



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

Case Reference : **MAN/OOCV/LOA/2014/0003**

Property : **Flats 1-6 & 7-12 Foxes Court, 3 Beresford Road
Prenton, Merseyside CH43 1XQ**

Applicant : **Foxes Court RTM Company Limited**
Representative : **Leasehold Doctors**

Respondents : **George Pearce, Sylvia Pearce & Gavin Millar**
Representative : **Elmdon Real Estate LLP**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Section 84(3)**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Jonathan Holbrook (Tribunal Judge)**

Date of determination : **27 August 2014**

Date of Decision : **27 August 2014**

DECISION

Application

1. Foxes Court RTM Company Limited applies for a determination under Paragraph 84(3) of the Commonhold and Leasehold Reform Act 2002 (the Act) that it was entitled to acquire the right to manage Flats 1-6 & 7-12 Foxes Court, 3 Beresford Road, Prenton, Merseyside CH43 1XQ as registered with Freehold Title under Title Number MS290259 (the Property) on 1 August 2014.

Background

2. The Property comprises a building of 12 flats let for a term of 999 years from various dates in 1994.
3. The Applicant is a company formed to acquire the right to manage the Property.
4. Following invitation to the Lessees of all flats to participate in the right to manage and notice to them under Section 78 of the Act claim notices under Section 79 of the Act were served on the Respondents on 22 March 2014.
5. The claim notices required any counter notice to be given no later than 30 April 2014. The Respondent served a counter notice 25 March 2014. The counter notice alleges that by reason of "Outstanding sums due, incorrect formatting on 22 March 2014" the Applicant was not entitled to acquire the right to manage.
6. The application was made to the Tribunal on 30 April 2014. In accordance with directions made by a Tribunal Judge on 26 June 2014 both parties have provided written submissions. Neither requested an oral hearing of the application.
7. The Tribunal convened on 27 August 2014 without the parties to make its determination.

The Law

8. The relevant law is found in Sections 71 to 113 in Chapter 1 of Part 2 of the Act.
9. Section 74 sets out the persons entitled to be members of a right to manage company. Section 75 specifies who is a qualifying tenant of a flat within the relevant premises. Section 78 makes provision for the notice that must be given by an RTM company to each person who is a qualifying Tenant.
10. Section 79(6) states that the claim notice must be given to each person who on the relevant date is a Landlord under a Lease of the whole or any part of the premises. The relevant date is stated by Section 79(1) as: "The date on which notice of the claim is given."
11. Section 84 provides for the service of a counter notice alleging that the RTM company was not entitled to acquire the right to manage. Section 84(3) enables an RTM company that has been given such a counter notice to apply to the Tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

Evidence and Submissions

12. The parties' submissions are analysed and considered under the separate issue headings below along with the Tribunal's individual conclusions.

Outstanding sums due

13. The Respondent's submission is in letter form dated 21 July 2014 and states: "The Applicants are in breach of the previous determination by the FTT until they have paid the money specified in the determination they are unable to make further applications to yourselves." The reference is to a decision dated 5 August 2013 following a referral from Birkenhead County Court for determination of service and administration charges.
14. The Applicants state that "The Tribunal ruling was subject to a subsequent ruling by Birkenhead County Court which closed the matter on 12 March 2014." They include an unless order dated 21 February 2014 that the claim be struck out.

Incorrect formatting

15. The Respondent has given no further information or detail in respect of this allegation. It is not referred to by the Applicant.

Tribunal's conclusions

16. We are not satisfied that the Respondent has established either of the points mentioned in the counter notice. The second allegation is vague to the point that it is ineffective as expression of objection. Whether there is an outstanding judgement against certain Leaseholders or unpaid service or administration charges is not material to the current application. We find it does not have the effect of disqualifying them from the conditions set out in the Act for becoming a qualifying Leaseholder or for service of the claim notices. This does not render the claims ineffective.
17. We conclude that the counter notice is ineffective to deny the Applicant's right to manage claims.

Order

18. The Tribunal determines that the Applicant was entitled to acquire the right to manage the Property on the relevant date, 1 August 2014.