

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2021] UKUT 166 (LC)
UTLC Case Numbers: LRX/143/2019 and LC-2019-487

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
IN THE MATTER OF AN APPLICATION UNDER SECTION 24, LANDLORD AND
TENANT ACT 1987

*LANDLORD AND TENANT – APPOINTMENT OF MANAGER – tribunal appointed
manager discharged – manager’s duty to account for funds received – consequences of
manager’s failure to account – s.24, Landlord and Tenant Act 1987 – s.25, Tribunals, Courts
and Enforcement Act 2007 - rule 8(5), Tribunal Procedure (First-tier Tribunal) (Property
Chamber) Rules 2013*

BETWEEN:

**ADRIAN SUCHORSKI AND GOSIA SUCHORSKI (1)
JONATHAN RUTH (2)
KRZYSTOF NOWASAD AND MONICA NOWASAD (3)
KRZYSTOF NOGAS AND MARTA NOGAS (4)
ALAN KENDREW (5)
MARK SHEPHERD (6)
MAKHSUDA SHEPHERD (7)
CHARLES HOPTON (8)**

Applicants

and

RICHARD NORTON

Respondent

Re: Albert Court, Market Street, Torquay TQ1 3AH

Martin Rodger QC, Deputy Chamber President

**Royal Courts of Justice
2 July 2021**

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The following case is referred to in this decision:

Chuan-Hui v K Group Holdings Inc [2021] EWCA Civ 403

Kol v Bowring [2015] UKUT 530 (LC)

Maunder Taylor v Blaquiére [2002] EWCA Civ 1633, [2003] 1 WLR 379

Introduction

1. This decision arises out of an application made on 26 June 2019 by the applicants, who are leaseholders of seven flats in a block known as Albert Court, in Market Street, Torquay for the removal of the respondent, Mr Richard Norton, from his position as manager of the premises under an appointment made on 1 September 2017 by the First-tier Tribunal (Property Chamber) under section 24, Landlord and Tenant Act 1987 (the 1987 Act). The basis of the application was that Mr Norton had failed to carry out the duties assigned to him by the FTT.
2. The FTT removed Mr Norton and appointed a replacement manager. It also made consequential orders directing Mr Norton to file an account showing what sums he had received in the course of his appointment and what he had done with them. The period of that appointment was from 1 September 2017 to 29 August 2019.
3. Mr Norton failed to comply with the FTT's order and has, so far, provided no account. The failure of a tribunal appointed manager to comply with the tribunal's directions is a serious matter, and the application was therefore transferred to the Upper Tribunal for consideration.
4. I am handing down this decision following a hearing which Mr Norton failed to attend, despite having been required to do so. It explains why I have made an order requiring him to repay the sums which came into his hands during his appointment as manager and how, in the absence of cooperation from Mr Norton, an inquiry to establish those sums will now proceed.

The status of a tribunal appointed manager

5. In *Maunder Taylor v Blaquiere* [2002] EWCA Civ 1633, the Court of Appeal explained that a manager appointed by a court or tribunal under section 24, 1987 Act is not the manager of the landlord's business, or the manager of the landlord's obligations under the lease. The manager is a court or tribunal-appointed official, whose responsibility is to carry out the duties required by the order appointing them. The manager answers to the court or tribunal which appointed them.
6. Sums payable by leaseholders to a tribunal-appointed manager as contributions towards the cost of services, are service charges within the meaning of section 18(1), Landlord and Tenant Act 1985. As the Court of Appeal has recently confirmed in *Chuan-Hui v K Group Holdings Inc* [2021] EWCA Civ 403, it follows that the statutory protections afforded to leaseholders by the Landlord and Tenant Act 1985 apply to such payments.
7. It also follows that the additional statutory protections provided by section 42, 1987 Act apply to service charges paid by leaseholders to a tribunal-appointed manager. Section 42 requires the landlord or other person to whom service charges are paid to hold any money they receive on trust to defray the costs incurred in connection with the matters for which the relevant service charges were paid, and otherwise on trust for the contributing leaseholders for the time being.

8. In *Kol v Bowring* [2015] UKUT 0530 (LC) the Tribunal (HHJ Gerald) confirmed that the tribunal which appointed a manager has power to require the manager to provide a final account of their receipts and expenditure at the termination of their appointment, and to direct that any surplus be paid to the leaseholders.

