

- extension of time (which was granted) on the grounds that delay had been caused by non-working days over a religious holiday and because the Second Respondent had sought legal advice.
- 6 Later, in their statement of case (page 33), a number of technical objections were raised suggesting, inter alia, that the Applicant had not notified all the eligible tenants correctly and/or had not demonstrated that the correct number of eligible tenants had joined in the application. The Applicant has demonstrated to the Tribunal's satisfaction that it did notify other tenants correctly and that the membership of the Applicant company was correctly constituted (see Exhibit C) and that the Applicant is supported by the correct number of participating tenants.
- 7 The Tribunal is therefore satisfied that the Applicant has fulfilled the statutory conditions to make it eligible to acquire the right to manage the property on no fault grounds and in the absence of any opposition from the First Respondent (who is barred from these proceedings for non-compliance with the Tribunal's Directions) the Tribunal considers that the Applicant is entitled to the declaration sought.
- 8 The Second Respondent's intervention in this process through its service of a counternotice (page 10) made it necessary for the Applicant to issue its Application to the Tribunal which was dated 31 May 2022.
- 9 Directions were issued by the Tribunal on 14 June 2022 as amended on 01 November 2022. The original hearing/consideration date in October had to be postponed because of the Second Respondent's request for an extension of time (para 5 above) and the paper consideration of this matter, to which all parties had consented or not objected, took place on 12 January 2023 during which the Tribunal read and considered the electronic bundle of documents filed by the Applicant, pages from which are referred to in this Decision. No separate or additional documents were submitted by either Respondent.
- 10 The Tribunal did not physically inspect the property and considered that the issues before it could be satisfactorily resolved without the need for a physical inspection.
- 11 The property comprises 7 self-contained flats in a detached brick built property situated in a quiet residential road in south London and is assumed to be close to all amenities. No photographs of the property were included in the hearing bundle. All flats are held on 99 year leases commencing from 01 January 2014.
- 12 The Applicant asked the Tribunal to exercise its discretion to order the repayment to them of their £100 application fee. The Tribunal orders this sum to be repaid by the second Respondent forthwith.
- 13 The Tribunal was also requested by the Applicant to order the Second Respondent to pay costs to the Applicant under Rule 13 of the Tribunal Rules of Procedure. They said that they had been put to the expense of making an application to the Tribunal by the Second Respondent's counternotice which had contained an untenable objection, later withdrawn by the Second Respondent. They had then been put to additional expense to proceed with the application in the face of further spurious allegations which the Second Respondent was ineligible to pursue because of lack of locus standi. Initially the Applicant asked for an order for £720 plus VAT to compensate for the cost of extra work carried out by its solicitors to rebut the inaccurate allegation made in the

- Second Respondent's counternotice. This sum was later increased to £4,392 which the Applicant contends is the extra solicitor's costs incurred because the Second Respondent insisted on pursuing the application to a full consideration and had caused a delay by not responding timeously to the Tribunal directions.
- 14 Both parties will be aware that an award of costs under Rule 13 is not made as a matter of course and is only given in exceptional circumstances where the behaviour of the paying party is wholly unreasonable.
 - 15 The Tribunal considered the history of this application and the conduct of the Second Respondent. As a professional landlord, the Second Respondent should have known that it had no right to take part in these proceedings. It appears however to have pursued a deliberate path intended to thwart the application; firstly by entering a patently erroneous counternotice, and then by proceeding to delay the further progress of the application by failing to meet timetable deadlines set by the Tribunal and continuing to make further objections in its statement of case which put the Applicant to additional time and expense to refute them.
 - 16 The Tribunal does not condone this behaviour and considers that the Second Respondent should make a contribution towards the Applicant's solicitor's costs. The Tribunal finds the Second Respondent's behaviour to be totally unreasonable and that it passes the very high test set out in Willow Court. Despite the fact that the Second Respondent has been aware of the Applicant's application throughout these proceedings (the Tribunal refers to costs in its Directions which were sent to all parties) at no point has it made submissions on this subject.
 - 17 It is likely that the Applicant would have sought, received and paid for legal advice about their application to manage irrespective of whether it resulted in a Tribunal application and hearing. On that basis the Tribunal restricts its award under Rule 13 to an amount which represents a proportion of the extra work which the Applicant's solicitor was required to undertake caused by the Respondent's recalcitrant behaviour. It assesses that sum as £750 plus VAT (total inc VAT =£900) representing approximately 3 hours extra work by a Grade B solicitor assisted by a Grade D para legal in a moderately sized provincial firm.
 - 18 Being satisfied that the Applicant satisfied the statutory criteria, the Tribunal will therefore grant to the Applicant a declaration that it is entitled to acquire the right to manage the property known as 26 and 26A Mount Nod Road London SW16 2LH under the provisions of the Commonhold and Leasehold Reform Act 2002.

