FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CB/LRM/2015/0003**
Property	:	**Barnston Towers,Barnston Towers Close, Barnston, Wirral, CH60 2UJ**
Applicant	:	**Barnston Towers RTM Company Limited (represented by Mr D Bowler and Mrs K Ward)**
Respondent	:	**Oakwood Builders Limited (represented by Mr K Eden)**
Type of Application	:	**Commonhold and Leasehold Reform Act 2002, Section 84: Right to manage**
Tribunal Members	:	**Mr J R Rimmer** **Mr W T M Roberts**
Date of Decision	:	**22nd September 2015**

DECISION

Order : **The Tribunal dismisses the claim notice served by the Applicant on the grounds set out in paragraphs 20-21 herein**

A. Application and background

1 The Applicant is a management company established for the purpose of managing the 5 flats numbered 1-5 within the building known as Barnston Towers in Barnston, Wirral, Merseyside. The Respondent is Oakwood Builders Limited, the freehold owner of the development.

2 The development at Barnston Towers represents the sub-division of a large Victorian residence into a number of flats: there are also a number of newer build properties on what were the grounds to the house. To judge from the dates referred to in those leases that ultimately came to the attention of the Tribunal the redevelopment took place in the mid 1970s, but the current freeholders acquired the freehold after that time.

3 There appears to be some disagreement between the parties as to whether the house should have been divided into the five flats that now exist, or that the number of flats should be limited to four. Whatever may have been the situation that was intended there are clearly five flats in existence and they comprise the entirety of the property that is the subject of this application.

4 Historic difficulties appear to have marred the management of the development but no agreement as to the causes of those problems has been established. As a relative newcomer to the development, as a joint owner of flat 5, Mr Bowler acquired his lease at a time when other tenants were seeking to acquire the freehold interest and had made an application to do so to the Tribunal. Notwithstanding an order confirming the right to the freehold, that process has stalled and The Applicant company in these proceedings has in the meantime sought to obtain the right to manage the development.

5 Against the background of that brief outline a Claim Notice seeking the right to manage the property under the "no fault" provisions of the Commonhold and Leasehold Reform Act 2002 and Dated 28th January 2015 was served by the Applicant upon the Respondent. Thereafter the Respondent served a counter notice alleging that "by reason of the Law of The Property Act 1922" the Applicant was not entitled to acquire the right to manage the premises, as a result of which the Applicant made application to the Tribunal in the appropriate manner on 17th April 2015.

6 The relevant legislation, and its application by the Tribunal to the circumstances of this application, are set out below, but in summary the principle of the "no fault" right to manage provisions is that once an application is made seeking the right to manage, and providing it conforms to the requirements of the Act, it is then for the Respondent to show why, within the parameters of the legislation, that right should not, or cannot, be exercised.

7 Following directions given by a Deputy Regional Judge of the Tribunal given on 20th May 2015 a statement of case was provided by the Respondent expanding its ground for objecting to the application:

(1) That the Applicant should not be able to make an application whilst there were still proceedings to be disposed of in relation to the acquisition of the freehold.
(2) The Applicant had already embarked upon work in relation to the roof of the building and electrical installations within it which were not carried out to an appropriate standard.
(3) The landlord is a resident landlord and there should only be four flats, not five in the building, to accord with the original settlement of the estate under the provisions of the Settled Land Act 1882: he can therefore avail himself of the resident landlord provisions within the Act to preclude the right to manage.
(4) There is already in existence a management company in existence, of which each leaseholder should be a member and which should properly carry out management responsibilities rather than a new RTM company.

B Inspection

8 In order to assist with its deliberations the Tribunal inspected the development at Barnston Towers in the early afternoon of 21st September 2015 and found that it comprised a large, three-storey Victorian building with loft space above the first floor utilised as flat 5. It is of brick construction with grounds to front, side and rear.. The building is divided into 5 flats accessed by a front door into a common hallway, landing and stairs. Flats 1 and 2 are accessed from the hallway through individual front doors whilst flats 3, 4 and 5 are accessed similarly from the first floor landing: the door to flat 5 leading immediately to the stairway to the second floor. The entire premises may be described as being in need of urgent maintenance and repair, hence, no doubt, this application.

The Law

9 The law relating to the "no fault" right to manage might usefully be set out at this point as its application is crucial to the determination that is required to be made by the Tribunal. It is contained in sections 71-112 Commonhold and Leasehold Reform Act 2002, together with Schedules 6 to 8. Those provisions are reproduced here only insofar as the Tribunal considers them relevant to the matters raised of this application.

10 Section 72 provides for the right to manage premises if-

(a) They consist of a self-contained building or part of a building...

(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.

Thereafter the section defines a building as being self-contained if it is structurally detached and a self-contained part of a 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) Relevant services by way of pipes, cables and other fixed installations are provided independently to the rest of the building or could be so provided without causing significant disruption to the occupiers of the rest of the building.

11 Sections 75-77 set out the criteria for being a qualifying tenant for the purposes of the exercise of the right to manage, being an appropriate leaseholder, holding a long lease of a flat that satisfies the criteria set out in Sections 76-77.

