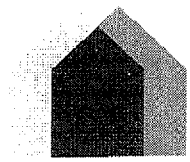

Leasehold Valuation Tribunal **LON/00AU/LRM/2008/0001**

London Rent Assessment Panel

Commonhold and Leasehold Reform Act 2002, Part 2, Chapter 1

(Right to Manage)

Property:	104 Tollington Way, London N7
Applicant:	104 Tollington Way RTM Company Limited
Represented by:	Ms Leesa Mather (participating leaseholder)
Respondent:	Assethold Limited (freeholder)
Represented by:	Mr Joe Gurvits, Eagerstates Ltd (managing agents)
Tribunal:	Mr T J Powell LLB Mr A Ring
Application:	19 December 2007
Directions:	7 January 2008
Hearing:	13 March 2008
Decision:	27 March 2008

Decisions of the Tribunal

(1) The Tribunal determines that the claim notice was properly served on the Respondent at its registered office address, that it arrived at that address on 12th October 2007 and that it gave the Respondent the statutory one month in which to respond;

(2) The Tribunal determines the notice of invitation to participate is valid and there was no evidence to suggest that it had not been properly served upon the non-participating leaseholder, Ms Smith-Soames, or that she had not kept fully informed about the progress of the right to acquire by the participating leaseholders;

(3) 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.

Background

1. This was an application to acquire the right to manage 104 Tollington Way, London N7 ("the premises") under Part 2 of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The Respondent freeholder has served a counter-notice asserting that the Applicant RTM company was not on the relevant date entitled to acquire the right to manage.

2. Although the application had been prepared and submitted by Bartletts solicitors, at the hearing the Applicant was represented by Ms Leesa Mather, one of the participating leaseholders. The Respondent was represented by Mr Joe Gurvits, the director of Eagerstates Ltd, the Respondent's managing agents.

The law

3. The relevant provisions of the Act and the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 (the "Right to Manage Regulations") are referred to in the Decision below.

The hearing

4. In its counter-notice and in its statement for the Tribunal the Respondent raised several doubts about the service and validity of the claim form, and about the involvement/ non-involvement of the non-participating leaseholder, Miss Janice Smith-Soames of Flat 1. Having heard evidence and considered the documents in the trial bundle, the Tribunal has made the following decisions.

Allegation that the Applicant's notice was sent to the wrong address and has not been properly served.

5. The Respondent relies on the fact that an address for service of notices had been provided to leaseholders under section 48 of the Landlord and Tenant Act 1987, which was the address of the managing agents Eagerstates Ltd at PO Box 1369, London NW11 7EH (the "section 48 address"). By sending the claim notice to the Respondent at its registered office address at 5 North End Road, Golders Green, London NW11 7RJ (the address of its accountants), Mr Gurvits argued that the notice had been invalidly served.

6. In addition, Mr Gurvits complained that purported service at the registered office address created delay, while the notice was forwarded to Eagerstates Ltd, with the result that the Respondent did not have sufficient time to make a counter-notice as required by the Act.

The Tribunal's decision

7. Section 111 of the Act states:

> "(1) Any notice under this Chapter—
>
> (a) must be in writing, and
>
> (b) may be sent by post.
>
> (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)).
>
> (3) 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 address to be contained in demands for rent)."

8. Sub-section (2) includes the word "may." This is a permissive provision and not a prescriptive one. The Tribunal had regard to the recent decision of the Lands Tribunal in (1) Plintal SA (2) Palvetto Properties Inc v (1) 36-48A Edgewood Drive RTM Co Ltd (2) 50-62A Edgewood Drive TRM Co Ltd (LRX-16-2007) 5th March 2008, where this very point had been decided by Mr George Bartlett QC, President. At paragraph 12 of that decision he stated:

> "Notice simply has to be given, and the Act is not prescriptive about the way in which notice must be given, other than that it must be in writing. Section 111 contains permissive provisions as to the method of service. In the present case there is no doubt that notice was given to the appellants for the purpose of section 79(1) because their duly authorised agents gave counter-notices under section 84. They had clearly received the claim notices; the notice had been given to them."

9. The Tribunal is satisfied that service of claim notice on the Respondent at its registered office address provided to Companies House is a perfectly valid method of service.

10. Furthermore, in the present case the evidence was that the claim notice had come to the attention of Eagerstates Ltd acting on behalf of the Respondent. Despite the complaint that the Respondent had had insufficient time to make a counter-notice, one had indeed been served within the time specified in the claim notice. The Tribunal considered that the Respondent had not been prejudiced by any delay. The Tribunal was not convinced by the arguments put forward by Mr Gurvits that there had been insufficient time for the Respondent to take legal advice.

