



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DIRECTIONS BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

Application pursuant to section 84 (3) Commonhold and Leasehold Reform Act 2002.

Ref LON/00AY/LOA/2009/0004

Premises: Gleaneagle Road Streatham London SW16

Applicant Lessees of Flats at 13 Gleaneagle Road

Respondent: Assehold Limited

**Date of paper
Determination:**

Date of Decision 14 September 2009

**Tribunal: Ms M Daley LLB (hons)
Mrs A Flynn M A MRICS**

Background

1. The Tribunal has received an application under section 84(3) of the Common hold and Leasehold Reform Act 2002 from 13 Gleaneagle RTM Company Ltd (RTM) for a determination that it is entitled to acquire the right to manage 13 Gleaneagle Road Streatham London SW16 (the property)
2. Directions for a hearing were made following a pre trial review on 9 July 2009.

At the Pre-trial review the Tribunal determined that the sole issue for determination was "*whether on the date on which the notice of claim was given the Applicant was entitled to acquire the Right to manage the premises.*" The Directions also required the Applicant to include in the bundle a copy of the notice to acquire the right to manage served on the respondent and the supporting documentation

3. The Counter notice did not admit the Right to Manage, The grounds were, that the notice of invitation to participate was not given to each person entitled to participate in the right to manage. The counter-notice also stated that the membership of the RTM company did not at the required date, include at least one half of the qualifying tenants.
4. The Tribunal at the Pre-trial review determined that this matter was suitable for a paper determination.

5. The Law

The Act sets out the procedural requirements that a right to manage company must follow before it can acquire the right to manage. The relevant sections for the purposes of this application are ss72 to 84.

Premises subject to the right to manage:

Section 72 defines the premises that maybe subject to the right to manage.

Right to manage companies:

Section 73 provides that the right to manage can only be acquired and exercised by a RTM company and the company must be a private company limited by guarantee that includes the acquisition and exercise of the right to manage as one of its objects. The company does not qualify if there is already a RTM company for the premises.

Membership of the company:

Section 74 75 and 76 provide that membership of the RTM company must consist of any qualifying tenant, defined as a residential tenant under a long lease of a flat in the premises and that there can only be one qualifying tenant per flat, no less than half the qualifying tenants (subject to a minimum of two must be members of the company on the date when the company serves the claim notice. From the time that the company acquires the right to manage the premises, any person who is a landlord under a lease of the whole or any part of the premises can be a member of the RTM company.

Notice of invitation to participate:

Section 78 - before making a claim to acquire the right to manage any premises, a RTM company must give notice to all qualifying tenants who are not members of the company inviting them to become members for the purposes of acquiring the right to manage.

Claim Notice:

Section 79 (1) – “A claim to acquire the right to manage any premises is made by giving notice of the claim 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” and(6) The claim notice must be served on each person who on the relevant date is

(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 or
(c) appointed as manager of the premises under Part 2 of the Landlord and Tenant Act 1987.”

Counter Notice:

Section 84 “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”) under section 80(6)

The Applicant's Case

1. The Applicants in their application to the Tribunal, stated that a Notice of Invitation to participate had been given to Kate Dion and Marianne Cornell (who at the date set out in the notice were non participating tenants) and that the Applicant had also given a Notice to Mount Star Properties who were the owner of non residential garages and that both have since then indicated that they are willing to participate. In response to the second ground, that is that the number of participating tenants is less than 50 % of the total, the Applicants stated that there are 6 flats at the building and that the number of participating tenants is 4 qualifying tenants and that this is sufficient to comply with the act.
2. The Tribunal noted that the Respondent's in their statement of case stated that “ ... *We note the applicants have failed to serve invitation notices on non participating leaseholders and despite our request for evidence of these invitation notices in the letter dated 25th May 2009 the applicants have failed to supply this...*” The Respondents further complain that the Applicants have failed to provide the information sought despite this being a ground in their counter notice.
3. The Respondents further state that one of the members of the RTM company Immanuel Olaofe was a member on behalf of Farnpoint Ltd and that this was insufficient, as Farnpoint itself needs to be a member of the RTM.
4. In response to the Respondents that they had not been provided with the necessary documentation, the Tribunal sent a request for further

information, on 19 August 2009. The Applicant provided the Tribunal with a copy of the Claim Notice and the Notice of Invitation to participate(pursuant to section 78.

