



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

Case Reference : **LON/00AM/LMD/2014/0001**

Property : **Hall Place, Sutton Square, 5-7
Urswick Road, London E9 6EG**

Applicants : **Robin Pike and Jasmine Endres,
leaseholders of Flat 2**

Representative : **In person (Mr Pike)**

Respondent : **Hall Place Limited**

Representative : **Mr T Talbot-Ponsonby, Counsel**

Type of Application : **Preliminary issue on an application
for the appointment of a manager**

Tribunal Members : **Judge P Korn (chairman)
Mr MC Taylor FRICS**

**Date and venue of
Hearing** : **17th September 2014 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **29th September 2014**

DECISION

Decision of the tribunal

The tribunal refuses the application for an order to dispense with the requirement to serve a notice under section 22 of the Landlord and Tenant Act 1987.

The application

1. The Applicants have applied for the appointment of a manager over the Property pursuant to section 24 of the Landlord and Tenant Act 1987 (“**the 1987 Act**”), but in their application they have stated that they have not first served a notice under section 22 of the 1987 Act.
2. Under sub-section 22(1), before an application for an order under section 24 of the 1987 Act can be made a notice under section 22 must be served on the relevant parties unless the tribunal by order dispenses with the requirement to serve such notice under sub-section 22(3).
3. The issue before this tribunal is simply the preliminary issue of whether – and if so on what terms – to dispense with this requirement.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Property is a converted listed building comprising 8 flats. The Applicants are the leaseholders of one of the flats, Flat 2. The leaseholders of Flats 1, 5 and 8 and one of the joint leaseholders of Flat 4 are all directors of the Respondent company which owns the freehold interest in the Property.
6. There have been ongoing arguments in relation to the management of the Property, and a service charge case between the parties was recently settled.

Applicant's case

7. Mr Pike briefly summarised the background to the application for the appointment of a manager. He had submitted the application only after years of what he considered to be poor management and poor value for money in relation to the service charge.
8. Prior to the involvement of the current managing agents, significant works to the Property had only been undertaken after detailed specifications having been produced. However, in relation to their programme to carry out wide-ranging external repairs and decoration

works the current managing agents had only prepared a one page specification. Mr Pike had emailed them to express his concerns as to the adequacy of the specification but had received no response. He understood from a resident that some works had now begun but he did not have details.

9. As regards whether there was a need to serve a preliminary notice under section 22, Mr Pike said that his understanding was that the purpose of the section 22 notice was to alert the Respondent to the issues, and he felt that he had already done this by other means and given the Respondent plenty of warning that he intended to make an application to the First-tier Tribunal.
10. When asked specifically by the tribunal about his interpretation of the wording of sub-section 22(3), he said that it was not reasonably practicable to serve a section 22 notice because his understanding was that building works were about to commence and there was no time to serve a preliminary notice.
11. Mr Pike also commented that he did not feel that there was effective communication between him and the Respondent.

Respondent's response

12. Mr Talbot-Ponsonby referred the tribunal to the wording of section 22 of the 1987 Act. He emphasised the fact that sub-section 22(1) states that a [section 22] notice **must** be served, subject only to the provisions of sub-section 22(3).
13. In relation to sub-section 22(3), Mr Talbot-Ponsonby noted that this sub-section only allowed the tribunal to dispense with the requirement to serve a notice "*in a case where it is satisfied that it would not be reasonably practicable to serve such a notice*".
14. Mr Talbot-Ponsonby also referred the tribunal to the Upper Tribunal case of *Eaglesham Properties Limited v John Jeffrey (2012) UKUT 157*. In that case the Her Honour Judge Walden-Smith stated that on the facts of that case she did not consider that the LVT (as it then was) could properly have dispensed with service of the preliminary notice by reason of the provisions of sub-section 22(3) of the 1987 Act as there was not, in her judgment, any evidence to suggest that it would not be reasonably practicable to serve such a notice.
15. In response to a question from the tribunal Mr Talbot-Ponsonby said that in his view the Upper Tribunal in *Eaglesham* was confirming that the wording of sub-section 22(3) should be given its ordinary, literal meaning.

16. Applying this principle to the present case, Mr Talbot-Ponsonby said that there was no evidence that it was not reasonably practicable to serve the notice.
17. In relation to the Applicant's contention that the matter had become urgent, Mr Talbot-Ponsonby said that the Respondent had claimed that the matter was urgent back in December 2013 but then had still waited until February 2014 before making the application.
18. As regards the Applicant's contention that he effectively gave notice by more informal means, Mr Talbot-Ponsonby said that there was no real evidence of this, and the Applicant could not rely on anything done after the date of the application as sub-section 22(1) clearly requires the notice to be served before the application is made.
19. As a general point, Mr Talbot-Ponsonby submitted that it would have been very easy for the Applicant to serve a notice on the directors and that the tribunal had no discretion to waive this requirement save as specifically stated in sub-section 22(3).

Tribunal's analysis and determination

20. It seems clear from a plain reading of sub-section 22(3), as understood by the Upper Tribunal in *Eaglesham*, that the only basis on which the tribunal may dispense with the requirement under sub-section 22(1) to serve a notice is where "*it is satisfied that it would not be reasonably practicable to serve such a notice*". In our view, this is limited to circumstances in which there is an actual difficulty with serving a notice, for example where the intended recipient cannot be traced.
21. The decision in *Eaglesham* arguably does not add very much to a plain reading of the wording of sub-section 22(3), but it does serve the purpose of confirming – or at least appearing to confirm – that the wording of sub-section 22(3) should be understood in its plain sense. The Applicant has not provided any compelling reasons as to why it should be read in any other way, and we are satisfied that it should be given its ordinary meaning.
22. Insofar as it is relevant to provide some context, we are of the view that, in drafting section 22 in the way that it did, Parliament intended the discretion to dispense with the preliminary notice to be very limited. The appointment of a manager is a relatively draconian step, and it is hard to envisage a scenario in which it suddenly becomes so urgent to apply for the appointment of a manager that the applicant cannot first serve a preliminary notice. The notice has an important purpose; in the context of such a draconian application it is important that the landlord (or other person responsible for managing the property) has full details of the applicant's concerns, a clear understanding as to why the

applicant believes that circumstances exist to justify the appointment of a manager by the tribunal and a reasonable time limit within which to remedy the problems complained of.

23. The Applicant has therefore failed to satisfy us that it was not reasonably practicable to serve the preliminary notice.
24. In any event, the Applicant has, in our view, failed to make a convincing case that the situation is such that – even if our interpretation of section 22(3) is unduly restrictive – we should give dispensation. In this regard we concur with the points made by Mr Talbot-Ponsonby as to the degree of urgency of the section 24 application itself and as to the Applicant’s own actions in the run-up to issuing that application.

Cost applications

25. There were no cost applications.

Name: Judge P Korn

Date: 29th September 2014

Appendix of relevant legislation

Landlord and Tenant Act 1987

Section 22

- (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 a 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 such 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.
- (3) A tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.