11. Accordingly, the Tribunal has no hesitation in saying that the claim notice was properly served on the Respondent.

Allegation that the Applicant did not give the required one month's notice for the counter-notice

12. The case put forward by the Respondent centred on an envelope containing the claim notice, the original of which was produced at the hearing. The envelope had all the signs of being the original, with Recorded Delivery stickers back and front, one of them containing the name and address of the Applicant's solicitors, Bartletts. There were three stamps on the envelope with postage totalling £1.20. Those stamps had been drawn through with a blue Biro pen and had been franked by the Greenford/ Windsor Mail Centre on the 15th October 2007.

13. The case for the Respondent was that the claim notice must have been posted on the 15 October 2007 for it to have been franked in this manner, and it could not have arrived at the Respondent's registered office address before 16th October 2007. If true, this would have given less than the statutory one month for the Respondent to reply (required by section 80(6) of the Act), since the date for replying given in the claim notice was 12th November 2007.

14. The Applicant's evidence set out in its statement for the Tribunal was that the claim notice was prepared on 10th October 2007 and delivered to the post office to be sent by Recorded Delivery on 11th October 2007. The trial bundle contained a copy of the Recorded Delivery slip of posting at the Turnpike Lane N8 post office on 11th October 2007, and a printout from the Royal Mail website with an electronic Proof of Delivery, which stated that the envelope had been delivered from the Golders Green delivery office on 12th October 2007.

15. The Tribunal found it impossible to ignore this direct evidence of posting and delivery. The original envelope clearly appeared to provide conflicting evidence, which was not entirely satisfactorily explained and which could not be reconciled with the Post Office records. However, bearing in mind that there was no prejudice to the Respondent and that the counter-notice was served within time, the Tribunal preferred the proof from the Royal Mail to the physical

state of the envelope, which could have had several explanations for the markings and its condition.

16. The Tribunal is therefore satisfied that the claim notice arrived at the Respondent's registered office address on 12th October 2007 and that it gave the Respondent until 12th November 2007 to respond.

17. As an alternative argument, Mr Gurvits said that even these respective dates - 12th October and 12th November 2007 - still did not give the statutory one month's notice, because the Tribunal should ignore either the date when the notice was delivered or the deadline date for replying.

18. The Tribunal was not persuaded by this argument. The Act required one month to be given in the claim notice and there was clearly one calendar month between the 12th October and 12th November 2007 - though it must be said that the Tribunal was very surprised the Applicant's solicitors had not given themselves a greater margin for error.

19. In any event, the Respondent was unable to demonstrate any disadvantage or any inability to seek advice in the time available. The Respondent had had the opportunity to submit its counter-notice in time and more than sufficient time to marshal its facts to oppose the right to acquire by the time that the hearing took place on 13th March 2008.

Challenge to the validity of the notice inviting participation

20. The Respondent raised doubts whether non-participating leaseholder, Miss Janice Smith-Soames of Flat 1 had been served with a notice inviting participation under section 78 of the Act and, even if she had been served, whether the Applicant had satisfied statutory requirements.

21. Mr Gurvits pointed to numerous requirements in the Act which he said did not appear in the notice inviting participation. However, he had not appreciated that the "Notes" accompanying the notice, which appeared in the trial bundle, formed part of notice inviting participation. The "Notes" answered all of the Respondent's objections about the content of the notice, save for an argument as to whether the acquiring leaseholders had given details of their management qualifications or experience, where the Applicant did not intend to appoint a managing agent.

22. Regulation 3(2)(g) of the Right to Manage Regulations states:

> **"Additional content of notice of invitation to participate**
>
> 3. - (1) A notice of invitation to participate shall contain (in addition to the statements and invitation referred to in paragraphs (a) to (c) of subsection (2) of section 78 (notice inviting participation) of the 2002 Act), the particulars mentioned in paragraph (2).
>
> (2) The particulars referred to in paragraph (1) are -

(g) a statement that the RTM company intends or, as the case may be, does not intend, to appoint a managing agent within the meaning of section 30B(8) of the Landlord and Tenant Act 1985[10]; and -

(i) if it does so intend, a statement -

(aa) of the name and address of the proposed managing agent (if known); and

(bb) if it be the case, that the person is the landlord's managing agent; or

(ii) if it does not so intend, the qualifications or experience (if any) of the existing members of the RTM company in relation to the management of residential property"

23. Paragraph 9 of the notice of invitation to participate states: "The company does not intend to appoint a managing agent within the meaning of section 30B(8) of the Landlord and Tenant Act 1985" but the notice does not go on to give any particulars of the qualifications or experience of any of the members of the RTM company, as required by Regulation 3(2)(g).

24. The Tribunal noted that the Regulations only require particulars of qualifications or experience to be given "if any". This suggests to the Tribunal that if the participating leaseholders do not have such qualifications or experience, then there is nothing for them to declare under Regulation 3(2)(g)(ii).

