



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

Case Reference : CHI/00MR/LAC/2014/0011

Property : 59 Cottage Grove, Southsea, Portsmouth,
Hants PO5 1EH

Applicant : 59 Cottage Grove RTM Company Limited

Representative : Canonbury Management

Respondent : Christie Estates Southern Limited

Representative : E & J Estates

Type of Application : Right to Manage
Part 2 Commonhold and Leasehold
Reform Act 2002

Tribunal Member(s) : Judge Greenleaves
KM Lyons FRICS

Date and Venue of Hearing : none

Date of Decision : 3 November 2014

Decision

1. Under section 84 of the Commonhold and Leasehold Reform Act 2002, (the Act) the Tribunal determines that the Applicant was on the relevant date entitled to acquire the right to manage the premises known as 59 Cottage Grove, Southsea, Portsmouth (the property).
2. Accordingly under section 90 of the Act the acquisition date is the date 3 months after this determination becomes final.

Appeals

3. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
4. 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.
5. 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.
6. 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.

Reasons

Introduction

7. This was an application made by the Applicant, 59 Cottage Grove RTM Company Limited, for a determination under section 84 of the Act that it was on the relevant date (at the date of the claim notice i.e. 19 June 2014) entitled to acquire the right to manage the property.
8. On the 17 July 2014, the Respondent gave counter notice that by reason of section 80 (9) of the Act the Applicant was not entitled to acquire the right to manage the premises specified in the claim notice.
9. The Applicant accordingly made this application to the Tribunal on 12 August 2014. In accordance with directions, the Respondent filed a statement dated 26 September 2014 setting out its case and the Applicant made a supplementary statement in reply dated 9 October 2014.

The Respondent's case

10. The Respondent's case is based on non-compliance with regulations as to the content of the claim notice:

- 10.1. that the claim notice must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made by the appropriate national authority (section 80 (8)) of the Act;
- 10.2. that those regulations are the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010;
- 10.3. Schedule 2 to the Transfer of Tribunal Functions Order 2013 (the 2013 Order) amended the 2010 regulations by replacing the reference in Note 1 to "leasehold valuation Tribunal" with "tribunal", that Order coming into force on 1 July 2013;
- 10.4. that note 1 of the claim notice given on 19 June 2014 refers to "leasehold valuation tribunal";
- 10.5. accordingly that the notice of claim does not comply with requirements about the form of claim notices as prescribed by regulations so that on the date of the claim notice the Applicant was not entitled to acquire the right to manage.

The Applicant's case

11. The Applicant's case:

- 11.1. "Section 80 (1) (A)" of the Act provides that the notice is not invalidated by any inaccuracy in any of the particulars required by section 80 (2) to (7) of the Act or the 2010 regulations;
- 11.2. that clause 9 of the claim notice, in terms, invited the Respondent to notify the Applicant of any inaccuracies in the notice;
- 11.3. the section with the inaccuracy is contained in regulation 5 of the 2010 regulations;
- 11.4. the inaccuracy is marginal: it is caught by clause 9 of the claim notice and that the notice is not invalidated by this minor error;
- 11.5. had it been brought to the attention of the Applicant by the Respondent, the claim could have been withdrawn and reissued with little effort and the need for the Tribunal hearing could have been avoided;
- 11.6. the Applicant is therefore entitled to acquire the right to manage under the Act.

Consideration

12. The Tribunal took into account the terms of the claim notice, the counter notice and the statements put forward by both parties as referred to above.

13. The Tribunal suspects the Applicant's reference to section 80 (1) (A) of the Act is an error but takes it to be a reference to section 81 subsection (1) of the Act which in any event applies to the case. It provides "A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80."
14. So far as material to the issue raised by the Respondent in this case, section 80, at subsection (8) provides "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."
15. It is not disputed by the parties that the 2010 regulations apply and that they were on 1 July 2013 amended by the 2013 Order.
16. The consequence of those regulations and the 2013 Order is that, as the Respondent submits, note 1 in the claim notice ought to have referred to the "tribunal" instead of "leasehold valuation tribunal".
17. The Tribunal is satisfied that although there is this inaccuracy in the claim notice, by reason of the terms of section 81 of the Act, the notice is not to be invalidated thereby.
18. Furthermore, the Tribunal found:
 - 18.1. that the Respondent could not possibly contend that it had been in any way misled or disadvantaged by the inaccuracy in its dealings with the consequences of the claim notice and it does not pretend to do so;
 - 18.2. the note containing the inaccuracy is in any event only relevant to a situation where the claim notice cannot be given to the landlord, a party to a lease other than the landlord or tenant, or a manager appointed under the Landlord and Tenant Act 1987, *if any such person cannot be found or the identity cannot be ascertained (our italics)*. There is no suggestion whatever from the Respondent that the note is in any way relevant to the issues the subject of the claim notice.
 - 18.3. Accordingly the Tribunal found not only that the claim notice is not invalidated by the inaccuracy, but that the Respondent's taking the point is entirely without merit.
19. The Tribunal made its decision accordingly.