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

Case reference : LON/00AZ/LRM/2018/0036

Property : Regency Court Glenville Grove
London SE8 4AP

Applicant : Regency Court Glenville Grove
RTM Company Limited

Representative : Mr John Fowler of Stock Page
Stock

Respondent : Xylem Limited

Representative : Cain Associates; Licensed
Conveyancers

Type of application : Right to manage – Part 2, Chapter 1
of the Commonhold and Leasehold
Reform Act 2002

Tribunal member : Judge Professor Robert M. Abbey

Venue : 10 Alfred Place London Wc1E 7LR

Date of decision : 26th February 2019

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act, and the Applicant will acquire such right within three months after this determination becomes final.

The application

1. This was an application to acquire the right to manage **Regency Court Glenville Grove London SE8 4AP** ("the premises") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. The application to the Tribunal was dated 19 November 2018. Previously a claim notice had been served by the Applicant on the Respondent on 23 August 2018. The Respondent freeholder served an undated counter-notice with a letter from their representatives dated 18 September 2018 asserting that the Applicant RTM Company was not on the relevant date entitled to acquire the right to manage.
3. The basis for the counter notice was that the Respondent asserted that the Applicant had failed to establish compliance with section 79(5) of the Act. This section provides that:-

"In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained".

However, the counter-notice lacked any further details or required particularisation for the grounds of the counter-notice. Thus, the Tribunal has a single issue to determine namely whether on the date on which the notice of claim was given the Applicant was entitled to acquire the Right to Manage the premises specified in the notice.

4. Directions were issued by the tribunal on 4 December 2018 and 22 January 2019. On the 15 January 2019 the respondent issued their statement in response to the application. On the 5 February the applicant supplied evidence in support of the application.

The law

5. The relevant provisions of the Act are referred to in the Decision below and are also set out in the schedule to this decision. Rights of appeal are set out in an annex to this decision.

The Tribunal's decision

6. The respondent seeks to assert that the applicant has not complied with section 79(5) as set out above. The applicant supplied to the tribunal a bundle of papers forming the evidence in support of the application. It purported to show details of the nine persons who the applicant says requested membership of the RTM company. The applicant supplied

copies of the letters of invitation to participate. The applicant also conceded that of the nine one, Christopher David Birch, had in fact sold his property on the 6th August 20128 and could not therefore participate. However, the applicant still maintains that this would still leave 8 members of a 12 block property.

7. Having considered the documents in the bundle, the Tribunal has made the following decision.
8. The tribunal took time to peruse the paperwork supplied by the applicant. On looking at the documentation in detail the tribunal was satisfied that there were indeed nine participants, albeit subsequently reduced to eight. Therefore the tribunal was satisfied that there was over one half of the flats involved with the RTM company and that this being so it was clear to the tribunal that section 79(5) has been complied with.

Decision Summary

9. The Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act. Therefore, in accordance with section 90(4) within three months after this determination becomes final the Applicant will acquire the right to manage these premises. 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.”

Costs

10. Section 88(3) of the Act states:

“(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation Tribunal only if the Tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.”

11. In the light of the Tribunal’s decision, there is no question of awarding any costs of the proceedings to the Respondent because the application for the right to acquire has not been dismissed.

Name: Judge Professor Robert M.
Abbey

Date: 26 February 2019

Annex

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).

The Schedule

Commonhold and Leasehold Reform Act 2002

79 Notice of claim to acquire right

(1) 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"); and in this Chapter the "relevant date", in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.

(2) 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.

(3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).

(4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.

(5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.

(6) 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,

(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 (c. 31) (referred to in this Part as "the 1987 Act") to act in relation to the premises, or any premises containing or contained in the premises.

(7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.

(8) 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.

(9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

84 Counter-notices

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).

(2) 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,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(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.

(8)An appeal is disposed of—

(a)if it is determined and the period for bringing any further appeal has ended,
or

(b)if it is abandoned or otherwise ceases to have effect.