The facts

9. Albert Court is a block of flats containing at least 11 leasehold flats (and possibly as many as 18 flats in total, although some may not be the subject of long leases). On 1 November 2017, on an application by a group of leaseholders, the FTT appointed Mr Norton as manager of the building for a term of 3 years. In its decision it noted that Mr Norton had no previous experience as a tribunal-appointed manager. For that reason, the FTT directed that there should be a review of his appointment after 18 months.
10. On 27 March 2019 the FTT asked the leaseholders if they supported the continuation of Mr Norton's appointment. That prompted an application by the current group of applicants seeking Mr Norton's removal and the appointment of a new manager, Mrs Angela Dixon. In their application the leaseholders explained that they had requested the change because:

“Mr Norton has failed to manager the property effectively. No maintenance or cleaning takes place and the property has deteriorated as a consequence. Mr Norton also fails to respond to any form of communication.”
11. On 9 July 2019 Judge Agnew fixed a date for a hearing of the application. He directed Mr Norton to state whether he consented to or resisted the application to remove him. Unless he agreed to his own removal he was required to attend the hearing.
12. Mr Norton failed to comply with Judge Agnew's direction that he state his position in relation to the application and on 14 August 2019 an order was issued by Judge Tildesley requiring him to attend before the FTT at the hearing on 29 August 2019 to give evidence about his term as manager and to produce up-to-date service charge accounts for the building. The order warned Mr Norton that failure to attend may result in the FTT referring the matter to the Upper Tribunal with a request to exercise its enforcement powers under section 25, Tribunal, Courts and Enforcement Act 2007.
13. Mr Norton did not attend the hearing on 29 August but notified the FTT shortly before the hearing was due to commence that he was unable to do so. The FTT made an order discharging him from his appointment as manager and appointing Mrs Dickson in his place. The FTT then directed Mr Norton to do three things:
 - (1) To produce a final closing account and answer questions raised on the account by the landlord and the leaseholders of Albert Court within 14 days;
 - (2) To hand over any current policy of insurance and other documents relating to the property to Mrs Dickson; and
 - (3) To reimburse any unexpended money to Mrs Dixon.

The FTT also directed Mr Norton to attend before it on 7 November 2019 to produce the required accounts and to hand over the documents in his possession and to give evidence about his term as manager. Once again it warned him that his failure to attend might result in the matter being referred to this Tribunal.

14. Mr Norton did not attend before the FTT on 7 November 2019. Mrs Dixon did attend the hearing and, in its decision issued on 12 November, the FTT recorded that she had been able to establish that the building was currently insured by the freeholder. Mrs Dixon also informed the FTT that she had not received any papers or information from Mr Norton.
15. Mr Suchorski, the first applicant, also attended the hearing on 7 November 2019. He informed the FTT that, during his term as manager, Mr Norton had arranged for the cleaning of some of the external common parts of the building, although not on a regular basis, and had issued a consultation notice in relation to proposed works of repair to the electric gates, but that the work had not subsequently been done. Mr Suchorski believed that most of the leaseholders had paid some service charges to Mr Norton, but in the absence of service charge accounts the leaseholders were unable to ascertain what money Mr Norton currently held.
16. The FTT made an order under rule 8(5), Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 referring the application to this Tribunal. It also ordered Mr Norton to reimburse the Tribunal fees paid by the applicants (£300).
17. Rule 8(5) of the FTT Rules entitles the FTT to refer to the Upper Tribunal any failure by a person to comply with requirements imposed by the FTT to produce a document or to attend for the purpose of giving evidence. The FTT has no enforcement powers of its own, and the purpose of a reference is to ask the Upper Tribunal to exercise its powers under section 25 of the Tribunals, Courts and Enforcement Act 2007(the 2007 Act).
18. Section 25(1), 2007 Act provides that in England and Wales and in relation to the matters mentioned in sub-section (2) of that section the Upper Tribunal has the same powers, rights, privileges and authority as the High Court. The matters mentioned in section 25(2) are the attendance and examination of witnesses, the production and inspection of documents, and all other matters incidental to the Upper Tribunal's functions.
19. After the matter was referred to this Tribunal I issued a direction on 7 February 2020 requiring Mr Norton to attend a hearing on 17 March and to produce the closing account which had been required of him by the FTT's order of 23 September 2019. That order was served by the Tribunal at Mr Norton's business address. It subsequently appeared that Mr Norton had discontinued his business and given up occupation of his business premises at some time before the Tribunal's order was served.
20. Without a current contact address the Tribunal was unable to serve any document on Mr Norton and it was not until February 2021 that court enforcement officers tracked him down. The Tribunal made a further order on 1 February 2021 requiring Mr Norton to attend before it the Royal Courts of Justice on 26 April 2021 and to provide his final account. In view of

