



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

<b>Case Reference</b>	: CHI/43UE/LRM/2021/0011
<b>Property</b>	: Vista House, Lincoln Road, Dorking RH4 1GP
<b>Applicant</b>	: Vista House Dorking RTM Company Limited
<b>Representative</b>	: The Leasehold Advice Centre
<b>Respondent</b>	: Surrey Heights Limited
<b>Representative</b>	: Eagerstates Limited
<b>Type of Application</b>	: Determination of entitlement to acquire the Right to Manage – Chapter 1 Commonhold and Leasehold Reform Act 2002
<b>Tribunal Member(s)</b>	: Judge Tildesley
<b>Hearing</b>	: Determination on the papers
<b>Date of Decision</b>	: 15 August 2022

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**DECISION**

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## **Summary of the Decision**

The Tribunal decides that the Applicant was entitled on the relevant date to acquire the Right to Manage the Premises which will take effect three months after this determination becomes final.

### **Background**

1. On 25 November 2021 the Applicant applied to the Tribunal for the right to manage Vista House, Lincoln Road Dorking RH14 1GP (“the Premises”) pursuant to section 84(3) of the Commonhold and Leasehold Reform Act 2002.
2. On 27 August 2021 the Applicant served a Notice of Claim on Surrey Heights Limited to acquire the right to manage the Premises on 8 January 2022. The Notice of Claim gave the Landlord (the Respondent) and other eligible persons until 7 October 2022 to serve a Counter Notice.
3. The Respondent served a Counter Notice on the Applicant by the said date disputing the Applicant’s entitlement to acquire the right to manage, on the ground that the notice of invitation was not sent to everyone required and of various asserted defects with the claim notice. The Counter Notice was signed by Mr Ronni Gurvits of Eagerstates Limited who was described on the Counter Notice as the authorised agent of the Respondent.
4. On 31 January 2022 the Tribunal directed that the application would be dealt with on the papers unless a party requested an oral hearing. The Tribunal required the Applicant to provide its statement of case by the 7 March 2022, the Respondent to supply its statement of case by 11 April 2022, the Applicant’s reply by 25 April 2022, and the Applicant to supply a hearing bundle by 9 May 2022.
5. The Tribunal also directed that

“If either party wishes to appoint a representative, a signed authority must be provided. As the application has been signed by a representative, authority for the representative to act must be provided by the Applicant by no later than 14th February 2022. In the absence of such an authority from any given party, any further correspondence from the Tribunal will be sent to the party direct and any purported representative will be treated as unable to act as such in conducting these proceedings or appearing as advocate”.
6. The Tribunal also required the Applicant to send a copy of the application and supporting documents and the Directions to the Respondent and the non-participating Lessees by 7 February 2022 and confirm to the Tribunal that it has done so, with evidence. The Applicant was not required to serve the participating Lessees.

7. The Tribunal directed the Respondent and any non-participating Lessee who wished to be a party to the application shall on receipt of the application and these directions do the following:
  - i) write to the Tribunal, electronically if possible, acknowledging receipt;
  - ii) if the email address provided by the Applicant is not the appropriate one to use in these proceedings, provide a suitable email address to the Tribunal and the Applicant for the service of documents.
8. The Applicant in emails of the 2 and 3 February 2022 confirmed that it had sent copies of the application and supporting documents and the Directions to the Respondent, Ronni Gurvits and the non-participating lessees.
9. On 7 February 2022 the Applicant supplied in writing a notice signed by Ms Ramos and Mr Temple, Directors authorising Philip Mark Bazin of the Leasehold Advice Centre to represent the Applicant in these proceedings in accordance with rule 14 of the Tribunal Procedure Rules 2013.
10. On 16 February 2022 the Applicant enquired whether the Respondent had provided written authority for Eagerstates, and Ronni Gurvits to act on its behalf in these proceedings. On 21 February 2022 the Tribunal confirmed that it had not and advised the Applicant to send any future documentation to the Respondent direct.
11. On 22 February 2022 Ronni Gurvits queried why it should provide the written authority on the ground that both the Applicants and the leaseholders were aware that Eagerstates managed the property on behalf of the Applicant. In a further email that day Ronni Gurvits said that he had lost track of the proceedings and requested a further copy of the directions.
12. On 22 February 2022 the Tribunal responded to Ronni Gurvits that his email had been referred to a Procedural Judge who referred Mr Gurvits to rule 14 of the Tribunal Procedure Rules 2013 and advised that if s/he was to represent the landlord then a written authority was required. On 8 March 2022 the Tribunal supplied Ronni Gurvits with another copy of the directions dated 31 January 2022.
13. On 3 May 2022 Ronni Gurvits contacted the Tribunal asking for an update on this matter, stating that no further correspondence had been received and that s/he could not see how this matter could be dealt with at present because neither party had made submissions.
14. On 4 May 2022 the Tribunal responded to Ronni Gurvits to the effect that it had requested on numerous occasions written authority that the Respondent had instructed Eagerstates to represent it in these proceedings and that no such authority had been forthcoming. Further

