



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

Case Reference : CHI/00HE/LRM/2021/0006

Property : 1, 2, 3 & 4 Elgin Close, Falmouth, Cornwall
TR11 5HH

Applicant : Elgin Close Apartments RTM Company
Limited

Representative : ---

Respondent : Smash Developments Limited

Representative : Stephens Scown LLP

Type of Application : No fault Right to Manage – Section 84(3)
Commonhold and Leasehold Reform Act 2002
("the 2002 Act")

**Tribunal
Member(s)** : W H Gater FRICS MCI Arb

Date of Decision : 11 January 2022

DECISION

Summary of decision

The Tribunal finds that the Applicants are entitled to the right to manage the premises with effect from 13 March 2022.

Background

1. The Applicant seeks a determination that it was, on the relevant date, entitled to acquire the right to manage the premises.
2. Directions were made on 13 October 2021 setting out a timetable for the exchange of documents between the parties and the preparation of a hearing bundle.
3. On 13 December 2021 the Respondents wrote to the Tribunal formally withdrawing their objection to the application for the right to manage. They stated that in the course of receiving documents for the determination bundle, the information contained in the Applicant's supplementary statement provided the information and evidence originally sought in its counter notice.
4. On 14 December 2021 the Applicants wrote to the Tribunal taking issue with the Respondent's account of the conduct of the application.
5. A procedural judge considered the matter and determined that, as the objection had been withdrawn, there appeared to be no dispute in respect of the application in hand. Accordingly the Tribunal no longer has jurisdiction in relation to the proceedings and was minded to strike out the application in accordance with Rule 9 (2)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 . Representations were invited from the parties within 14 days of 15 December 2021.
6. No representations were received from the Respondents. On 25 December 2021 the Applicants wrote requesting the Tribunal to determine the entitlement to manage.
7. The Applicants produced a letter to the Respondents dated 17 December 2021 requesting them to confirm in writing, in pursuance of Section 84(5)(b) of the Act, the entitlement of the RTM company to manage the property.

The Law

8. The relevant sections of the Act are:-

Commonhold and Leasehold Reform Act 2002

Section 84(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

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

Section 90

(4) Where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final.

(5) Where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the acquisition date is the date three months after the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees in writing that the company was on the relevant date entitled to acquire the right to manage the premises.

Finding of fact

9. The Respondents have confirmed in writing to the Tribunal and to the Applicant in the letter of 13 December 2021 that the issues, on which their objection to the entitlement was based, have all been satisfied and have formally withdrawn that objection.

Decision

10. The effect of the letter of withdrawal and confirmation that all issues in the counter notice are satisfied is that the Respondents have agreed in writing that the Applicants are entitled to the right to manage, satisfying section 84(5)(b) of the Act.
11. Accordingly, the Tribunal finds that the Applicant were so entitled under that section.
12. In accordance with Section 90(5) of the Act the Tribunal finds that the acquisition date is 3 months after 13 December 2021, the date of the letter of withdrawal, namely 13 March 2022.

Rights of appeal

1. 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.
2. 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.
3. 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. The application should be send by email to rpsouthern@gov.uk
4. 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.
5. 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.
6. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).