FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**RC/LON/00AC/LRM/2019/0003**
Property	**:**	**Montrose Court, The Hyde, London NW9 5BS**
Applicant	**:**	**Montrose RTM Co Ltd**
Representative	**:**	**Mr John Galliers**
Respondents	**:**	**(1) St Leonards Properties Ltd** **(2) Brickfields Properties Ltd**
Representative	**:**	**Mr Simon Serota**
Type of application	**:**	**Application relating to no-fault right to manage**
Tribunal members	**:**	**Judge Simon Brilliant** **Mrs Evelyn Flint FRICS**
Date of determination and venue	**:**	**10 April 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**15 April 2019**

DECISION

Summary of the Tribunal's decision

(1) The RTM Company's notices of withdrawal dated 8 November 2018 are valid.

(2) The RTM Company's second claim notice is valid.

Background

1. In Elim Court RTM Co Ltd v Avon Freeholds Ltd [2017] EWCA Civ 89, Lewison LJ began his judgment by saying:

It is a melancholy fact that whenever Parliament lays down a detailed procedure for exercising a statutory right, people get the procedure wrong.

2. That case concerned the question whether alleged defects in the procedure followed by an RTM Company in purported exercise of the no-fault right to manage under the Commonhold and Leasehold Reform Act 2002 resulted in the failure of its attempt to invoke that right. This is another such case.

3. Save where otherwise appears, all statutory references in this judgment are to the 2002 Act.

4. In Elim Lewison LJ set out the genesis of the statutory scheme. We annex this discussion of the statutory scheme to this decision.

The relevant legislation

5. The following provisions in Chapter 1 of Part 2 of the 2002 Act are relevant to these proceedings:

s.79 Notice of claim to acquire right

(1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a "claim notice"); …

(6) 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, …

s.80 Contents of claim notice

(1) The claim notice must comply with the following requirements. …

(6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may

respond to it by giving a counter-notice under section 84. …

s.81 **Claim notice: supplementary**

(3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—

(a) the premises, or

(b) any premises containing or contained in the premises,

may be given so long as the earlier claim notice continues in force.

(4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—

(a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or … .

s.84 **Counter-notices**

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing 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 this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the first–tier tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or ...

s.86 **Withdrawal of claim notice**

(1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect (referred to in this Chapter as a "notice of withdrawal").

(2) A notice of withdrawal must be given to each person who is— (a) landlord under a lease of the whole or any part of the premises, ...

s.87 **Deemed withdrawal**

(1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—

(a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or

(b) such an application is so made but is subsequently withdrawn,

the claim notice is deemed to be withdrawn.

(2) The withdrawal shall be taken to occur—

(a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and...

s.93 **Duty to provide information**

(1) Where the right to manage premises is to be acquired by a RTM company, the company may give notice to a person who is—

(a) landlord under a lease of the whole or any part of the premises, …

requiring him to provide the company with any information which is in his possession or control and which the company reasonably requires in connection with the exercise of the right to manage.

s.111 **Notices**

(1) Any notice under this Chapter—

(a) must be in writing, and

(b) may be sent by post.

(2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole or any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).

(3) That address is—

(a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or

(b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).

(4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.

The statutory scheme

6. The RTM company makes a claim to acquire the right to manage by giving a claim notice to the landlord. This includes, in this case, both the freeholder (St Leonards Properties Ltd) and the head lessee (Brickfield Properties Ltd) (s.79(1) and (6)).

7. No subsequent claim notice can be given so long as the earlier claim notice continues in force. A claim notice continues in force unless it is withdrawn or deemed to be withdrawn (s.81(3) and (4)).

8. If a landlord wishes to allege that the RTM company, on the date that the notice of claim is given, was not entitled to acquire the right to manage, it must serve a counter-notice alleging why (s.84(1) and (2)).

