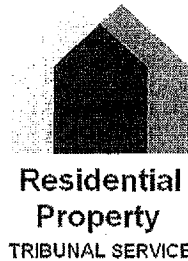


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**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/OOAW/LRM/2009/0001**

**APPLICATION UNDER SECTION 84(3) of the Commonhold and Leasehold Reform Act 2002 ('the Act')**

**Applicants:** Kenton Court Management Limited

**Respondents:** Borisbrook Properties Limited

**Premises:** Kenton Court, 356 Kensington High Street, LONDON W14 8NN

**Date of Application:** 22 December 2008

**Date of Pre-Trial Review:** 9 January 2009

**Date of the Hearing:** A decision was taken on a consideration of the papers neither party having sought an oral hearing.

**Appearances:** As there was no oral hearing there were no appearances

**Leasehold Valuation Tribunal:** James Driscoll LLM, LLB, Solicitor, Evelyn Flint DMS FRICS

**Date of Tribunal's Decision:** 20 February 2009

## **DECISION**

**As the respondents failed to give a counter-notice under s 84 of the Act the tribunal has no jurisdiction to make a determination as to whether the applicant is entitled to the RTM (see: s 84(3) of the Act)**

**Consequently the applicant acquired the RTM on the date specified in the claim notice that is to say the 1st February 2009 (see s 80(7), s 90 of the Act).**

### **The Application**

- 1 This is an application made under s 84(3) of the Act for a determination that the applicant has the right to the RTM. It is made by Mr George Korolewski a director the secretary of the applicant company.
- 2 For the following reasons, the tribunal has concluded that it has no jurisdiction to make an order. In reaching this decision the tribunal considered written statements made by the parties. The applicant is a company that was incorporated originally to acquire the freehold of the premises which is a block of flats all held on long leases. Later (on 10 November 2007) the applicant passed a resolution to amend the memorandum and articles of association to include as one of its objects the exercise of the right to manage the premises (cf s 73(2)(b) of the Act).
- 3 Later a notice claiming the right to manage was given under s 80 of the Act. According to the applicants, this followed the giving of participation notices to non-participating leaseholders under s 78 of the Act.
- 4 The respondent is the landlord under the flat leases and the owner of the freehold of the building. For various reasons the respondent has maintained in correspondence that the applicant is not entitled to the RTM. This correspondence was exchanged between those advising the parties. In summary, the respondent challenges the

RTM claim on the grounds that (a) the applicant is not a RTM company as required under s 73 of the Act and (b) that it is not convinced that the participation procedures were complied with (under s 78 of the Act).

5 However, the respondent did not serve a counter-notice under s 84 of the Act. On the 22 December 2008, the applicant applied to the tribunal for a determination under s 84(3) of the Act. Directions were given by the tribunal on 9 January 2009 and with the agreement of the parties a determination as to whether the tribunal has jurisdiction was directed on consideration of the papers and without an oral hearing.

6 In considering the papers the tribunal noted, amongst other things, that there is evidence that the applicant resolved to alter its objects to include the exercise of the RTM (in accordance with s 73(2)(b)) though the tribunal noted that the name of the applicant company has not been changed to include 'RTM Company Limited' (see the RTM Companies (Memorandum etc) (England) Regulations 2003, Schedule, Part I).

7 The right to manage (RTM) was introduced by the Act as a new set of rights for leaseholders to take over the management of the building containing their flats. It is an alternative to a claim to enfranchise under Part I of the Leasehold Reform, Housing and Urban Development Act 1993. The qualifications for the exercise of the RTM are broadly speaking the same as they are for an enfranchisement claim under the 1993 Act.

8 In contrast to the right to apply to the tribunal for a manager to be appointed (under Part 11 of the Landlord and Tenant Act 1987) the RTM is a no-fault based right. No application needs to be made to the tribunal or the court for the exercise by leaseholders of the RTM. There is, however, the right for a landlord to challenge the claim by giving a counter-notice. For example, the landlord might claim that the premises do not qualify, or that the company is not a properly incorporated RTM company or that other aspects of the procedures in the Act have not been followed.

## **The decision**

9 Under s 84 of the Act the respondent has the right to give a counter-notice, either admitting the applicant's entitlement to the RTM or alleging that under one of the provisions in the Act it is not so entitled. It is common ground between the parties that although

those advising the respondent claimed in correspondence that there was not entitlement to the RTM, no such counter-notice was given.

10 Under the Act, where the applicant is given one or more counter-notices alleging that there is no entitlement, application can be made to the tribunal under s 84(3) of the Act for a determination that it is entitled to the RTM and such an application must be made within two months of the day on which the counter-notice was given.

11 As no counter-notice was given under s 84 of the Act the company had no need (or any right) to apply to the tribunal for a determination. Thus in this case the tribunal has no jurisdiction to make a determination. If the respondents wanted to effectively challenge the RTM claim, they should have served a counter-notice under s 84 and in accordance with the requirements of the Act and regulations made under the Act.

12 It follows that as the tribunal has no jurisdiction to make a determination. Accordingly as no legally effective challenge has been made by the respondents, the applicant acquired the RTM under s 90(2) of the Act on the date specified in the notice of claim given under s 80(7) of the Act. It appears, therefore, that the acquisition of the RTM took place on the 1 February 2009.

SIGNED..... *James Driscoll*  
James Driscoll LLM LLB Solicitor  
Lawyer Chairman

Dated: 20 February 2009