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HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

Case Reference:	**LON/00AM/LAM/2012/0016**
Property:	**105 – 115 Haberdasher Street, London N1 6EH**
Applicant:	Mr P Feldman
Respondent:	105 – 115 Haberdasher Street RTM Company Limited
Date of hearing:	3rd September 2012
Appearance for Applicant:	Mr J Fowler of Stock Page Stock
Appearances for Respondent:	Mr A Parkinson of Atlantis Estates and Mr H Goulbourne, a director of the Respondent company
Also in attendance:	Mr Feldman (the Applicant)
Leasehold Valuation Tribunal:	Mr P Korn (chairman) Mr L Jarero BSC FRICS Mrs L Hart
Date of decision:	19th September 2012

Decisions of the Tribunal

(1) The Tribunal makes the following determinations:-

- The Applicant is not entitled to make an application under sub-section 21(1) of the 1987 Act as he is not a 'tenant'.

- In any event, and even if the Tribunal is wrong in law on the above point, the Tribunal refuses to grant an order dispensing with the requirement to serve a preliminary notice.

(2) In the light of the determinations of the Tribunal referred to in (1) above, the substantive application for the appointment of a manager does not fall to be determined.

(3) The Tribunal makes no cost orders.

The application

1. This application is for the appointment of a manager pursuant to section 24 of the Landlord and Tenant Act 1987 ("**the 1987 Act**").

The background

2. The Applicant is the freehold owner of the Property, which consists of 6 flats within a self-contained block in an estate of 52 flats. The Respondent is a 'Right To Manage' company (RTM) established in 2008 to manage the Property. The Applicant declined to join the RTM when it was established.

3. Of the 6 flats within the Property, 2 of them (flats 105 and 109) are not subject to long leases, and in his application the Applicant described himself as the 'owner' of these flats, presumably in order to distinguish them from those which are subject to long leases in favour of third parties. At the hearing Mr Fowler explained that flats 105 and 109 were let out on assured shorthold tenancies.

4. The Tribunal inspected the Property on the morning of 3rd September 2012 and the hearing took place in the afternoon of the same day.

The juridictional issues

5. The Tribunal noted that the Applicant had not served a preliminary notice on the Respondent under section 22 of the 1987 Act and that he was therefore applying under sub-section 22(3) of the 1987 Act for dispensation with the requirement to serve a preliminary notice before making the application to the Leasehold Valuation Tribunal.

6. The Tribunal also noted that the Applicant in this case was the freeholder, not a leaseholder, and that therefore the question also arose as to whether he was entitled under section 21 of the 1987 Act to make an application for the appointment of a manager at all.

Preliminary notice

7. Mr Fowler for the Applicant said that the works that needed to be carried out to the Property were urgent and that this was why there had been insufficient time to serve a preliminary notice. Specifically, he said that the rear elevation needed to be decorated, repointed and repaired and that the last time any external redecoration was done was approximately 13 years ago. When asked about the timescale for the work, Mr Fowler said that the work needed to be done next Spring.

8. Mr Fowler said that previous complaints had been made by or on behalf of the Applicant about the state of the Property, but he conceded that there had been no recent communication and that no letters had been written since Atlantis Estates took over the management of the Property in June 2010.

9. Mr Parkinson for the Respondent said that the work was not urgent enough to justify proceeding to an application without first serving a preliminary notice. It was accepted that there had been some breaches of the Respondent's repairing responsibilities, but the Respondent was in the process of trying to remedy the breaches.

Section 21

10. The Tribunal put it to the Applicant that sub-section 21(1) of the 1987 Act states that *"The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises"*. The question therefore arose as to whether the Applicant was "the tenant of a flat" for these purposes, given that he was the freehold owner of the Property and that 4 of the flats were subject to long leases and the other 2 were subject to assured shorthold tenancies.

11. Mr Fowler said that the Applicant considered himself to be the tenant of flats 105 and 109 because he is responsible for paying the service charge in respect of these flats. He did not advance any other arguments, and nor did the Respondent.

Tribunal's analysis – preliminary notice

12. Dealing first with the application for dispensation with the requirement to serve a preliminary notice, it seems clear to the Tribunal that dispensation should not be given. The appointment of a manager by the leasehold valuation tribunal

against the wishes of the landlord or (in this case) of the RTM company is a very serious matter and not one to order lightly. It is therefore incumbent on an applicant to present as strong a case as possible and to go through all requisite preliminary steps as thoroughly as possible unless there are compelling reasons not to do so.

13. It is also clear from the way in which the legislation is drafted that the presumption is that a full preliminary notice must be served containing all relevant details and specifying a reasonable period within which the problems complained of must be remedied. If a notice is served containing full details of the issues of concern and if the landlord/manager then fails to remedy the problems within the reasonable period specified in the notice then at **that** stage an application can be made to the leasehold valuation tribunal.

14. A leasehold valuation tribunal can only **dispense** with the requirement to serve a preliminary notice if *"satisfied that it would not be reasonably practicable to serve such a notice"*. The classic scenario in which it would not be reasonably practicable to serve a notice on somebody is where that person cannot be traced. It might also be arguable that it is not 'reasonably practicable' to serve a preliminary notice in a case where work needs to be carried out as a matter of extreme urgency (for example due to health and safety considerations), although in such a situation it is not at all obvious that the best way to deal with the urgent need to carry out works will be to apply to the leasehold valuation tribunal for the appointment of a manager.

15. In any event, the Applicant's evidence on this issue is very thin generally and he has not advanced any good reasons for the failure to serve a preliminary notice. There was no problem in tracing the Respondent. To prepare and serve a preliminary notice would have taken a few hours. If the work referred to by Mr Fowler really was urgent then the Applicant could have specified a short period in the preliminary notice for compliance.

16. Furthermore, even if it is the case that urgency can justify dispensing with a preliminary notice, based on Mr Fowler's own evidence the level of urgency of the work in this case is not even close to warranting dispensing with the preliminary notice on this ground. Mr Fowler referred to the work needing to be carried out next Spring, which (even if he is correct in his analysis) does not suggest a level of urgency that would make it problematic to serve a preliminary notice.

17. The Tribunal therefore refuses to grant an order dispensing with the requirement to serve a preliminary notice.

Tribunal's analysis – section 21

18. No legal arguments or legal authorities were advanced on behalf of either party on this point, although this is merely an observation and not a criticism.

19. In the absence of any legal arguments having been put to the Tribunal, it considers that the plain meaning of the words in sub-section 21(1) *"The tenant of a flat ... may ... apply ... for an order ... appointing a manager"* excludes the Applicant. The Applicant is not a tenant in the plain sense of that word. The four leaseholders are tenants, and it is arguable that the Applicant's assured shorthold tenants are tenants for the purposes of sub-section 21(1). The Applicant, on the other hand, is the freeholder and he is the landlord of all of the leaseholders and of the assured shorthold tenants.

20. As stressed at the hearing, it is possible that the Tribunal is wrong in law on this particular point. As no legal arguments were advanced, the Tribunal was not in a position to analyse this issue in detail. Whilst the Tribunal does not usually give 'advice' to the parties, in this case it is considered appropriate to add that the Applicant may wish to obtain a legal opinion on this particular point. That way, he can take a view on the likelihood of his being entitled to make a fresh application after first having served a preliminary notice.

No cost applications

21. No cost applications were made.

Chairman: 

Mr P Korn

Date: 19th September 2012