9. Where the RTM company has been given a counter-notice it has two months in which to make an application to the tribunal for a determination of that issue. Such an application must be made not later than the end of two months beginning with the day on which the counter-notice is given (s.84(3) and (4)).

10. An RTM company which has given a claim notice may, any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice of withdrawal to the landlord (s.86(1) and (2)).

11. If a RTM company has been given a counter-notice alleging that it was not, on the date that the notice of claim was given, entitled to acquire the right to manage, the claim notice is deemed to be withdrawn if no application is made to the tribunal within the two month period. In such a case, the withdrawal is taken to occur at the end of the two month period (s.87(1) and (2)).

12. Any notice under Chapter 1 of the 2002 Act may be given to the landlord at the address last furnished to a member of the RTM company as the landlord's address for service in accordance with s.48 of the Landlord and Tenant Act 1987 (s.111(2) and (3)(a)).

13. But the RTM company may not give such a notice to a person at the s.48 address if it has been notified by it of a different address in England and Wales at which it wishes to be given any such notice (s.111(4)).

The facts and the issues arising

14. The facts are straightforward and are not in dispute.

15. On 21 September 2018, the RTM company gave a claim notice to the landlords at their s.48 address ("the first claim notice").

16. On 22 October 2018, the landlords gave the RTM company a counter-notice alleging that the RTM company was not entitled to acquire the right to manage on 21 September 2018 ("the first-counter notice").

17. At the foot of the first counter-notice, under the signature of the landlord's solicitors Wallace LLP, there was written pursuant to s.111(4):

Duly authorised agent of [the landlords] whose address to which any Notice to be given under Chapter I Part II of the Act should be sent is c/o Wallace LLP (Ref S3088.069), One Portland Place, London W1B 1PN

18. On 8 November 2018, the RTM company sent notices of withdrawal by post to the landlords at their s.48 address ("the withdrawal notices"). No notice was given of the withdrawal to the s.111(4) address. The landlords say that this means the withdrawal notice was not valid.

19. The landlords duly sent the withdrawal notice to Wallace LLP.

20. On 18 December 2018, the RTM company gave a second claim notice to the landlords at their s.48 address ("the second claim notice").

21. If, as the landlords contend, the withdrawal notice was not valid, then on 21 December 2018 there was a deemed withdrawal of the first claim notice. This was because no application to the tribunal for a determination had been made within the requisite time.

22. On 9 January 2019, the landlords gave the RTM company a counter-notice alleging that the second claim notice was invalid. This was on the grounds that the withdrawal notice was invalid, having not been sent to the s.111(4) address. Accordingly, the first claim notice remained valid until it was deemed to have been withdrawn on 21 December 2018.

23. The second claim notice had been served three days prior to this date. No claim notice can be given so long as an earlier claim notice continues in force. Therefore, the landlords argue, the second claim notice was invalid because it was given whilst the first claim notice was still extant. The first issue we have to decide is whether or not the withdrawal notice was valid.

24. The landlords also argue in these proceedings that the second claim notice is not valid because it had not been given to the s.111(4) address. This is the second issue we have to decide.

25. In respect of the first issue, the RTM company says the landlords had suffered no prejudice, and that the inclusion of an alternative address in the counter-notice was a ploy in order to defeat the claim on a technicality.

26. In respect of the second issue, the RTM company says that the giving of an alternative address in the first counter notice should not govern where any future claim notice by the RTM company should be given. It also relies upon the Elim Court decision referred to in paragraph 1 above, and discussed below.

The authorities

27. There are three authorities to which reference must specifically be made. The first is the decision of the Court of Appeal in Natt v Osman [2014] EWCA Civ 1520. The second is the decision of Mr Martin Roger QC, Deputy President of the Lands Chamber of the Upper Tribunal, in Gateway Property Holdings Ltd Ross Wharf v RTM Company Ltd [2016] UKUT 0097 (LC). The third is the

decision of the Court of Appeal in Elim Court, referred to in paragraph 1 above.

