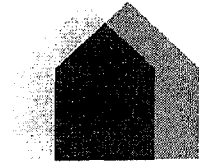


LON/00BG/LRM/2008/0006



Residential
Property
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
ON AN APPLICATION UNDER SECTION 84(3) OF THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Applicant: 40 Hackney Road RTM Company Limited

Represented By: Canonbury Management Ltd

Respondent: Kedai Limited

Represented By: Sterling Estates Management

Address of Property: Flats 1-14
40 Hackney Road
London
E2 7PA

Application: To determine the validity of a claim notice served by the Applicants under section 79 of the Commonhold and Leasehold Reform Act 2002

Hearing date: 1st September 2008

Appearances:

Mr David Seex

For the Applicants

Mr S Ahmed

For the Respondents

Members of the Residential Property Tribunal Service:

Mrs M Daley (LLB Hons)

Mr C White FRICS

The Application

1. On 10 June 2008 the Tribunal received an application on behalf of 40 Hackney Road, RTM Company Ltd for a determination under section 84(3) of the Commonhold and Leasehold Reform Act 2002("the Act") that it was entitled to acquire the right to manage (in accordance with the Act). The Notice of Claim was served on or about 27/03/ 2008.
2. The Applicant received a Counter-Notice dated 21 April 2008, from the Respondent denying the Applicant's right to manage on the basis that the Applicant had failed to comply with section 78 of the Commonhold and Leasehold Reform Act 2002 (The Act) The Respondent stated that "*The Applicant had intentionally failed to notify all such qualifying tenants as prescribed within the Act*".
3. The notice alleged that the Applicant had acted '*intentionally*' and that such a qualifying tenant had been "*discriminated against in participating in the application*".
4. Directions were given on 9 July 2008. The Directions stated:-

"...The issue for determination of the Tribunal is 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..."

Documents Received

The Tribunal was provided with a bundle of documents from the Applicant and a separate bundle from the Respondent

The Law

- (i) Section 78-81 of the Commonhold and Leasehold Reform Act 2002
- (ii) Section 111 of the Commonhold and Leasehold Reform Act 2002
- (iii) Regulation 8 of and Schedule 3 to the Right to Manage (Prescribed Particulars and Forms England Regulations 2003

The Hearing

5. The Tribunal considered a number of documents from the parties, in particular a witness statement from Mr R McElroy director of Cannonbury Management dated 9 June 2008 and the Respondents statement of case dated 25 July 2008.
6. The Respondent in their Statement of Case, at paragraph 7 stated “ *Upon receipt of the Claim Notice the Respondent instructed their Managing Agents to investigate the validity and it was discovered that the Applicant had in fact failed to given Notice of Participation to every qualifying tenant*”. In support of their contention the Respondent had included a copy of an email dated 2/04/08 from Daniel (Derbyshire) of flat 4 which stated that *He could confirm that he had received no notice.*
7. In his witness statement Mr McElroy stated that he was able to confirm that an invitation notice in compliance with section 78, was sent to all non-participating tenants on 10/3/08 and that this was sent by first class post. A copy of the non-participating tenants, which included Mr Derbyshire, was attached to the Witness statement.
8. The Tribunal heard oral evidence from Mr Seex on behalf of the Applicant, which was supplemented by documents supplied by Cannonbury Management on the Applicant’s behalf. Mr Seex stated that he had been involved in the process from the outset, which had been driven as a result of dissatisfaction from the Lessees in the way in which the property was being managed, in particular he stated that there had been a number of changes in managing agents, (although he had no particular concerns with Sterling Estates Management).
9. He stated that this had lead to him and other tenants considering the alternatives and had decided to set up a Right to Manage company. He described the arrangements used by the tenants to communicate through an informally constituted Residents Association, and stated that he had contacted all of the Lessees of the block of flats and invited them to join

and some, including Mr Derbyshire had expressed a wish not to participate in the company.

10. He stated that Cannonbury Management had complied with the requirements, in the Act, by using first class postage and stated that he was aware of at least one of the flats that had included a non-participating tenant, receiving an Invitation to Participate. This information was given to him by the tenant of flat 6 who had purchased flat 5 from a non-participatory tenant). Mr Ahmed on behalf of the Respondent's criticised this and invited the Tribunal to question whether such a notice had been validly served,(as the date was then in issue if it had been received by the tenants of the purchaser) .
11. Mr Ahmed also stated that his colleague had spoken with Mr Derbyshire and had had to explain the Right to Manage process, as Mr Derbyshire had been unaware of what it entitled. He had stated that his Management Company had been involved in Right to Manage cases and that there approach was to send notice first class and by recorded delivery and keep a record of postage.
12. Mr Seex stated that Mr Derbyshire would have been aware of the process because his earlier communication with Mr Derbyshire and Mr Derbyshire had given Mr Seex to believe that he had some property expertise. On behalf of the Landlord Mr Ahmed stated that the landlord was genuinely concerned that tenants might not have been notified and might not understand the implications of the Right to Manage process, especially as there were controversial fire safety works that needed to be undertaken which some of the participating tenants had been unhappy about.

13. The Decision of the Tribunal

14. The Tribunal made the following determinations -:

15. The Tribunal have considered the requirements for the service of the Notice of Invitation to Participate set out in section 78. The Requirements are in two parts, the requirements under section 78,(which are not in issue before the Tribunal), and the manner in which the notice must be served
16. . Section 111 (1) of the Act states that the notice (a) must be in writing (b) may be sent by post. Section 111 (5) further states:- "*A company which is a RTM company up 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.*"
17. The Act does not require any additional means of service, or indeed proof of receipt. In the absence of any further requirement on the Applicant in respect of giving notice, the Tribunal finds on a balance of probabilities that notice was given on the non-participatory tenants in accordance with the requirements in the 2002 Act.
18. Accordingly the Tribunal determine that the Applicant's notice was validly served and that the Applicant has acquired the Right to Manage.

19. Signed



20. Dated

1st September 2008