- on 21 February 2022 the Tribunal informed the Applicant and Ronni Gurvits that any further correspondence and documentation would be sent direct to the Respondent until such authority had been received.
15. On 17 May 2022 the Applicant submitted an application to bar the Respondent from taking further part in these proceedings, and also for permission to make application for unreasonable costs.
  16. On 20 May 2022 the Tribunal informed the parties that the Applicant should serve the determination bundle in accordance with the directions.
  17. On 26 May 2022 the Applicant filed and served the determination bundle.

### **Consideration**

18. The issue for the Tribunal is whether the Applicant is entitled to acquire the Right to Manage the Premises.
19. Part 2 of the Commonhold and Leasehold Reform Act 2002 (“2002 Act”) makes provision for the acquisition of the right to manage a building containing flats, by a RTM company whose shareholders are qualifying tenants. The right to manage is acquired by compliance with the procedure set out in the Statute.
20. The purpose of the legislation is to enable leaseholders to acquire the right to the manage premises without the need to prove fault on the part of the landlord. It was intended that the Statutory procedure for acquiring the right to manage should be as simple as possible. Unfortunately the procedures that have in fact been laid down have not eliminated scope for dispute. As the Upper Tribunal 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."
21. Under the 2002 Act the RTM can only be acquired in respect of premises if: (1) they consist of a self-contained building or part of a building (with or without appurtenant property); (2) they contain two or more flats held by qualifying tenants; and (3) two-thirds of the flats contained in the premises are held by qualifying tenants. A qualifying tenant is a person who is a tenant of a flat under a long lease. The essential characteristic of a long lease is that it “is granted for a term of years certain exceeding 21 years”. A person is not a qualifying tenant, however, if the long lease in question is a business lease.
22. The Statutory procedure comprises a two-stage process: invitation to participate followed by claim notice. Section 78 (1) requires the notice

inviting participation to be served on all qualifying tenants who are not members of the RTM company and have not agreed to become members. Section 79(1) enables a claim notice to be given provided it is given by a RTM Company; all persons required to be given a notice of invitation to participate has been given such a notice at least 14 days before the claim, and at the date of the claim the membership of the RTM company include a number of qualifying tenants of flats contained in the premises which is not less than one half of the total number of flats so contained.

23. The persons upon whom the claim notice has been served (and no one else) are entitled to serve a counter-notice. Since qualifying tenants are only given a copy of the claim notice, rather than the notice itself, they are not entitled to serve a counter-notice. The counter-notice will either admit that the RTM company was entitled to acquire the right to manage or it will allege: "that, by reason of a specified provision of the Chapter, the RTM company was not ... so entitled."
24. If a counter-notice denying the RTM company's right to manage is given, the RTM company may apply to the Tribunal to determine its entitlement. If no counter-notice is given, or all counter-notices admit the right, the RTM company acquires the right to manage automatically.
25. This case has been marred by the Respondent's unwillingness to participate in the proceedings. The Tribunal finds Eagerstates' questioning of the direction to the Respondent to supply written authority for Eagerstates Limited to represent it in these proceedings suspicious and timewasting. The Tribunal notes that Eagerstates Limited has no ownership or other corporate connection with the Respondent, and it is not a firm of solicitors. The purpose of rule 14 is to ensure that the person who is held out to be representative of a party has that party's authority to speak for it in the proceedings. The Tribunal is satisfied that the Respondent has been separately notified of these proceedings and has received the relevant documents. The Tribunal finds that the proceedings have been unnecessarily delayed by the Respondent's failure to co-operate with the Tribunal. The Tribunal, however, decides not to dwell on the Respondent's failure but to proceed to determine the substantive application on the evidence before it.
26. The Applicant supplied a determination bundle comprising 935 pages which included a copy of the Respondent's Counter Notice.
27. The Tribunal makes the following findings of fact:
  - a) The Premises comprise a self contained block of seventy one apartments held on long leases and constructed around 2018. The freehold of the Premises is held by Surrey Heights Limited (the Respondent).

