

12609



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

Case reference : **LON/00BK/LAM/2017/0020**

Property : **Dorset House, Gloucester Place,
London, NW1 5AQ**

Applicants : **Mr Clive Norman and 83 tenants
per the list attached to the
application**

Representative : **Mr Clive Norman (Flat 6)**

Respondent : **Dorset House Residential Limited
(landlord)**

Representative : **Mr S Serota, Wallace LLP, solicitor**

Interested persons : **(1) Mr Leslie Gardiner (tenants'
association)
(2) Parkgate Aspen Ltd (current
managing agents)
(3) Mr Richard Daver (proposed
manager)**

Type of application : **Application for the appointment of
a manager**

Tribunal Judge : **Judge Amran Vance**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **25 September 2017**

DECISION

The Tribunal's Decision

- (1) This application is struck out under rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 as the tribunal has no jurisdiction to determine the application.

Background

- (2) In this application, the applicants seek an order appointing Mr Richard Daver, of Rendall & Rittner, as a manager under section 24(9) of the Landlord and Tenant Act 1987 (the "Act") in respect of Dorset House, Gloucester Place, London, NW1 5AQ ("the Building").
- (3) The Building is a mixed-use property containing approximately 200 residential flats. The respondent has held the head lease for the residential flats and associated common parts since December 2010, following and an assignment of that interest from the previous head landlord, Bellnorth Limited. At all material times the head landlord's managing agents have been Parkgate Aspen.
- (4) There has been a long history of previous litigation concerning the Building. Determinations were issued by this tribunal on 12 April 2005 following a two-day hearing (LON/00BK/LSC/2004/0094); 14 July 2010, following a four-day hearing (LON/00BK/LSC/2009/346); 16 July 2012, following a four day hearing (LON/00BK/LSC/2016/0135); and 5 January 2017, following a two day hearing (LON/00BK/LSC/2016/0135). There was also a previous application for the appointment of a manager brought under section 24 of the Act (LAM/2011/0119) which, following a five-day hearing, was dismissed in a determination dated 25 July 2011.
- (5) A preliminary notice under section 22 of the Act was served on the respondent on 31 May 2017. This application was issued on 20 July 2017 and directions were issued by the tribunal on 25 July 2017.
- (6) By letter dated 27 July 2017, the respondent applied to amend the 25 July Directions and requested that the application be listed for a case management hearing. In light of the issues raised in the letter the tribunal suspended the 25 July Directions except for direction 1(i). It also listed the application for a case management hearing ("CMH") which took place on 24 August 2017. Both Mr Norman and Mr Serota attended this CMH.
- (7) At the August CMH, Mr Serota stated that the respondent intended making an application to strike out this application in its entirety, or in part, pursuant to rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"). I gave directions at that CMH and also listed the application for a further CMH on 25 September 2017, at which the first issue to be determined was the respondent's intended application under rule 9 of the 2013 Rules to strike out all or part of this application

- (8) The CMH on 25 September 2017 was attended by Mr Norman for the applicants and by Mr Dovar of counsel for the respondent. Also present were Mrs Norman (Flat 6), Mr Vaslev (who was representing his children, the tenants of Flat 101 and 138) and Mr Daver.

The Respondent's Case

- (9) Mr Dovar submitted that the tribunal should strike out the applicants' case under rule 9 of the 2013 Rules on the basis that:
- (a) the tribunal had no jurisdiction to entertain the application and it should therefore be struck out under rule 9(2)(a); or
 - (b) the proceedings (or a part of them) and/or the manner in which they are being conducted is frivolous, vexatious and/or an abuse of process and they should be struck out under rule 9(3)(d); or
 - (c) there was no reasonable prospect of the proceedings (or part of them) succeeding and they should be struck out under rule 9(3)(e).
- (10) On the jurisdictional point he contended that the section 22 notice served was invalid as it did not comply with the requirements of that section of the Act.
- (11) On the remaining two points his arguments were that:
- (a) many of the issues in the section 22 notice were issues that had been raised in the previous section 24 application brought in 2011. The fact that those proceedings were dismissed by consent was, he said, recorded in paragraph 10 of the tribunal's determination of 16 July 2012. His case was that to the extent that this application covers the same grounds, it should be struck out as an abuse of process under rule 9(3)(d). Mr Dovar relied on the decision in *Verdin v Harrods Ltd* [2006 ICR 396 in support of that submission. To the extent that it raises new issues then these, he said, could, and should, have been dealt with in the previous application, giving rise to issue estoppel, meaning that this new application was an abuse of process and should be struck out under rule 9(3)(d).
 - (b) to the extent that the matters complained of related to the management of the previous landlord they should be struck out as having no reasonable prospect of success under rule 9(3)(e).
 - (c) the individual breaches alleged in the section 22 notice were either incomprehensible, unparticularised, unmeritorious, vexatious or attempts to relitigate matters litigated previously.

