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

Case Reference : **LON/00BC/LRM/2013/0023**

Property : **15a Richmond Road, Ilford, IG1 1JG**

Applicant : **15a Richmond Road RTM Company Limited**

Representative : **Ms M Stevenson - Counsel
Ms J Allen - representative of the Applicant**

Respondent : **Sinclair Gardens Investments (Kensington) Limited**

Representative : **Mr Wijeyarathe - Counsel**

Type of Application : **Application in relation to the denial of the Right to Manage**

Tribunal Members : **Mr Andrew Dutton - Tribunal Judge
Mr Trevor Johnson FRICS
Mr Paul Clabburn**

Date and venue of Hearing : **19th December 2013 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **19th December 2013**

DECISION

The Tribunal determines that the Applicant is not entitled to acquire the right to manage the Property for the reasons set out below

REASONS

Background/Submissions

1. This matter came before us on 19th December 2013. Initially there were a number of issues raised by the Respondent but they were condensed to one matter. That is whether the Notice of Claim complied with section 80(7) of the Commonhold and Leasehold Reform Act 2002 (“the Act”).
2. The Notice of Claim is dated 20th May 2013 and requires the Respondent to give any Counter-Notice by 27th June 2013. At paragraph 6 of the Notice it informs the Respondent that it intends to acquire the right to manage the premises on 27th September 2013.
3. The only issue is whether or not the date of 27th September 2013 complies with the requirements of section 80(7). This subsection says:

“(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”
4. The Applicant’s case was advanced by Ms Stevenson, both in a skeleton argument received on the morning of the hearing and in oral submissions. The wording of s80(7), *at least three months* suggests that the minimum date is precisely three months and not three months and one day as contended for by the Respondent in its written statement of case included in the bundle before us. The Applicant relied upon an LVT case Fir Tree Lodge RTM Company Limited against the Respondent under case reference LON/00AK/LRM/2005/0005, when a decision supporting the Applicant’s proposition was given. It was considered that this earlier LVT decision was consistent with the House of Lords case *Dodds v Walker*, which was also relied upon by the Respondent. We have noted both cases in reaching our decision. It was also submitted that the requirement of subsection (7) was for the purposes of ongoing communication. It did not require the Respondent to do anything other than note the date upon which the right to manage would take effect. It was said that if we were not in support of the primary submission that the “error” was capable of being rescued by the provisions of section 81(1) which states

81(1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
5. The Respondent’s submission is contained at pages 2 and 3 of a lengthy Respondent’s case dated 11th September 2013. Mr Wijeyarathe expanded upon those written submissions. He argued that the calculation of the period of three months excluded the day upon which the event occurred. That is to say if notice, as in this case, is given under sub-section (6) as 27th June 2013, the three month period for sub-section (7) must be after three months and therefore the earliest date is 28th September 2013. In support of this proposition he relied upon two recent First-tier Tribunal cases, the first in time being the Southern

(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.

Findings

7. We have carefully considered all that has been submitted in writing and argued before us today. We find, with some reluctance, that we must follow the Respondent's submissions. We say 'with reluctance' because this legislation is intended to be "no fault right to manage" and should not be laying pitfalls in front of parties who wish to acquire such right. However, the Act must be followed and we are somewhat nonplussed that, as in this case, the Applicant puts itself in a position where there can be a challenge to the procedures. If they had inserted, for example, the date of 1st October 2013 in the Notice of Claim for the purposes of section 80(7), as conceded by Mr Wijeyarathe, this issue would not have been raised.
8. We have considered the findings by the House of Lords in the Dodds case and the speech of Lord Diplock and the following opinion "*My Lords, reference to "a month" in a statute is to be understood as a calendar month. The Interpretation Act 1978 says so. It is also clear under a rule that has been consistently applied by the Court since Lester v Garland (1808) 15 Ves 248 [1803 – 13] All ER Rep 436 that, in calculating the period that has elapsed after the occurrence of the specified event such as the giving of notice, the day on which the event occurs is excluded from the reckoning. It is equally well established, and is not disputed by counsel for the tenant, that when the relevant period is a month or a specified number of months after the giving of a notice the general rule is that the period ends on the corresponding date in the appropriate subsequent month, ie the day of the month that bears the same number as the as the day of the earlier month on which notice was given.*"

9. In addition we have borne in mind the decisions of our colleagues earlier this year and in 2005. We accept that we are not bound by those decisions but nonetheless we do strive for consistency where the facts are the same. We find that the reasoning behind both decisions in 2013 is sound, and preferred by us to the 2005 decision for the reasons stated herein, and is adopted by us in this case.
10. Accordingly the date of 27th June 2013 at s80(6) should have led to a date of not earlier than 28th September 2013 in s80(7), this being ‘a date, at least three months after that specified under subsection (6)’. The inclusion of the word “after” means that the date must be after 27th September, being three calendar months from the date contained at s80(6).
11. We do not consider that we can utilise the saving provisions of section 81. The Applicant’s case is not that there was an inaccuracy. Its case is put on the basis that the Notice of Claim was correct. There is no ‘prejudice’ element implied in section 81 and no authority was cited. Indeed the Assethold case referred to above specifically rules this out (see paragraph 4 of the judgment). Further since the LVT case in 2005 there has been clarification as to what might constitute an “inaccuracy” and the insertion of a date as in this case is not an inaccuracy for which the provisions of section 81 can be invoked.

Andrew Dutton

Andrew Dutton

Tribunal Judge

19th December 2013