acquire the right to manage premises known as Charlotte Court, 68b Old Kent Road, London, SE1 4NU ("the Premises"). The Premises is a former school building that has been converted into 30 residential flats which are let on long leases.

3. The freehold interest in the Premises lies with the respondent. It appears that Residential Block Management Services Limited ("RBMS") have been acting as its managing agents.

4. By a claim notice dated 12 January 2017, the applicant gave notice to the respondent company that it intended to acquire the Right to Manage the Premises on 22 May 2017. The claim notice was sent to 962 Eastern Avenue, Ilford, Essex, IG2 7JD which is the address specified as being the address for service of notices on the respondent as given in a service charge demand included in the applicant's hearing bundle.

5. In a counter-notice sent under a cover of a letter from RBMS dated 13 February 2017, RBMS disputed the claim, alleging several defects with the service of the Notice of Intention to Participate ("NIP") sent by the applicant to qualifying lessees in the Premises and also alleging that the Notice of Claim was served less than 14 days after the NIP was sent. The counternotice is signed by Carl McDonnell of RBMS and contains the following endorsement after his signature:

   "Signed authority of the company on whose behalf this notice is given: RBMS, 54-50 Royal Parade Mews, Blackheath, London, SE3 0TN.

6. Mr McDonnell has also signed the counternotice in a second place immediately after the words "(*Duly authorised*"). Nowhere in the counternotice is it stated that the notice is signed by RBMS for or on behalf of the respondent company and the respondent's company's name does not appear anywhere in the counternotice.

The Respondent's Case

7. The respondent asserts that it was instructed by the respondent to serve a counternotice and alleges that:

   (a) the claim notice was defective as it should have been sent to the respondent's registered office address;

   (b) the applicant failed to respond to its requests for copies of the NIPs sent to qualifying tenants as well as other requests for information;

   (c) it was possible that the NIPs were not sent to all lessees and that those who did receive a NIP may not have had the ability to inspect documents relevant to the intended claim as required by section 78 of the Act.

   (d) the NIP was not in the form prescribed in Statutory Instrument (2010 No 825) and did not comply with the requirements of section 78 of the Act;

   (e) the claim notice may have been served within 14 days of the NIP.

The Applicant's Case

8. The applicant's primary case is that the counternotice served by RBMS was invalid because it did not provide that it was signed by RBMS as agent of the landlord and, in fact, made no mention of the landlord at all.

9. It refers to the contents of the covering letter sent by RBMS on 13 February 2017 which refers to *"our"* counternotice and that the covering letter was signed *"for and on behalf of Residential Block Management Services"* and suggests that RBMS served the counternotice on the mistaken understanding that they were entitled to do so on its own behalf when, in fact. It was not entitled to do so.

10. The applicant also suggests that the counternotice was, in any event, invalid as it did not comply with the requirement set out in section 84(2)(b) of the Act to contain a statement alleging why, by reason of a specified provision of the Act the relevant chapter of the Act, the applicant was not entitled to acquire the right to manage.

11. It also rejects the applicant's challenges to the validity of the NIPs as being based on pure speculation. It explains that the NIPs were hand delivered to all of the qualifying lessees by Mr Charles Eddis as

evidenced in his witness statement filed in these proceedings and that all the required statutory information was included.

12. It contents that the claim notice was correctly served at the address provided for the service of notices under sections 47 and 48 Landlord and Tenant Act 1987.

The Law

13. Section 79(1) of the Act provides that a claim to acquire the right to manage any premises is made "by giving notice of the claim (referred to in this Chapter as a "claim notice. Section 79(2) provides that the "claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before". Section 79(6) provides that the claim notice must be given to each person who on the relevant date is a "landlord under a lease of the whole or any part of the premises" or a "party to such a lease otherwise than as landlord or tenant" or "a manager appointed under Part 2 of the Landlord and Tenant Act 1987 ... to act in relation to the premises ...". Section 79(8) provides that a copy of the claim notice "must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises".

14. Section 84 of the Act deals with counter-notices and provides, in subsection (1), that a person who is given a claim notice by a RTM company under section 79(6) may give a "counter-notice" to the RTM company "no later than the date specified in the claim notice under section 80(6)". Section 84(2) provides that a counter-notice is a notice containing 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 this Chapter, the RTM company was on that date not so entitled".