travel restrictions in place because of the coronavirus pandemic the Tribunal agreed to Mr Norton's request that the hearing take place remotely using the CVP digital hearing platform.

21. Mr Norton attended the hearing on 26 April and explained that he had been aware of the FTT's directions in 2019 requiring him to provide an account but at that time he had been experiencing personal difficulties which had resulted in the loss of his home and the closure of his business. He informed me that he had responded to the FTT's order of 29 September 2019 by posting all of the documents in his possession relating to the management of Albert Court to Mrs Dixon, the new manager. He said that he had not received a copy of the Tribunal's order of 7 February 2020 and had been unaware that the matter had been referred to this Tribunal until he was served with the Tribunal's order of 1 February 2021.
22. Mr Norton also told me that most of the funds he had collected from leaseholders had been used to insure the building. He had no documents to show what he had received or how it had been spent but he had requested copies of his business bank account statements from his bank. These had not yet arrived by the time of the hearing on 26 April although they were said to have been requested in February. Mr Norton said that when he received copies of the bank accounts he would be able to prepare a final account of the money he had received in his capacity as manager and what it had been used for. I therefore agreed to adjourn further consideration of the matter until 28 May.
23. Mr Norton requested that, once again, the hearing on 28 May should be conducted remotely. He filed no documents and informed me at the hearing that he was still awaiting copies of bank statements to enable him to complete a final account. There had apparently been a delay because he did not have the account number but he had now found this and provided it to the bank and intended, that day, to go personally to the bank and repeat his request for copies of the bank statements. He expected it to take 10 days for the statements to arrive. I agreed once again to adjourn the hearing to enable Mr Norton to obtain this material.
24. The resumed hearing was listed to take place on 2 July. Mr Norton did not respond to a request from the Tribunal's staff by email on 18 June for a progress report, and he did not attend the hearing at the Royal Courts of Justice.

Disposal

25. I have considered whether it is necessary to take further action at this stage to compel Mr Norton's attendance. I have concluded that it is not necessary as the minimum order the Tribunal can make where a tribunal-appointed manager fails to account for money received is sufficiently punitive in this case.
26. The minimum appropriate response by the Tribunal in the circumstances of this case is to require Mr Norton personally to repay all monies received by him between 1 November 2017 and 29 August 2019 in his capacity as tribunal-appointed manager of Albert Court. As I have explained, Mr Norton assumed the responsibilities of a trustee when he accepted the FTT's appointment. As a trustee he is under an obligation to account for all money he received. A trustee who fails to account for money entrusted to him is presumed still to hold it subject to the trust. I explained to Mr Norton at both of the hearings he attended that that

would be the consequence of a continuing failure on his part to account for the funds handed over to him. Having been required to explain what he has done with the money received in his capacity as manager, and having failed to do so, it will therefore come as no surprise to Mr Norton that he is now required to repay that money.

27. The evidence before the Tribunal suggests that Mr Norton did incur some expenditure in his capacity as manager. In particular, the FTT heard evidence from Mr Suchorski that he may have arranged cleaning or insurance of the building. The opportunity is still open to Mr Norton to account for what he spent, but it is for him to do so.
28. It will be necessary for the Tribunal to conduct an inquiry to establish how much Mr Norton received. The applicants have not played an active part in this matter since it was transferred to this Tribunal so I will make an order giving them, and any other leaseholder, the opportunity to provide evidence of the sums they paid to Mr Norton during his appointment. Evidence that payments have been made should include copies of service charge demands and any receipts issued by Mr Norton, together with copy bank statements showing payments made to Mr Norton. Once the total has been established Mr Norton will be required to repay that sum either to Mrs Dixon, if she remains the manager of the property or to the leaseholders who made the payments.

Martin Rodger QC
Deputy Chamber President
8 July 2021