LON/00AG/LRM/2006/0002

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 84(3) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Property: **1 - 138 Greenhill, Prince Arthur Road, London NW3 5TY**

Applicant: Greenhill RA RTM Company Limited

Respondent: Hildron Finance Limited

Determination without a hearing in accordance with regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Members of the leasehold valuation tribunal:

Lady Wilson
Mr W J Reed FRICS
Mr D L Levene OBE MRICS

Date of the tribunal's decision: 30 August 2006

1. Greenhill RA RTM Company Limited ("the company") is a company formed by the requisite proportion of the qualifying tenants of Greenhill, Prince Arthur Road, London NW3 5TY, which is a block of 138 flats, for the purpose of acquiring and exercising the right to manage the block in accordance with Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The claim notice was served on Hildron Finance Limited, the freeholder, and others, on 19 April 2006 and by a counter-notice dated 18 May 2006 the freeholder alleged that, by reason of its failure to show that it had on the relevant date, namely the date on which the claim notice was given to the respondent, complied with section 78 of the Act, the company was not entitled to acquire the right to manage.

2. This determination is made without a hearing and on the basis of written representations in accordance with regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England Regulations) 2003. Written representations have been received from the landlord's solicitors dated 26 July 2006 and from Dr Lipman, a director of the company dated 17 August 2006.

3. The landlord's case is that the claim is invalid because the landlord has not been provided with satisfactory evidence that invitation notices had, before the claim was made, been properly given in accordance with section 78 of the Act. It says that compliance with section 78 is a pre-condition to the service of a valid claim notice under the Act, and that because the date given on the claim notice was said to have been given on a date before the notice was signed, no credence can be given to the dates on the invitation notices.

4. Dr Lipman says that the landlord's solicitors had by a letter dated 3 May 2006 asked for confirmation that, in accordance with section 78(2) of the Act, every qualifying tenant in the building had been given notice of invitation at least 14 days before the claim notice was served, and that the company had by a letter dated 10 May 2006, confirmed that they had. He accepts that compliance with section 78 is a precondition of validity of the claim notice but

submits that there is no ground upon which it can properly be said that the claim notice is invalid and that the evidence shows that all the requirements of section 78 were in fact complied with. The company has produced to the tribunal copies of notices of invitation to participate dated 3 March 2006 and a letter from Hampstead Secretarial Bureau dated 19 June 2006 which says that its named employee personally posted notices of invitation to participate on every person on an attached list, which has been put before us and which appears to contain the names of all the 138 leaseholders and not just those of the leaseholders who are qualifying tenants but not members of the company.

5. By section 78(1) of the Act:

> *Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice was given -*
>
> *(a) is the qualifying tenant of a flat contained in the premises, but*
>
> *(b) neither is nor has agreed to become a member of the RTM company.*

6. We accept that the giving of such notices in accordance with section 78 is a pre-condition of the validity of the claim notice, but we do not accept that it is a requirement of the Act that compliance with section 78 must be strictly proved unless a *prima facie* case has been made. In our view the landlord has not established a *prima facie* case of non-compliance with the section and there is no merit whatsoever in the stance which it has taken. Indeed, the documents provided appear to establish that the company has exceeded its statutory obligations in that it has given notice of invitation even to qualifying tenants who are members of the company.

7. Accordingly we determine that the claim notice is valid and that the company was on 19 April 2006 entitled to acquire the right to manage. In accordance with 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 (in accordance with the time specified by rules under section 3(6) of the Lands Tribunal Act 1949), or (b) if appealed against, at the time when the appeal, or any further appeal, is disposed of, and by section 90(4) the right to manage will be acquired three months after that date.

8. The company has invited us to make an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs incurred 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 on the ground that the landlord's case had no merit, that the company has been put to unnecessary expense, and that it is therefore just and equitable for the tribunal to exercise its discretion to make such an order. The landlord has not responded to this application because no reply to the company's case was directed

9. Section 20C of the 1985 Act provides that an application under the section may be made by "a tenant". Our preliminary view is that it would be disproportionate to require a separate application under section 20C to be made by a tenant or tenants, given that Dr Lipman is a tenant, as are all the directors of the company, and because the company, although it has been incorporated, has not yet acquired the right to manage. However, since the landlord has not had an opportunity to make submissions on the question of whether an order should be made under section 20C, it may have 21 days from receipt of this decision in which to do so. A determination on this issue will be made shortly after any such written submissions are received or, if none are received, shortly after 21 days after the date of this decision.

CHAIRMAN.....

DATE: 30 August 2006