26. Section 111 of the Act provides for the form and service of notices and states that:

(1) Any notice under this Chapter

(a) must be in writing, and
(b) may be sent by post.

(2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole or any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).

(3) That address is—

(a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or

(b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).

(4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.

(5) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.

The tribunal's decision and reasons

15. The tribunal's jurisdiction, as far as this application is concerned, is derived from section 84(3) of the Act which enables an RTM company who has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) to apply this tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

16. The applicant has, of course, received a document from RBMS which purports to be a counter-notice under the Act. However, I interpret section 84(1) as providing that only a person who is given a claim notice by a RTM company under section 79(6) may serve a counter-notice.

17. Section 79(6) requires a claim notice must be given to three classes of persons, namely: (a) a landlord under a lease of the whole or any part of the premises; (b) a "party to such a lease otherwise than as landlord or tenant"; and (c) "a manager appointed under Part 2 of the Landlord and Tenant Act 1987 ... to act in relation to the premises ...".

18. RBMS are not the landlord of the Premises, nor are they a party to the lease or, it would, appear a manager appointed under the provisions pf Part 2 of the 1987 Act. I note that on 20 February 2017 the applicant's solicitors wrote to RBMS inviting them to evidence on what basis it was entitled to serve a counter notice and inviting them to provide any documentation to support the contention that they were a court-appointed manager. I have seen no response to that letter and the

respondent has not asserted in its statement of case in reply to this application that RBMS are a court appointed manager.

19. I conclude that RBMS were not a party to whom a claim notice needed to be served under Section 79(6) and that it was therefore not entitled, in its own right, to serve a counter-notice under section 84(1),

20. That is not to say that RBMS were unable to serve a counternotice on behalf of the respondent freeholder. There is no requirement for the counternotice to be signed by the freeholder itself and I consider that Mr McDonnell would have been entitled sign the counternotice and serve it on behalf of the respondent if he had, in fact, been authorised to do so.

21. However, there is no evidence aside from the bare assertion in the statement of case lodged by RBMS that it was so authorised by the respondent. As pointed out by the applicant, the counter-notice is expressed to have been signed by Mr McDonnell on behalf of RBMS and the covering letter dated 13 February 2017 refers to "our" counternotice with the words "for and on behalf of Residential Block Management Services" appearing below Mr McDonnell's signature in that letter. Nowhere in the letter or the counternotice is it stated that RBMS were authorised by the respondent to serve the counternotice.

22. At paragraph 12 of the witness statement from Mr Charles Eddis dated 31 May 2017, served on behalf of the applicant, he states that he met with Mr Mario Bernard from the respondent company on 25 May 2017 at which Mr Bernard unequivocally confirmed that he had not authorised RBMS to act as its agent in this matter. Whilst this is heresy evidence and carries limited evidential weight given this interim decision has been reached on the papers without oral evidence, it supports the applicant's assertion that RBMS did not have the respondent's authority to serve the counternotice. Coupled with RBMS's failure to identify that it was so authorised in either the claim notice or its accompanying covering letter I am satisfied, on the available evidence, that RBMS did not have such authority and therefore no counternotice has been served by the respondent on the applicant.

23. As no counter-notice has been served, the tribunal does not have jurisdiction under section 84(3) to determine this application.

24. Given that conclusion it would be inappropriate for me to make any determination considering the other substantive points made by the applicant and the respondent about the validity or otherwise of the claim notice and counter notice.

Concluding Comments

25. This decision has been made without the benefit of a hearing and without hearing oral evidence. I am also conscious that the respondent has not had the opportunity to respond to the witness statement of Mr Eddis and that there was a dispute of fact between the applicant and RBMS as to whether the counternotice was served with the authority of the respondent.

26. For these reasons, this decision will be issued as an interim decision and not a final determination. Directions will be issued separately providing for either party to make further written representations before the decision is made final and also allowing for either party to request an oral hearing before the tribunal's final determination is issued.

Name: Amran Vance **Date:** 19 June 2017