25. In this case, four out of the five leaseholders in the building are applying to acquire the right to manage. Although they must have discussed this proposal for some time, and it seems inconceivable to the Tribunal that they did not ask themselves if they had the skills to manage the building, there was no evidence that any of them had actual qualifications or experience of doing so in the past. There was therefore no evidence that anything had been omitted from the notice of invitation to participate.

26. Even if the Tribunal is incorrect about the emphasis to be given to the words "if any" above, the Tribunal also relied upon the wording of section 78(7) of the Act, which states:

"(7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section."

27. There was no evidence of any complaint by Ms Smith-Soames about the content of the notice of invitation or that she had not been kept informed about the acquisition process by the participating leaseholders. There was also no evidence of any prejudice to her, let alone to the Respondent, as a result of the notice of invitation failing to include the Regulation 3(2)(g)(ii) particulars.

28. Taking into account all these factors the Tribunal determines the notice of invitation to participate is valid.

Allegation that the Applicant had failed to inform all relevant parties of the application

29. The Respondent relied on the fact that there was no evidence, in the papers, of service of either the notice of invitation to participate or the claim notice upon Ms Smith-Soames. Mr Gurvits said that these issues had been raised in the counter-notice dated 8th November 2007 and that it was incumbent upon the Applicant and/or its solicitors to provide evidence of service to satisfy the Tribunal. Mr Gurvits pointed out rightly that the Respondent had been requesting such evidence of the Applicant's solicitors over a considerable period of time, but it had not been forthcoming.

30. The Applicant relied upon the letter from Bartletts solicitors dated 19th December 2007 (which stood as the notice of application to the Tribunal), which stated that the notice of invitation to participate "was given" to Ms Smith-Soames on 4th September 2007. Ms Mather for the Applicant also gave oral evidence to the Tribunal that she had been told by another leaseholder, Ms Gulnur Akturan of Flat 3 (who is the lead-leaseholder), that Ms Akturan had handed a copy of the notice of invitation to participate to Ms Smith-Soames in September 2007. While Ms Mather could not confirm that the claim notice had likewise been served, she believed that it had been, and she said that Ms Smith-Soames knew all about the current hearing, having said "Good luck" to Ms Akturan, when she told her about the hearing a couple of days before.

31. There was a conflict of evidence from the parties, much of it unsubstantiated. The glaring omission was the lack of any direct evidence from Ms Smith-Soames herself. If she had been concerned about any part of the process the Tribunal thinks that it was reasonable to expect her to have mentioned this to both parties, so that there would have been something more substantial to put before the Tribunal. The onus was on the Respondent to justify its allegation that she had not been served with relevant documents. In the absence of any complaint from Ms Smith-Soames herself, on the available evidence such as it is, the Tribunal is satisfied that the notice of invitation to participate was properly served upon her.

32. There was no conclusive evidence that the claim form had been served on Ms Smith-Soames, but equally nothing to say that it had not been. Despite having had several months to prepare for the hearing the Respondent had not produced a witness statement from Ms Smith-Soames to confirm that the claim form had not been served upon her.

33. Furthermore, the Tribunal had regard to the case of Sinclair Gardens Investments (Kensington) Limited v Oak Investments RTM Company Limited (LRX-52-2004) 1st March 2005, a case which involved the non-service of a notice of invitation to participate on a non-participating leaseholder. In that case Mr George Bartlett QC President stated:

> "The purpose of requiring notice of invitation to participate to be served on a qualifying tenant who neither is nor has agreed to become a member of the RTM Company is clearly to ensure that the interest of that tenant is protected. Under section 79(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. The provisions are thus designed to ensure that every qualifying tenant has the opportunity to participate in the RTM Company and is informed that a claim notice has been made by the RTM Company. In determining the effect of the failure to comply with one or other of these requirements the principal question for the Tribunal will be whether the qualifying tenant has in practice has such awareness of the procedures as the statute intended him to have. The LVT considered this question and expressed itself as satisfied that Mr Mallon was fully aware of the proceedings and that his omission had been inadvertent. It also concluded that the landlord had not been prejudiced in any way by the failure to serve a notice inviting participation, and, given the purpose of the section 79(8) requirement, it was undoubtedly correct to do so."

34. Mr Gurvits did not bring any evidence to show that Ms Smith-Soames had not been kept informed about the progress of the right to acquire. Moreover, according to Ms Mather she knew about the hearing on 13 March 2008. There was no evidence that either Ms Smith-Soames or the Respondent had been prejudiced in any way by the process followed by the Applicant. Without a witness statement or further evidence the Tribunal determined that the Respondent had not been able to sustain this challenge to the process.

Summary

35. Overall, 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.

36. 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

37. Section 88(2) 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."

38. 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.

Chairman: 

Timothy Powell

Date: 27 March 2008