

THE MIDLAND RENT ASSESSMENT PANEL

**DECISION OF THE MIDLAND LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S84(3) OF THE COMMONHOLD AND LEASEHOLD
REFORM ACT 2002**

Property: 9 - 29 Wiltshire Drive, Halesowen, West Midlands B63 2XU

Applicant: 9 - 29 Wiltshire Drive, Halesowen RTM Company Limited
(represented by LHP Law LLP, solicitors)

Respondent: Sinclair Gardens Investments (Kensington) Limited (landlord)
(represented by P Chevalier & Co, solicitors)

**Determination without an oral hearing under Regulation 13
of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003**

Members of the leasehold valuation tribunal:

Lady Wilson
Mr T F Cooper BSc FRICS FCI Arb

Date of the tribunal's decision: 9 March 2006

Background

1. This is an application by 9 - 29 Wiltshire Drive, Halesowen RTM Company Limited (“the company”) against Sinclair Gardens Investments (Kensington) Limited, the landlord, under section 84(3) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination that the company was on the relevant date, which is defined by section 79(1) of the Act as the date on which the notice of claim was given, entitled to acquire the right to manage 9 - 29 Wiltshire Drive (“the premises”).
2. The company gave notice of the claim to acquire the right to manage the premises in accordance with section 79(6) of the Act to the landlord (and to its managing agent) by post on 30 September 2005, and the notice was apparently received by the landlord on 3 October 2005. We accordingly take 3 October 2005 to be the relevant date. By a counter-notice dated 2 November 2005 the landlord alleged that by reason of section 79(8) of the Act the company was not on the relevant date entitled to acquire the right to manage the premise.
3. In accordance with regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended by the Leasehold Valuation Tribunals (Procedure) (Amendment) Regulations 2004 we have given notice of our intention to proceed without an oral hearing and neither party has requested to be heard. Accordingly we have reached our decision on the basis of written representations which the parties’ solicitors have submitted in accordance with the tribunal’s pre-hearing directions.
4. Section 79(8) of the Act provides that *a copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises*. It is not disputed that a copy of the claim notice has been given to each of the ten qualifying tenants, nine of whom have elected to become members of the company, but that such notice was given

subsequent to the service of the counter-notice. It is the landlord's case that the company should have given copies of the claim notice to the qualifying tenants on or before the relevant date and that its failure to do so invalidates the claim.

5. The company's case is that its failure on or before the relevant date to give a copy of the claim notice to the qualifying tenants does not invalidate the claim. It says that section 79(8) of the Act is silent as to when copies of the claim notice must be given to the qualifying tenants, and that the only persons who might have been prejudiced by a failure to give them copies of the claim notice by the relevant date, namely the qualifying tenants, have not been prejudiced by having been given copies of the claim notice after the relevant date. The company has produced letters from all ten of the qualifying tenants confirming that they received notices of invitation to participate in the claim before the claim was made, that they received six newsletters between 4 August 2004 and 16 January 2006 advising them of the progress of the company's efforts to acquire the right to manage, that they were fully aware prior to the service of the claim notice that the claim was being made, and that they were satisfied that their interests as tenants had been protected in that they had been given an opportunity to participate in the company and had been informed that the claim notice had been given.

Decision

6. We are satisfied that the company had on the relevant date the right to acquire the right to manage. We find no support in the Act or in any Regulations for the landlord's contention that the company's entitlement to the right depends upon copies of the claim notice having been given to the tenants by the relevant date. We observe that section 79(2) of the Act provides: *The claim notice may not be given by a RTM company unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.* Had there been a

requirement as to the giving of notice on or before the relevant date we would have expected to find it similarly clearly expressed in section 79. Indeed, we are not surprised to see that such a requirement is not in the section, the interests of the tenants being clearly protected by the requirements as to notices inviting participation in section 78 and by the provisions of section 79(2).

7. Accordingly, we are satisfied that the company had at the relevant date the right to acquire the right to manage the premises. By section 84(7) of the Act, this determination becomes final -

(a) if not appealed against, at the end of the period for bringing an appeal [as to which, see the Lands Tribunal Rules 1996], or

(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

8. The tenants have in their application asked us to make an order under section 20C of the Landlord and Tenant Act 1985 that any costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge. The landlord has not commented on this aspect of the application. We are satisfied that it would be just and equitable in all the circumstances to make such an order, the company having been wholly successful and the landlord's challenge being, in our view, without merit.

CHAIRMAN.....

DATE.....