5. The Claim notice included the following details of qualifying tenants:- Simon John Rea, Shakeel Abbas, Emmanuel Oladimeji Olaofe of flat 13B and on behalf of Farnpoint Limited & Residential Trust Limited.
6. In their application, the applicants stated that this represented over 50% of the qualifying tenants, (as the premises consisted of 6 flats.) The Respondent complaint was that of the four tenants who were participating, Mr Olaofe was participating on behalf of Farnpoint Limited, whilst it should have been Farnpoint Limited, who were the qualifying tenants.
7. The other complaint concerned the service of the section 78 notice, that is that it had not been sent to all the tenants who were entitled to participate. The Applicants stated that they had sent notices to Kate Dion and Marianne Cornell who were qualifying tenants entitled to participate, and Mount Star Properties who were tenants of garages, which adjoined the premises.
8. No further information of the grounds for objections were received from the Respondents and no further representation was received in response to the further documentation supplied the Applicants.

The Tribunal's Determination

9. The Tribunal has considered the documents provided by the parties.
10. The Tribunal in determining this application must consider whether the Applicant has acquired the Right to Manage in accordance with the provisions of the Act. The Tribunal if it is to admit the Right to manage must be satisfied on a balance of probabilities that the Applicant has complied with the legislation and the regulatory requirements, unless the Tribunal have been given discretion to dispense with any of the Requirements.

11. The Tribunal determine that the Applicant has satisfied the Tribunal that it has complied with the legislative and regulatory requirements for the following reasons:-
- a) The Tribunal note that in the directions the Applicant was informed that a copy of the notice had not been provided to the Tribunal and the Respondent and that this should be provided in accordance with direction 4. Although this should have been provided to the Respondents in compliance with the directions, it was provided to the Tribunal by letter dated 24 August 2009. The Respondent complained that they had not had sight of the notice of invitation to participate. This has now been remedied.
 - b) The Tribunal note that this was one of the grounds of challenge and that the Applicant in order to succeed in its claim, must satisfy the Tribunal on a balance of probabilities, that it has complied with the legislative and regulative requirement
 - c) The Tribunal note the Respondent's. Contention that Mr Olaofe could not represent the company, the Tribunal find that notwithstanding this, the number of qualifying tenants was 50%. The legislation also makes it clear in section 81 that a claim notice is not invalidated by any inaccuracy in any of the particulars required by virtue of section 80, given this, the fact that Mr Olaofe was acting on behalf of Farnpoint limited does not of itself make the notice invalid. The Tribunal therefore find that the claim notice was valid.
 - d) The Tribunal in determining whether the Applicants complied with section 78 noted that the Respondent had not provided details from any of the tenants who had a right to participate, such as a complaint that they were not served with an invitation in compliance with section 78. It is of course the Applicants who must prove their case, and the Tribunal recognise that (and do not seek to displace this duty,) However there is no complaint before the Tribunal as evidence of this failing given this and the fact that the Applicants have provided the Tribunal with sight of the notice, the Tribunal find on a balance of probabilities that the invitation notice was sent to all of the non-participating tenants, who were qualifying tenants.

- e) The Tribunal find on a balance of probabilities that the Applicant has acquired the right to manage in accordance with sections 78-84 of the 2002 Act and for this reason the application is granted.

Signed

A handwritten signature in black ink, appearing to be 'M. J. [unclear]', written in a cursive style.

Dated

14th September 2009