Natt v Osman

28. In Natt, which concerned the right of collective enfranchisement, Sir Terence Etherton C said that the characterisation of statutory provisions as either mandatory or directory did not assist in determining what consequence of non-compliance the legislature intended. The better approach was to apply the usual principles of statutory interpretation, which involved an assessment of the purpose and importance of the requirement in the context of the statutory scheme as a whole.

29. A distinction could be drawn between (a) cases in which the decision of a public body was challenged or which concerned procedural requirements for challenging a decision; and (b) cases such as the instant one, where statute conferred a property or similar right on a private person and the issue was whether non-compliance with the statutory requirement precluded that person from acquiring the right in question. In the latter category of cases, the intention of the legislature as to the consequences of non-compliance with the statutory procedures was to be ascertained in the light of the statutory scheme as a whole. In the former category of cases, a more relaxed approach could be taken to compliance with the statutory procedures.

Gateway Property Holdings Ltd Ross Wharf v RTM Company Ltd

30. In Gateway, a claim form was given to the landlord by a RTM company on 11 July 2014. On 14 August 2014, the landlord served a counter-notice in which there was written pursuant to s.111(4):

The address at which future communications in relation to the subject matter of the notice and any further notice which may be served under Chapter I Part II of the Act should be sent is c/o Wallace LLP, 1 Portland Place, London W1B 1PN Ref: HG3201.19

31. The claim initiated by the claim form was not pursued. On 27 February 2015, the lessees were given a s.48 address with a service charge demand, which was not the s.111(4) address.

32. On 7 April 2015, the RTM company gave a second claim form to the landlord at the s.48 address, and not to the s.111(4) address. On 1 May 2015, the landlord gave the RTM company a second counter-notice, disputing the validity of the second claim notice on the grounds that it had been given to the landlord at the wrong address.

33. The First-tier Tribunal ("the FtT") held that the claim notice had been properly given. The s.48 notice given on 27 February 2015 countermanded the s.111(4) notice given in the counter-notice dated 14 August 2014. The right to be acquired by the right to manage was not "a property or similar right" as

described in Natt, no prejudice had been suffered and it could not have been the intention of Parliament that contravention of s.111(4) should defeat the right to manage process.

34. On appeal to the Upper Tribunal ("the UT"), the Deputy President said that the appeal raised two issues. First, whether the second claim notice delivered to the landlord's s.48 address was validly given, or whether the effect of s.111(4) was that the use of that address was prohibited, the counter notice of 14 August 2014 having stipulated that future communications in relation to the subject matter of any further notice should be given to the s.111(4) address.

35. Secondly, if the address at which the second claim notice should have been given was the s.111(4) address, was the consequence of failing to give the claim notice at that address that the claim notice was of no effect at all or whether the safe delivery of the claim notice to the landlord was sufficient to enable the infringement of the prohibition in s.111(4) to be overlooked.

36. The Deputy President held that the s.48 address given to the lessees on 27 February 2015 did not countermand the s.111(4) notice given in the counter-notice dated 14 August 2014 (there is not an issue such as this that in these proceedings).

37. The Deputy President analysed the precise wording of the s.111(4) notice in the first counter-notice. He said that a reasonable recipient of that notice would read the notice in the light of there being a number of different types of notice after a claim notice has been given: for example the requirement under s.93 for the landlord to give information.

38. The notice would be read as referring to communications relating to the then current claim. It would not be understood to mean that the address of Wallace LLP must be used as the landlord's address for service of any future claim notice which the RTM company might wish to give. The recipient of the first counter-notice would reasonably have assumed that if a landlord wished future claim notices to be sent to it at a specific address it would make that clear in a letter or formal notice, rather than buried in the middle of a counter-notice responding to a specific claim. As the RTM company pointed out, a future claim might not have come until after a considerable lapse of time, and it would be surprising for a commercial landlord to nominate a professional representative potentially years in advance of the claim being made.

