FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	LON/00AG/LUS/2017/0004
Property	:	55 Grafton Road, London NW5 3EL
Applicant	:	55 Grafton Road (London) RTM Company Limited
Representative	:	Prime Management (PS) Limited
Respondent	:	Manorpress Properties Limited
Representative	:	Fuglers Solicitors
Type of application	:	Right to manage
Tribunal member(s)	:	Mr J P Donegan (Tribunal Judge)
Date of decision	:	15 June 2017

DECISION

Decisions of the Tribunal

(A) The Tribunal determines that the claim notice dated 12 December 2016 was valid and was given to the respondent at its registered office on 14 December 2016.

(B) The Tribunal determines that the applicant was on the relevant date entitled to acquire the right to manage ('RTM') 55 Grafton Road, London NW5 3EL ('the Property'). The relevant date was 14 December 2016 and the applicant will acquire the right to manage the Property three months after this determination becomes final.

The application

1. The Tribunal received an application under Part 2 of Chapter 1 of the 2002 Act on 24 April 2017.

2. Directions were issued on 04 May 2017. Paragraph E identified a single issue for determination by the Tribunal, *"namely whether the applicant has given a valid claim form to the respondent as required by section 79(6)(a) of the Act."* Paragraph 1 provided that the application was suitable for determination without an oral hearing, on the paper track. Neither party has objected to this allocation or requested an oral hearing.

3. The parties filed statements of case, with supporting documents in accordance with the directions. The paper determination took place on 15 June 2017.

The law

4. The relevant provisions of the 2002 Act are referred to in the decision below.

The background

5. The applicant is a right to manage ('RTM') company formed by the leaseholders at the Property. Its representative; Prime Property Management (PS) Ltd ('PPML') sent a claim notice to the respondent's registered office at 73 Cornhill, London EC3V 3QQ on 12 December 2016. This imposed a deadline for service of the respondent's counter-notice of 15 January 2017.

6. The respondent failed to serve a counter-notice by 15 January 2017 or at all. However, it contested the claim in a letter to PPML dated 11 April 2017. That letter stated *"The RTM company has failed to serve the notice on the landlord at their address for service and is, therefore, invalid."*

7. More detailed grounds of opposition were contained in a letter from the respondent's solicitors, Fuglers, to PPML dated 13 April 2017. These were expanded upon in the respondent's statement of case, which identified three grounds for disputing the RTM claim. These are each addressed below.

The claim notice did not state the respondent's address for service

8. The respondent submits this was a substantial defect invalidating the claim notice. The applicant denies that this was a substantial defect.

The Tribunal's decision

9. The omission of the respondent's address for service did not invalidate the claim notice.

10. Section 80 of the 2002 Act sets out the detailed requirements for the contents of a claim notice. Additional requirements are prescribed at section 4 of the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 ('the 2003 Regulations). There is nothing in either of these sections that requires the notice to include the landlord's address for service. It follows that the omission of the address was not a defect and did not invalidate the notice.

The claim notice failed to allow one month for service of the counter-notice

11. The respondent makes three points in its statement of case:

    (a) The covering letter that accompanied the claim notice did not specify the method of service and the deemed date of service is unclear.

    (b) Two dates (26 and 27 December 2016) should be excluded when calculating the one-month period specified in section 80(6) of the 2002 Act, as they were public holidays and there was no postal service.

    (c) The deadline for the counter-notice (15 January 2017) was a Sunday, which should also be excluded when calculating the one-month period.

12. The applicant exhibited a proof of delivery slip, from Royal Mail, to its statement of case. This established that the claim notice was signed for by on 14 December 2016, which disposes of point (a). In relation to points (b) and (c), the applicant relies on the wording of section 80(6). The deadline for giving a counter-notice must be "*not earlier than one month after the relevant date*". The Applicant submitted that if public holidays or weekends were to be excluded then the draftsmen "*would likely have specified the timescale in working days.*"

The Tribunal's decision

13. The claim notice satisfies the requirements of section 80(6) of the 2002 Act.

14. The claim notice was given on 14 December 2016, being the date it was signed for. This was the relevant date for the purposes of section 79 of

the 2002 Act. The deadline for service of the counter-notice was 15 January 2017, which was not earlier than one month after the relevant date.

15. Section 80(6) refers to a period of one month. It does not refer to weekdays and there is nothing to suggest that Sundays or public holidays should be excluded when calculating this period. All that is required is to give a date for service of the counter-notice that is not earlier than one month after the relevant date. The claim notice met this requirement.

16. The respondent has not referred to any authority that supports its contention that Sundays or bank holidays should be excluded when calculating the one-month period.

The claim notice was not validly served

17. The claim notice was sent to the respondent's registered office at 73 Cornhill. However, the most recent ground rent demands (for the period 25 March to 28 September 2016) showed its address as 70 Charlotte Street, London W1T 4QG.

18. The respondent submits that the claim notice was not validly served, as it was not sent to the Charlotte Street address. It relied on sections 111(2) and (3) of the 2002 Act.

19. Sections 112(2)-(4) provide:

"(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)).

(A) 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 addressed to be contained in demands for rent).

(B) 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."

20. The respondent contends that the claim notice should have been served at the address given in the rent demands, which was furnished in accordance with section 47 of the Landlord and Tenant Act 1987 ('the 1987 Act') .

21. The applicant contended the notice was validly served. It was sent to the respondent's registered office and the respondent clearly received it.

22. The applicant relied on the use of the word "*may*" in section 111(2). There is no obligation to serve the notice at an address given under sections 47 or 48 of the 1987 Act and it can be served elsewhere. The applicant had not been notified of an alternative address for service, pursuant to section 111(4). The rent demands, giving the Charlotte Street address, were sent to the leaseholders rather than the applicant.

23. The applicant referred to paragraphs 27 and 28 of the Upper Tribunal's decision in ***Gateway Property Holdings Limited v Ross Wharf RTM Company Limited [2016] UKUT 0097 (LC).*** At paragraph 27 the UT said *"But it is essential to remember that rent demands and notices under sections 47b and 48 are given to tenants, not to RTM companies; and that a notification given by a landlord for the purpose of section 111(4) is not given to the members of an RTM company but to the company itself."*

The Tribunal's decision

24. The claim notice was validly served at the respondent's registered office.

25. Section 111(2) of the 2002 Act is permissive. An RTM company "*may*" give a claim notice to its landlord at the address furnished in accordance with sections 47 or 48 of the 1987 Act but this is not compulsory. Other addresses may be permitted, depending on the facts of the case.

26. The claim notice was sent to the respondent's registered office and was clearly received, as it was signed for on 14 December 2016. This was good service.

27. The respondent has not suggested the rent demands were notices for the purposes of section 111(4). Such an argument would have failed for the reasons advanced by the applicant. The rent demands were sent to the leaseholders, who have separate legal identities to the applicant.

Summary

28. The Tribunal has rejected the respondent's challenges to the validity of the claim notice and is satisfied the notice was valid. It has determined that the notice was validly served on the respondent. It follows that 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 2002 Act.

29. In accordance with section 90(4), the applicant will acquire the right to manage the Property three months after this decision becomes final.

Name: Tribunal Judge Donegan **Date:** 15 June 2017

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).