The Applicants' Case

- (12) Mr Norman said that there had been discussions in late 2015/early 2016 with the respondent about changing the managing agent but as this did not progress the applicants decided to serve notice under section 22 of the Act.
- (13) He accepted that the section 22 notice did not identify which alleged breaches were capable of remedy or specify a date within which they should be remedied. However, his position was that most of the breaches identified in the section 22 notice were *not* capable of being remedied. For those that were capable of remedy the respondent should have acted promptly to do so.
- (14) He acknowledged that the current section 22 notice raised some of the same issues covered in the 2011 application but argued that these were not the subject of a determination by the tribunal. In addition, the agreement that led to the 2011 section 24 application not proceeding further was, he said, conditional on the agreement of the managing agent to comply with the tribunal's order, which it had failed to do.
- (15) Apart from failing to comply with previous orders of this tribunal, Mr Norman's case was that the managing agents had failed to comply with the RICS Code of Practice and had not complied with the terms of the relevant flat leases. These were, say the applicants, serious breaches that warranted this application proceeding to a full hearing.

The Law

- (16) Section 22 of the Act provides as follows:

- “(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served [by the tenant on—*
- (i) the landlord, and*
 - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy].*
- (2) A notice under this section must—*
- (a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is*

served] may serve notices, including notices in proceedings, on him in connection with this Part;

- (b) state that the tenant intends to make an application for an order under section 24 to be made by [the appropriate tribunal] in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the [requirement specified in pursuance of that paragraph is complied with];*
- (c) specify the grounds on which [the tribunal] would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;*
- (d) where those matters are capable of being remedied by [any person on whom the notice is served, require him], within such reasonable period as is specified in the notice, to take steps for the purpose of remedying them as are so specified; and*
- (e) contain such information (if any) as the Secretary of State may by regulations prescribe.”*

(17) Subsection 22(3) allows a tribunal to dispense with the requirement to serve a notice under this section where it is satisfied that it would not be reasonably practicable to do so. It is not relevant to this application.

(18) Section 24 concerns applications to this tribunal and provides that:

- (1) No application for an order under section 24 shall be made to [the appropriate tribunal] unless—*
 - (a) in a case where a notice has been served under section 22, either—*
 - (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the [person required to take steps in pursuance of that paragraph having taken them], or*
 - (ii) that paragraph was not applicable in the circumstances of the case; or*
 - (b) –(c).....*

(19) Rule 9 of the 2013 Rules states the following:

“Striking out a party’s case

- 9 (1) *The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.*
- (2) *The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—*
- (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and*
 - (b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.*
- (3) *The Tribunal may strike out the whole or a part of the proceedings or case if—*
- (a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;*
 - (b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;*
 - (c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;*
 - (d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or*
 - (e) the Tribunal considers there is no reasonable prospect of the applicant’s proceedings or case, or part of it, succeeding. “*

Decision and Reasons

- (20) In my view this tribunal does not have jurisdiction to determine this application because the section 22 notice served by the applicants did not comply with the requirements of that section.

- (21) The purpose of such a notice is to give notice to a landlord or relevant person of a potential application under section 24 but also to allow that person to remedy those breaches that are capable of being remedied and to set a reasonable timescale for this to occur.
- (22) The applicants' notice itself is lengthy and sets out 32 separate asserted breaches by the managing agents which the applicants argue support their grounds for the appointment of a manager.
- (23) Mr Norman may well be correct that some of the matters raised are historic and cannot be remedied. However, some, if true, clearly are capable of being remedied. For example at paragraph 1.1a of the schedule it is asserted that legal fees disallowed by the January 2017 tribunal had not been credited to the tenants. Similarly, at paragraph 3.16 it is asserted that the managing agent had agreed to make a payment in the sum of £12,000 but had not yet done so.
- (24) Despite this, nowhere is the notice is their any indication as to which matters are capable of remedy, and which or not, and nor is there any timescale for remedying those matters that are capable of remedy. In my view, a notice in which no attempt whatsoever is made to address these points does not comply with the requirements and statutory purpose of section 22 and is not, therefore, a valid notice.
- (25) Section 24 precludes the making of an application to this tribunal until the period specified in the section 22 notice for remedying those matters that are capable of being remedied has expired, without the relevant person having taken steps to do so. As no valid notice has been served the precondition in section 24 for such a notice has not been met and this tribunal has no jurisdiction to determine the application. The application to strike out these proceedings under rule 9(2)(a) must succeed.
- (26) In light of this decision on jurisdiction it is unnecessary and inappropriate for me to go on to consider the remaining two grounds relied upon by Mr Dovar in support of his strike out application. I would only add that, in my view, the relevance of many of the matters raised by the applicants in their section 22 notice is not easy to follow. If the applicants intend serving a fresh notice then, as I commented on at the hearing, they may wish to consider seeking legal advice before doing so.

Name: Judge Amran Vance

Date: 25 September 2017

APPENDIX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.