



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

**Case reference** : **LON/00AP/LRM/2019/0008**

**Property** : **78 Upper Tollington Park, London  
N4 4NB**

**Applicant** : **78 Upper Tollington Park RTM  
Company Limited**

**Representative** : **The Leasehold Advice Centre  
(Philip Bazin)**

**Respondent** : **Assethold Limited**

**Representative** : **Scott Cohen Solicitors Limited**

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

**Tribunal member** : **Judge Pittaway**

**Date of decision** : **3 July 2019**

---

**DECISION**

---

## **Decisions of the Tribunal**

1. The Tribunal determines that the applicant was on the relevant date entitled to acquire the right to manage the premises pursuant to section 84(5)(a) of the Act.
2. Therefore, in accordance with section 90(4), within three months after this determination becomes final the Applicant will acquire the right to manage these premises.
3. The tribunal orders the respondent to refund the fee of £100 paid by the applicant within 28 days of the date of this decision.
4. No costs of the proceedings to the respondent are awarded because the application for the right to manage has not been dismissed

## **The application**

5. By a claim notice dated 23 January 2019 the applicant gave notice that it intended to acquire the Right to Manage 78 Upper Tollington Park, London N4 4NB (“the **premises**”) on 1 July 2019.
6. The respondent freeholder served a counter-notice dated 5 March 2019 asserting that the applicant had failed to establish compliance with sections 79(3), 80(3), 80(8) and 80(9) of the Act.
7. On 2 May 2019 the tribunal received an application under section 84(3) Commonhold and Leasehold Reform Act 2002 (the “**Act**”) for a determination that on the relevant date, the applicant RTM company was entitled to acquire the Right to Manage the premises. In this the applicant indicated that it was content for the tribunal to deal with the application without a hearing.
8. The tribunal identified that the only issue before it to determine was whether on the date on which the notice of claim was given the applicant was entitled to acquire the Right to Manage the premises. It issued directions on 23 May 2019 directing that the matter would be determined without a hearing unless either party requested one. Neither party has done so.
9. The directions further required the respondent to provide the applicant and the tribunal with a statement of case including legal submissions by 23 May 2019. It has not done so.

## **The law**

10. The relevant provisions of the Act are referred to in the decision below.

## **Evidence and submissions**

11. In its counter-notice, the respondent raised failure by the applicant to comply with sections 79(3), 80(3), 80(8) and 80(9) of the Act, but gave no details of how the applicant had so failed. And the respondent has not provided a statement of case as directed by the tribunal.
12. The only document from the respondent which indicates the basis upon which it challenged the validity of the application is an e mail of 25 March 2019 from the respondent's solicitor to an unidentified recipient ("Legal Administrator 1"), included by the applicant with the application, stating that the respondent had concerns as to the validity of the register of members and the due process of registration of the members, because of an alleged discrepancy between two versions of the register; and that the respondent was therefore concerned that there might be consequential inaccuracies affecting compliance. What these consequential inaccuracies might be are unspecified.
13. The application to the tribunal included a statement by the applicant's representative that when the Notice of Claim was served all the qualifying tenants were (and still were at the date of the statement) members of the RTM company, that the notice gave the information required by section 80(3), that it complied with section 80(8) and section 80(9).
14. The applicant's representative has drawn the tribunal's attention to the open correspondence that it sent the respondent on 13 May 2019 inviting the respondent to withdraw its counter-notice. The respondent not having done so the applicant invited the tribunal to make an immediate determination in favour of the applicant.
15. By e mail to the tribunal of 30 May 2019, copied to the respondent's solicitor, the applicant's representative requested the reimbursement of its application fee of £100.

## **The Tribunal's decisions and reasons**

16. Having considered the documents which accompanied the application, the tribunal determines the notice of invitation to participate is valid.
17. The only submission by the respondent (if the e mail from the respondent's solicitor can be considered as such) appears to relate to a discrepancy between two versions of the members' register. The tribunal are satisfied on the basis of the evidence before it that the applicant had complied with section 80(3), which requires the Claim Notice to state the full name of each person who is both the qualifying tenant of a flat in the premises, and a member of the RTM company.
18. Further, by section 81(1) of the Act a claim notice is not invalidated by an inaccuracy in any of the particulars required by or by virtue of

section 80 of the Act, so that any discrepancy between two versions of the members' register would not invalidate the Claim Notice.

19. As to the date upon which the applicant acquires the right to manage the premises, the tribunal is bound by section 90(4) of the Act, which provides that the applicant acquires the right three months' after this determination becomes final. According to section 84(7):
  - “(7) A determination on an application under subsection (3) becomes final—
  - (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.”
20. In light of the failure by the respondent to comply with Directions and taking into account the tribunal's determinations above the tribunal orders the respondent to refund the fee of £100 paid by the applicant within 28 days of the date of this decision.
21. As to costs, Section 88(3) of the Act states:
  - “(3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.”
22. In the light of the Tribunal's decision, there is no question of awarding any costs of the proceedings to the respondent because the application for the right to acquire has not been dismissed.

**Name:** Judge Pittaway

**Date:** 3 July 2019

### **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).