- b) Vista House Dorking RTM Company was incorporated on 9 April 2021. A copy of its Memorandum and Articles of Association are exhibited in the bundle.
- c) On 7 June 2021 the RTM Company served Notices of Invitation to participate in the RTM Company on all qualifying tenants who were not members of the RTM company and had not agreed to become members. The Notices of Invitation were sent to Flats 1, 2, 7, 8, 12, 13, 14, 17, 22, 26, 31, 32, 34, 35, 39, 40, 41, 42, 43, 44, 45, 47, 51, 64, 70 and 71. Flats 22, 41, 42 and 45 were subsequently admitted as Members of the RTM company prior to the Notice of Claim being served.
- d) On 27 August 2021 the RTM Company served a Notice of Claim by first class post on the Respondent, the Registered Proprietor of the Freehold and also copied it to Eagerstates Limited, the managing agent of the Premises. The Notice provided for a response date of 7 October 2021.
- e) At the date of the Claim 69 per cent (49 of the flats) of the qualifying tenants were members of the RTM company.
- f) On 4 October 2021 Eagerstates Limited on behalf of the Respondent served a Counter Notice disputing the Applicant's right to acquire the management of the premises.
- g) In response to the Counter Notice the Applicant supplied the Respondent with a schedule of all the Qualifying Tenants who were members of the RTM company and who were not members at the date the notice of the Claim was served. The Applicant also provided the Respondent with copies of the Notices of Invitation which were sent to the non-members. The Tribunal is satisfied on the evidence provided that contrary to the allegations in the Counter Notice the Applicant meet the requirements of section 78(1) and section 79 subsections (2), (3) and (5) of the 2002 Act.
- h) In response to the Counter Notice the Applicant supplied the Respondent with copies of emails and correspondence confirming that Notices of Claim were served on the Qualifying Tenants whether members of the RTM company or not. The Tribunal is satisfied on the evidence that the requirements of section 79 (8) of the 2002 Act were met.
- i) In response to the Counter Notice the Applicant stated that the Claim Notice provided the necessary information as required by section 80(3) of the 2002 Act. The Tribunal having considered the evidence agrees with the Applicant. The Tribunal is satisfied on the evidence that the requirements of section 80(3) of the 2002 Act were met.

j) The Application to the Tribunal for the RTM the premises was made on 25 November 2021.

## **Decision**

28. The Tribunal finds that the Applicant met the statutory criteria and that it has complied with the statutory procedures for acquiring the RTM the premises.
29. The Tribunal, therefore, decides that the Applicant was entitled on the relevant date to acquire the Right to Manage the Premises which will take effect three months after this determination becomes final.
30. The Tribunal orders the Respondent to reimburse the Applicant with the Tribunal fee of £100. The Tribunal has a discretion under rule 13(2) of the Tribunal Procedure Rules 2013 in respect of the reimbursement of fees. The Tribunal considers it is appropriate in this case for an Order against the Respondent because of its failure to co-operate with the Tribunal and its non-compliance with directions.
31. If the Applicant wishes to make an application for unreasonable/wasted costs in accordance with rule 13(1) of the Tribunal Procedure Rules 2013 it must make the application in writing within 28 days from the date of this decision and serve it on the Tribunal and the Respondent. If an application is made the Respondent has 14 days in which to respond. The response must be sent to the Applicant and the Tribunal. The Tribunal will then make its determination on the papers.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.