39. The Deputy President therefore concluded that on the first issue the tribunal had come to the right conclusion, but for different reasons.

40. As the Deputy President found for the RTM company on the first issue, the second issue did not strictly arise, and his views on the consequence of non-compliance with s.111(4) are obiter.

41. He made it clear that he did not think the FtT was entitled to take the

approach which it had done to the issue of non-compliance. He disagreed with the suggestion that the right to manage provisions did not involve the acquisition of a "property or similar right" as explained in Natt.

42. He said that Parliament had identified the steps to be taken to acquire the right to manage status, and it was not for the FtT to confer the same status by something less than complete compliance with those steps. The correct approach required the procedural rule in question to be considered in the context of the Act as a whole in order to determine, as a matter of construction of the statute, what Parliament intended to be the consequences of the failure of compliance. In considering that question, prejudice to any of the parties interested in the procedure is immaterial. Only if it is concluded that Parliament did not intend non-compliance be fatal is it appropriate to consider whether something less than complete compliance may have the same effect.

43. Having made these observations, the Deputy President did not decide whether a claim notice served in breach of the s.111(4) prohibition was a nullity, as the issue did not arise on the appeal.

Elim Court RTM Co Ltd v Avon Freeholds Ltd

44. In Elim one of the flats in the block was subject to a head lease. The RTM company failed to give a claim notice to the head lessee as required by s.79(6) (the definition of "landlord" in that subsection being defined in s.112(2) and (3) so as to include a head lessee).

45. The freeholder landlord served a counter-notice disputing the RTM company's entitlement to acquire the right to manage, on the grounds, amongst others, that no claim form had been given to the head lessee.

46. The FtT held that the claim to acquire the right to manage had not been invalidated by a failure to serve the intermediate landlord. On appeal, the UT held that the failure to serve the claim notice on the intermediate landlord was fatal to the validity of the claim.

47. On appeal to the Court of Appeal, the UT's conclusion that the claim notice ought to been served on the head lessee was not challenged. The only issue was what consequences attached to that failure.

48. Lewison LJ referred to the two categories in Natt. In paragraph [52] he said that the outcome in category two cases did not depend on the particular circumstances of the actual parties, such as the actual prejudice caused by non-compliance on particular facts of the case. The intention of the legislature as to the consequences of non-compliance with the statutory procedures is to be ascertained in the light of the statutory scheme as a whole.

49. In paragraph [53] he said that it was clear that the acquisition of the right to manage fell outside the first category in Natt, but fell within the second

category.

50. In paragraph [56] he said that it does not follow that if the case falls within the second category every defect in the notice or in procedure, however trivial, invalidates the notice. Even if there is no principle of substantial compliance the court must nevertheless decide as a matter of statutory construction whether the notice is "wholly valid or wholly invalid". In considering the question of validity, although the court should not inquire into the question whether prejudice had been caused on particular facts of the case, it does not mean that prejudice in the generic sense is irrelevant.

51. Lewison LJ went on to refer to the Court of Appeal decision in 7 Strathray Gardens Ltd v Pointstar Shipping & Finance Ltd [2004] EWCA Civ 1669. This was an example of a case falling within the second category where failure to comply with the literal requirements of the regulations was not fatal to the validity of a counter-notice. It was an enfranchisement case. The counter-notice was defective in that it failed to say whether the property in question was or was not included in an estate management scheme. In fact it was not.

52. Arden LJ held that the failure was not fatal to the validity of the counter-notice. There was no possible prejudice to the tenants or their nominee purchaser if that information was excluded.

53. In paragraph [58] of Elim Lewison LJ said that the focus must be on whether Parliament intended that a landlord (or some other person entitled to serve a counter-notice) could successfully contend that the defect in the relevant notice was fatal to its validity. As the head lessee in that case had no management responsibilities, he held that a failure to serve a claim notice on the intermediate landlord of a single flat with no management responsibilities did not invalidate the notice.

