



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

<b>Case reference</b>	:	<b>CAM/00MC/LRM/2014/0016</b>
<b>Property</b>	:	<b>20 Kennet Street, Reading, RG1 4AQ</b>
<b>Applicant</b>	:	<b>20 Kennet Street (Reading) RTM Co. Ltd.</b>
<b>Respondent</b>	:	<b>Sinclair Gardens Investments (Kensington) Ltd.</b>
<b>Date of Application</b>	:	<b>25<sup>th</sup> November 2014</b>
<b>Type of Application</b>	:	<b>For an Order that the Applicant is entitled to acquire the right to manage the property (Section 84(3) Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”))</b>
<b>The Tribunal</b>	:	<b>Mr. Bruce Edgington (lawyer chair) Mr. David Brown FRICS</b>

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## DECISION

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1. This Application succeeds and the Applicant therefore acquires the right to manage the property as at the 4<sup>th</sup> May 2015 (section 90(4) of the 2002 Act).

### Reasons

#### **Introduction**

2. The Respondent accepts that the Applicant is a right to manage company (“RTM”). Such RTM served the Respondent with a Claim Notice dated the 10<sup>th</sup> September 2014 seeking an automatic right to manage the property and giving the 10<sup>th</sup> October 2014 as the date by which any counter-notice must be served. On the 7<sup>th</sup> October 2014, the Respondent served a Counter-Notice by post.

#### **Procedure**

3. The Tribunal decided that this case could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties that (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 4<sup>th</sup> February 2015 and (b) an oral hearing would be

held if either party requested one before that date. No such request was received.

### **Discussion**

4. The 1<sup>st</sup> Respondent's Counter-Notice alleges 4 grounds for opposition i.e. (a) there is no evidence that Notices of Invitation to Participate have been served in the appropriate form on all those entitled to receive the same, (b) there is no evidence that sufficient qualifying tenants are members of the RTM, (c) there is no evidence that all the RTM members are set out in the Claim Notice as set out in section 80(3) of the 2002 Act and (d) the date for service of the counter-notice is earlier than the 1 month after the relevant date i.e. 11<sup>th</sup> September 2014.
5. In view of recent authority that a landlord is not bound by the contents of its counter-notice and can subsequently raise additional matters in applications such as this, the Tribunal directed the Respondent to file a statement setting out exactly what it was now saying about the Applicant's case.
6. A statement has been filed dated 21<sup>st</sup> December 2014 which is after the date by which it should have been filed. It is unfortunate that the statement is what can only be described as a verbose 15 page document from which the Tribunal has had to try to extract "*exactly why the Respondent does not consider that the Applicant is entitled to manage*" which is what was ordered. As far as can be ascertained the objections start at page 9 (page 46 in the bundle). There are still 4 objections but they are not exactly the same as in the counter-notice. The Tribunal concludes that any other ground of objection is abandoned in view of the wording of the directions order.
7. The first objection is that the **date for service of the counter-notice** is earlier than the 1 month after the relevant date i.e. 11<sup>th</sup> September 2014. It is presumed that the Respondent is referring to the 'relevant' date as defined by subsection 79(1) i.e. the date when the claim notice is 'given'. The 11<sup>th</sup> September 2014 was the date on which the Respondent received the notice. The Respondent suggests that the relevant date is the date of service of the notice which is not what the subsection says.
8. There is no argument put forward that the date when the notice was 'given' was later than the 11<sup>th</sup> September 2014. One month from that date expires on the 10<sup>th</sup> October 2014 which is the date by which the notice said that the counter-notice must be served.
9. The next objection is that **claim notice gives the name of a non member** as a qualifying tenant i.e. a person named "Tindale". The Applicant has provided clear evidence that the member concerned is Gemma McGinn whose maiden name is Tindale. She is a member of the RTM. This appears, on the face of it to be an inaccurate particular but as it is clearly the same person, the objection is not established.
10. The third objection then appears on page 11 of the submission (page 48 in the bundle) which is that a **Notice of Invitation to Participate was not served on qualifying tenants** i.e. 'Commander & Arguello'

of flat 47. It seems to be alleged that people called 'Cook & Pound' were the ones who had been served. Certificates of service dated 20<sup>th</sup> August 2014 have been filed which say that Lawrence George Commander, Itziar Balboa Arguello, Catherine Cook and Karen Pounds were served by hand at flat 47 on that date which is at least 14 days before the claim notice. Copies of the notices in standard form are exhibited to the certificates.

11. The final objection is that '**Tindale**' is named in the Notice of Invitation to Participate as a member whereas no such person was a member of the RTM at the time. The copy Notices of Invitation to Participate produced to the Tribunal do not include that name. It has now been established that this person is Gemma McGinn and the copy register of members produced states that Gemma McGinn did not become a member until 28<sup>th</sup> August 2014 i.e. 8 days after the said Notices were served. Thus, the Notices would appear to be accurate in that regard.

### **Conclusions**

12. The Respondent has not put forward any ground for objection which it can use to persuade the Tribunal that, on the balance of probabilities, the Applicant has not complied with the relevant parts of the 2002 Act and the application therefore succeeds.
13. Having said that, the Tribunal was very concerned to note the way in which the Respondent's submissions were filed because they added very considerably to the time the Tribunal needed to spend on the issues. As has been said, the submissions were in a verbose 15 page document which seems to consist, in large part, of a template designed to cover all eventualities. No less than 16 authorities have been quoted with case reports of 8 being included in the bundle. Most of these case reports are irrelevant to the objections raised.
14. Much of the submissions seem to be designed to cast doubt on the Upper Tribunal's decisions in **Assethold Ltd. v Stanfield Road RTM Co. Ltd.** [2012] UKUT 262 (LC) and **Avon Freeholds Ltd. v Regent Court RTM Co. Ltd.** [2013] UKUT 0213 (LC) which have been a clear 'steer' to First-tier Tribunals to look at the question of prejudice if there has been a purely technical non-compliance with the 2002 Act. Only one subsequent authoritative decision has been produced which is about enfranchisement, not right to manage.

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**Bruce Edgington**  
**Regional Judge**  
**4<sup>th</sup> February 2015**