



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **MAN/30UF/LRM/2017/0004**

**Property** : **111, St Anne's Road East,  
Lytham St Anne's FY8 3NF**

**Applicant** : **111, St Anne's Road East RTM Company  
Limited (represented by Elaine Greaves)**

**Respondent** : **Angela Coombs**

**Type of Application** : **Commonhold and Leasehold Reform Act  
2002, Section 84: Right to manage**

**Tribunal Members** : **Mr J R Rimmer  
Mr J Rostron**

**Date of Determination** : **4<sup>th</sup> December 2017**

**Date Decision issued** : **9<sup>th</sup> January 2018**

---

**DECISION**

---

**Order: The Tribunal dismisses the counternotice served by the Respondent for the reasons set out herein**

**A. Application and background**

- 1 The Applicant is a management company established for the purpose of managing the 3 flats numbered 1-3 within the building known as 111, St Anne's Road East, Lytham St Anne's. The head leaseholder of the building and who is herself the occupier of Flat 3.
- 2 The development at 111, St Anne's Road East represents the sub-division of a large Edwardian residence into 3 flats: to which has been added an extension to accommodate the common hallway staircases and landings to access each of the 3 flats.
- 3 There appears to be some disagreement between the parties on the fundamental issue as to whether there is a need for a management company to take over the management of the building from the Respondent and it is necessary for the tribunal to emphasise that an application such as this is one that can be made as of right if certain conditions are satisfied. It does not reflect any criticism of the management regime that has existed thus far.
- 4 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 19<sup>th</sup> May 2017 was served by the Applicant upon the Respondent. Thereafter the Respondent served a counter notice alleging that the Applicant was not entitled to acquire the right to manage the premises on the ground that Respondent was a resident landlord and the right to seek management powers was not available. The result was the Applicant making an application to the Tribunal on the appropriate Form RTM on 20<sup>th</sup> July 2017.
- 5 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.

- 6 Following directions given by a Deputy Regional Judge of the Tribunal given on 31<sup>st</sup> July 2017 a statement of case was provided by the Respondent expanding her ground for objecting to the application on the ground that she was a resident landlord and also providing details of some of the history relating to the management of the building. The Tribunal is satisfied that the Respondent accepts that this history is not relevant to the type of application being made here.

## **B Inspection**

- 7 In order to assist with its deliberations the Tribunal inspected the property at 111, St Anne's Road East on the morning of 4<sup>th</sup> December and found that it comprised a large, three-storey building, probably dating from the Edwardian era. It is of brick construction with grounds to front and rear. The building is divided into 3 flats, each occupying one floor of the building. Access is provided by a front door into a common hallway, landing and stairs. These are a much more recent addition constructed to provide separate access to each floor and are effectively the only common parts of the building itself. There are front and rear gardens with access from the latter to parking and garage areas for each flat. Pedestrian access only is available at the front via a garden pathway. Services to each flat are supplied and metered individually.

## **The Law**

- 8 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.

- 9 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.
- 10 Sections 73-74 set out the requirements of a right to manage "RTM" company what members are required, being qualifying tenants and the freeholder my join if and when the right to manage is acquired.
- 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. They are not set out at length here as they did not relate to any issue raised by the parties, or raised any issues that the tribunal was required to address.
- 12 Section 79 provides for what is necessary for a notice of claim to acquire the right to manage a property to be valid and with particular relevance to this instant case Subsection (5) provides that on the relevant date the RTM company must have as its members the two qualifying leaseholders, Ms Greaves and Mr Oliver. The "relevant date" according to Subsection (1) is the date upon which the notice of claim is given.
- 13 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.
- 14 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.

15 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**

16 Later on the morning of 4<sup>th</sup> December 2017 the Tribunal met at the Tribunal Hearing Centre for a hearing requested by the parties.

17 Ms Greaves, assisted by her partner addressed quite simply the issue raised by the Respondent that she was a resident landlord: she was, however, a long leaseholder, not a freeholder to which the entitlement to object to the claim was granted.

18 It then became apparent to all present, including the members of the Tribunal that a further significant issue had arisen in the interval between the issue of the claim notice, the application and the hearing. Michael Oliver, the other shareholder in the Applicant company and the long leaseholder of Flat 2 had since sold his leasehold interest to a new purchaser. It was not immediately apparent, what, if any, effect this had upon the validity of the application. There were no other significant issues raised during the course of the hearing and effectively the Respondent accepted the situation relating to the position of resident landlord and sought to have the Tribunal to consider instead the change of ownership of of Flat 2. The Applicant, in the person of Ms Greaves, accepted that the Tribunal should consider the application from that perspective.

### **Determination**

19 The Tribunal is satisfied that for the purposes of this application and within the terms of the legislation applicable to it the Respondent, although indeed resident in Flat 3, is not a freeholder and able to benefit from the provisions of Schedule 6 to defeat the application.

20 The Tribunal has considered the situation in relation to the sale of Flat 2. This apparently occurred in August 2017, being a date after the claim notice was issued and the application made (see paragraph 4, above).

- 21 The Tribunal can find nothing within the Act to suggest that the right to acquire the right to manage is lost if, after the relevant date, one of the members of the company then ceases to be a qualifying tenant, even if there are only two members. In this case the relevant date is 19<sup>th</sup> May 2017 and at that time Mr Oliver is a qualifying tenant. This is consistent with the philosophy of the right to manage provisions as there is the prospect that on larger developments there will be a constant flux of sales and purchases.
  
- 22 In the absence of any other specific objections being raised against the right to manage and the Tribunal finding nothing untoward in the papers submitted to it to suggest any procedural irregularity in the notice, or the service of it, the Tribunal dismisses the objection to the notice and the right to manage is therefore available to the Applicant.