54. Drawing the threads of these authorities together and applying them to the present case, it is clear that we must go through a three stage process:

(1) Has there been a failure to comply with a provision in the statutory code when giving the withdrawal notices and/or the second claim notice to the wrong recipients?

(2) If so, does the failure fall within category one or category two of the Natt decision?

(3) If the failure does fall within category two, did Parliament intend that the landlords could successfully contend that giving the withdrawal notices and/or the second claim notice to the wrong recipients was fatal to the validity of either of them?

Discussion

The first issue

55. We turn to the first issue in these proceedings, which was whether the withdrawal notices were valid or not?

56. There is no doubt that by ignoring the s.111(4) prohibition contained in the first counter-notice, there was a failure to comply with a provision in the statutory code.

57. We are satisfied that this failure fell within the second category in Natt. We are unable to accept Mr Galliers' submission to the contrary.

58. We turn to the critical question, which is whether Parliament intended that the failure to give a withdrawal notice to the correct recipient rendered it invalid.

59. It is important to appreciate that the first issue concerns a withdrawal notice, not a claim notice, or one of the other notices which might be served on the landlord by the RTM Company, such as one under s.93(1) requiring further information.

60. A withdrawal notice can be distinguished from any of the other notices which must or may be used in a right to manage application. This is because a withdrawal notice does not require the landlord to do anything. It is not therefore critical that the notice is given to the address at which the landlord expects the notices in respect of the right to manage to be given. It really makes no difference to the landlord whether a withdrawal notice is sent to the s.48 address or to the s.111(4) address.

61. Even if the landlord does not become aware of a withdrawal notice, there will be a deemed withdrawal two months after the notice of claim is given if no application has been made to the FtT. As soon as that date is passed, the landlord will know that the claim to the right to manage has come to an end. So the landlord's ignorance of the withdrawal notice does not appear to matter and certainly cannot prejudice it's position. This is a lack of generic prejudice, not a lack of particular prejudice.

62. We equate the giving of the withdrawal notice to the s.48 address rather than to the s.111(4) address with the failure to state whether or not was an estate management scheme in 7 Strathray Gardens.

63. Accordingly, the RTM company succeeds on the first issue.

The second issue

64. We now turn to the second issue, which is whether the second claim form was valid or not? This was not a point taken in the second counter-notice, only

in the landlords' statement of case. But Mr Galliers did not submit that we could not deal with it.

65. In our judgment, on the true construction of the reference to s.111(4) in the first counter-notice, we are of the view that a reasonable recipient would not understand the prohibition on using the s.48 address to refer to a completely new claim, as opposed to a further notice in the existing claim. Although the wording used in these proceedings has been firmed up since the wording in Gateway, we do not consider that it goes far enough to be distinguishable from the wording in Gateway.

66. Moreover (and this is not our main reason), with the utmost respect to the Deputy President, it is doubtful to us whether a requirement to use a particular address given pursuant to s.111(4) in a counter-notice can ever govern the address for the giving of a second claim notice. Suppose a counter-notice requires a notice from the RTM Company to be sent to its solicitors and that a second claim notice is given sometime after the giving of the counter-notice. By that time the solicitors nominated in the counter–notice may no longer be instructed by the landlord, or, being a partnership, may have been wound up. It would be absurd in those circumstances to hold that the s.111(4) address remained efficacious. There cannot be a cut-off point after which an address given pursuant to s.111(4) in a counter-notice ceases to govern the identity of those to receive a second counter-notice. It would be more satisfactory to hold that when a second claim notice is given, the slate is wiped clean.

67. Accordingly, there has been no failure to comply with a provision in the statutory code.

68. If we are wrong on that and there has been a failure to comply with a provision in the statutory code, it is clear from the observations of the Deputy President in Gateway that there is a powerful argument that the giving of a second claim form at an address prohibited by an earlier s.111(4) notice would be a nullity, as this was intended by Parliament to be the consequence of a failure of compliance. We follow that approach.