19 The Law (Commonhold and Leasehold Reform Act 2002)

72 Premises to which Chapter applies

(1) This Chapter applies to premises if—

(a) they consist of a self-contained building or part of a building, with or

- without appurtenant property,
- (b) they contain two or more flats held by qualifying tenants, and
- (c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
- (2) A building is a self-contained building if it is structurally detached.
- (3) A part of a building is a self-contained part of the building if—
- (a) it constitutes a vertical division of the building,
- (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
- (c) subsection (4) applies in relation to it.
- (4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
- (a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
- (b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.
- (5) Relevant services are services provided by means of pipes, cables or other fixed installations.
- (6) Schedule 6 (premises excepted from this Chapter) has effect.

74 RTM companies: membership and regulations

- (1) The persons who are entitled to be members of a company which is a RTM company in relation to premises are—
- (a) qualifying tenants of flats contained in the premises, and
- (b) from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.
- (2) The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.
- (3) A RTM company may adopt provisions of the regulations for its memorandum or articles.
- (4) The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.
- (5) A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.
- (6) The regulations have effect in relation to a memorandum or articles—
- (a) irrespective of the date of the memorandum or articles, but
- (b) subject to any transitional provisions of the regulations.
- (7) The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTM company—
- (a) sections 2(7) and 3 (memorandum), and
- (b) section 8 (articles).

75 Qualifying tenants

- (1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.
- (2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.

(3) Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.

(4) Subsection (2) does not apply where—

(a) the lease was granted by sub-demise out of a superior lease other than a long lease,

(b) the grant was made in breach of the terms of the superior lease, and

(c) there has been no waiver of the breach by the superior landlord.

(5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.

(6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.

(7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat.

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.

80 Contents of claim notice

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must state the full name of each person who is both—
 - (a) the qualifying tenant of a flat contained in the premises, and
 - (b) a member of the RTM company,and the address of his flat.
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
 - (a) the date on which it was entered into,
 - (b) the term for which it was granted, and
 - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
- (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

81 Claim notice: supplementary

- (1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
- (2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.
- (3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—
 - (a) the premises, or
 - (b) any premises containing or contained in the premises,may be given so long as the earlier claim notice continues in force.
- (4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—
 - (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
 - (b) ceased to have effect by reason of any other provision of this Chapter.

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.

90 The acquisition date

(1) This section makes provision about the date which is the acquisition date where a RTM company acquires the right to manage any premises.

(2) Where there is no dispute about entitlement, the acquisition date is the

date specified in the claim notice under section 80(7).

(3) For the purposes of this Chapter there is no dispute about entitlement if—

(a) no counter-notice is given under section 84, or

(b) the counter-notice given under that section, or (where more than one is so given) each of them, contains a statement such as is mentioned in subsection (2)(a) of that section.

(4) Where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final.

(5) Where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the acquisition date is the date three months after the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees in writing that the company was on the relevant date entitled to acquire the right to manage the premises.

(6) Where an order is made under section 85, the acquisition date is (subject to any appeal) the date specified in the order

Rule 13 Tribunal Rules of Procedure

13.— Orders for costs, reimbursement of fees and interest on costs

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

a residential property case, a leasehold case

a tenant fees case; (c) in a land registration case or

(d) in proceedings under Schedule 3A to the Communications Act 2003 (the Electronic Communications Code) which have been transferred from the Upper Tribunal.

(1A) An order under paragraph (1)(d) may be made in respect of costs of—

(a) any part of the proceedings in the Tribunal, and

(b) any part of the proceedings which took place in the Upper Tribunal before the transfer

(subject to any contrary order or direction by the Upper Tribunal).

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

Judge F J Silverman
16 January 2023

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.