12 Section 80 sets out certain criteria in respect of which the claim notice must be comply (according to the relevant sub-sections):

(2)It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which (the Act) applies

(3)It must state the 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.

13 Section 84 provides for counter notices served by the Respondent and requiring them to contain 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 the (Act) the RTM company was on that date not so entitled.

14 Schedule 6 of the Act should also be considered as it relates to the issue of whether or not there is a resident landlord and whether the right to manage is therefore excluded. Paragraph 6 of the Schedule excludes the right to manage in respect of premises if there is a resident landlord and the premises do not contain more than four flats. The term "Resident landlord" refers to a situation where the premises are not a purpose built block of flats and either the freeholder, or an adult member of his family occupy a qualifying flat as his or her only, or main residence.

Hearing and Determination

15 On the morning of 21st September 2015 the Tribunal met at the Tribunal Centre, Dale Street, Liverpool for a hearing requested by the parties.

16 Mr Eden, on behalf of the Respondent raised the issue of what he saw as a failure of the Applicant to comply with the directions previously given, in that the respondent had not received a copy of any response to the Statement of case provided by the Respondent. It was clear that a copy had been served by the Applicant to the address notified to it in previous correspondence in the earlier proceedings and being the registered office at that time of the landlord. The Respondent's situation had changed and although not notifying the Applicant specifically of this, had been corresponding from a new address whilst the registered office was being changed. In the circumstances the Tribunal considered the Applicant's response had been properly served, but offered the opportunity for Mr Eden to consider that document before proceeding further. Mr Eden availed himself of that opportunity.

17 Thereafter the Tribunal considered the objections raised by the Respondent to the application and although Mr Eden was able to address the Tribunal at length he was able to provide very little support by way of evidence or documentation for the matters he raised.

18 It is useful to consider the objections in the order in which they are set out in paragraph 7, above.

(1) Mr Eden felt very strongly that the application was premature whilst proceedings in respect of the earlier application to acquire the freehold were still ongoing. The Tribunal expressed the view that they were not aware of any provision in the Commonhold and Leasehold Reform Act, nor anywhere else that prevented an application for the right to manage being made notwithstanding any contemporaneous proceedings. Whilst not accepting that situation Mr Eden was unable to provide any guidance for the tribunal to contradict it.

(2) Similarly in relation to the works carried out by or on behalf of the Applicant already he could provide no support for his view that inadequate existing work was a bar to an application. In any event the Applicant indicated that the works had received building control approval and no evidence was forthcoming as to its quality.

(3) The argument in relation to a resident landlord was based upon the fact that the owner of Oakwood Builders Ltd, the freeholder, was Mr David Kershaw, the owner and occupier of flat 2, being the leaseholder not participating in membership of the Applicant company. Under the settlement of the land, according to Mr Eden, as only 4 flats were authorised, he was able to rely on the resident landlord provisions of Schedule 6. In the absence of any evidence as to the existence of the settlement, the views of the Tribunal as to the factual existence of 5 flats rather than 4, the different legal identities of the Respondent and Mr Kershaw and the lack of any evidence as to the existence of any settlement or its terms the Tribunal was not persuaded by his argument.

(4) There appear to have been two management companies previously in existence by the name of Barnston Towers Management and it was in respect of one of these that Mr Eden suggested that management should be exercised by that company, in relation to which all tenants were shareholders, rather than the new RTM company. The evidence that the Tribunal received on this matter was somewhat confusing but it appeared that the first company was wound up and replaced by the second. It appeared to the Tribunal that it was a consensus between the parties that in respect of the second company, although the leaseholders were entitled to shares, those shares had not been issued. In any event it was clear it was not managing the premises at this time and had been wound up earlier this year. The Tribunal did not see its existence as a bar, within the terms of the statutory scheme, to the current application.

20 Having considered those objections to the application the Tribunal then moved on to consider the application itself. Mr Eden raised an issue in respect of the copy lease provided to Tribunal as not being typical of each and every lease of the 5 flats in the premises. Whilst exploring this point the Tribunal had cause to consider the particulars given in the Claim Notice relating to the leases of the flats held by qualifying members of the RTM company. At no point were any details provided in respect of any of the leases relating to the date of the commencement of the term (those seen by the Tribunal being leases granted on various dates for 999 years, or in one case 99 years, 25th March 1975).

19 Whilst Section 80(4) indicates that the particulars are required so as to provide sufficient information to identify those leases, and it might be argued that in relation to premises containing only five flats this might be achieved without reference to the dates of commencement of the terms, the section is clear that the notice "must contain" that information. Indeed it is no doubt the case that if necessary that information establishes that the leaseholders in question each have sufficient standing to be members of the RTM company.

20 It is therefore upon this technical matter, not one raised by the Respondent, and notwithstanding the view that a Tribunal takes that it should be circumspect with matter not raised by the parties, that this Tribunal must reject the Application as a fundamental requirement relating to the information required has not been complied with.