68. However, for the reasons set out in paragraphs 65–67 above, the RTM Company also succeeds on the second issue.

Name:	Judge Simon Brilliant	**Date:**	15 April 2019

Annex

The genesis of the statutory scheme

2. Parliament first created a right for lessees to ask for a landlord to be stripped of its right to manage blocks of flats in the Landlord and Tenant Act 1987. This required the lessees to establish fault on the part of the landlord. If they succeeded in doing so then the court had the power to appoint a manager whose duties would be specified in the court order. These were usually limited to matters connected with service charges. The process was difficult for lessees and engendered many disputes between landlords on the one hand and lessees on the other.

3. Following lengthy consultation the Government published a further consultation paper in August 2000: Commonhold and Leasehold Reform. This is the genesis of what ultimately became the right to manage. The Government's view was that the leasehold system was heavily weighted in favour of landlords and that "abuses continue to flourish causing misery and distress to leaseholders." The proposals were:

"...intended to redress the uneven balance between landlords and leaseholders, and give leaseholders a greater degree of control over the management of their homes which reflects the substantial investment they have made. They are also intended to prevent unreasonable or oppressive behaviour by unscrupulous landlords, and would provide flexibility to tackle any new forms of abuse that may arise in the future."

4. Section 2.1 of the consultation paper explained the thinking behind the right to manage:

"The Government proposes to give leaseholders of flats a new right to take over the management of their building without having to prove shortcomings on the part of the landlord and without payment of compensation. This reflects the fact that the leaseholders normally have by far the greatest financial interest in the building. At present, the freehold of a block of flats can be acquired for a few thousand pounds whereas the value of the flats themselves may be hundreds of thousands of pounds. The Government does not consider it right that landlords should have complete control over management when they hold such a relatively small stake in the building."

5. In order to ensure democratic management, management functions would be carried out by a defined corporate structure with prescribed memorandum and articles of association. In section 3 Chapter 1 of the consultation paper the Government commented on the process under the Landlord and Tenant Act 1987:

"The process is adversarial and leaseholders may be at a disadvantage against an obstructive landlord who can afford the best professional advice and representation."

6. Accordingly the Government decided to introduce a right to manage without the need to prove fault. Paragraph 10 of that chapter stated:

"The procedures should be as simple as possible to reduce the potential for challenge by an obstructive landlord. …At the same time, the legitimate interest of the landlord in the property should be properly recognised and safeguarded."

7. The consultation paper went on to discuss requirements for standardising the memorandum and articles of association of RTM companies. It then discussed the procedure to be followed. There was to be a notice inviting participation; a claim notice served on the landlord and the opportunity for the landlord to serve a counternotice. In relation to the latter the paper said:

"We propose to provide that a counter-notice could only be served on the grounds of non-compliance with one or more of the specific qualifying criteria. It would be legitimate to object, for example, on the grounds that not enough of the qualifying tenants were members of the company, that the Memorandum and Articles did not meet the prescribed requirements, or that more than 25 per cent of the property was in non-residential use. Vaguer objections, such as suggestions that the company members did not have the resources or skills required to manage the block successfully, would not be legitimate, and such a counter-notice would not be valid. We are concerned that landlords may seek to serve spurious counter-notices, and are considering whether a prescribed form which sets out the grounds for objection might help to prevent this happening."

8. Although the Government's intention was that the procedures should be as simple as possible, the procedures that have in fact been laid down have not eliminated scope for dispute. As the Deputy President observed in Triplerose Ltd v Mill House RTM Co Ltd [2016] UKUT 80 (LC); [2016] L & TR 23:

"Small and apparently insignificant defects in notices, or failures of strict compliance, are relied on again and again by landlords seeking to stave off claims to acquire the right to manage and to avoid the resulting losses of control and of other benefits."

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).