RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.24 Landlord &Tenant Act 1987 as amended

Case Number: CHI/21UG/LAM/2008/0008

In the matter of 15 Mitten Road, Bexhill On Sea, East Sussex, TN40 1QL

Applicant: Mr. D J Rowe

Respondent: Miss. S J Cooper

Date of Application: 19th November 2008

Date of Hearing: 25th February 2009

Tribunal Members: Mr. S Lal LL.M, Barrister (Legal Chairman)
Mr. R Wilson LLB

Representation:

Applicant

Mr. D J Rowe (in person)
Miss. Mogridge

Respondent

Mr. Relton (friend of Miss. Cooper)

History

1. This matter came before the Tribunal as a result of directions made at a pre-trial review on 12th December 2008. By letter dated 7th December 2008, the Respondent notified the Applicant of her intention to request that the matter be dismissed as an abuse of process pursuant to Regulation 11(1) (b) of the Leasehold Valuation Tribunal (Procedure) Regulations 2003 and that request was repeated orally at the above pre-trial review.

2. The Tribunal determined that the application under Regulation 11 be heard first in an oral preliminary hearing and directions were issued accordingly.

Documentation

3. The Respondents submissions were contained in a bundle (pp1-28) in pursuance of her application which was served on all parties on 26th January 2009. The bundle had been prepared by Stephen Rimmer Solicitors although Mr. Relton indicated to the Tribunal that they would not be appearing for the Respondent and that he would make submissions on her behalf. He served in addition a further bundle of documents on the day of the hearing which included many of the previous documents although it did contain a statement from Miss. Cooper in which she broadly repeated the earlier submissions advanced by her solicitors.

4. The Applicant had served a reply in the form of his own statement of case and bundle consisting of 143 pages.

Case for the Respondent

5. Mr. Relton contended that the application made to appoint a manager under the provisions of Section 27 of the Landlord and Tenant Act 1987 should be dismissed at this stage as frivolous or vexatious or otherwise as an abuse of process because the Applicant had served the Preliminary Notice under the Act on 29th October 2008 and this had given the Respondent a period of 3 months in which to remedy the matters. He pointed out that the Application to the LVT was made on 19th November 2008, some 22 days after the Preliminary Notice and therefore did not comply with the appropriate period of three months as being a reasonable period within the meaning of the Act. In essence his case was that the Application was premature.

6. He also added that Mr. Rowe had acted maliciously in respect of his conduct in that he had made up false insurance claims (at least 3 out of a possible 7 such claims) which were put before the subject property's then insurers which resulted in them withdrawing cover from the subject property and he had also been obstructive in terms of communicating his interest to the Respondent as a lessee as opposed to an executor. For these reasons he invited the Tribunal to strike out the matter.

Case for the Applicant

7. Mr. Rowe in reply stated that he brought the Application to the LVT within 22 days of the Preliminary Notice because he was advised to do so and he was concerned that the subject property was not insured in the interim. He asserted that the then insurers withdrew cover on 4th November 2008 and the property was not reinsured by the Respondent until 27th November 2008. He was concerned at this period because of the failure on the part of the Respondent to insure and he believed that his actions in bringing the Application were justified because of the insurance issue.

8. He disputed the Respondents assertion that he had been obstructive as to his status and pointed out that his solicitors had notified the Respondents of his title in November 2007. He denied that he had made up insurance claims. His contact with the insurance company had been as a result of legitimate concerns in respect of claims made by the Respondent for work which was not in fact done.

The Reply

9. Mr. Relton denied that the property was ever without insurance cover but he was unable to produce any documentation to the Tribunal confirming this.

The Law

10. Regulation 11(1) (b) of the Leasehold Valuation Tribunal (Procedure) Regulations 2003 provides that if it appears to the Tribunal upon application by the Respondent that the application is frivolous or vexatious or other an abuse of process, the Tribunal may dismiss the application in whole or in part. Essentially the Tribunal is engaged in a two stage assessment, the first stage is a finding that an application is frivolous or vexatious or otherwise an abuse of process and the second stage is the exercise of discretion as to whether the application should be dismissed as a consequence.

The Decision

(a) "Frivolous" or "vexatious"

11. The Tribunal are not satisfied that the Application made by Mr. Rowe on the 18th November 2008 can be properly described as either "frivolous" or "vexatious". The starting point must be to give those terms their ordinary English meanings. The notion of "frivolous" would encompass conduct not having any proper purpose and the notion of "vexatious" implies something that is wholly improper in terms of the bringing of litigation perhaps for a malicious or untoward purpose. Both terms go beyond what maybe described as the normal purpose of litigation which is the resolution of a conflict or dispute. The Tribunal are satisfied that the Application made on 18th November was not frivolous in the sense it had no purpose. Clearly it did because the Tribunal accepts that there is a disagreement as to the fact as to whether the property was insured or not. Neither is the Tribunal satisfied that the application was vexatious in the sense that the Tribunal accepts that there are legitimate points of dispute between the parties as to work done or not done in respect of the subject property. The Tribunal are not persuaded that the Application was motivated by malice and are minded to accept Mr. Rowe's assertion that he wanted to have the insurance position resolved because he believed that the subject property was uninsured.

(b) Otherwise an abuse of process

12. In respect of this concept, the Tribunal are however satisfied that the Application was premature. The Preliminary Notice was dated 29th October 2008. It specified at item 5, that the Respondent would have three months in which to remedy the matters identified. However the fourth Schedule to that Notice set out reduced the time limits for remedying certain defects. For example the Respondent was given 1 week to supply insurance details. As a consequence of these contradictions, the Tribunal finds that the Notice is misleading.

13. Pursuant to Section 23 of the Act, no Application for an Order under Section 24 shall be made unless in a case where a Notice has been served, the period specified in the Notice has expired without the person required to take steps in pursuance of that paragraph having taken them. The Tribunal considers it not unreasonable for the Respondent to assume that in fact the time period she actually had was three months.

14. In that regard the Tribunal are satisfied that the Application dated on the 19th November 2008 was an abuse of process because it went directly against the express statutory requirement as contained in Section 24 (2) (d) to allow the landlord a reasonable period to take such steps as necessary to remedy the matters. This is consistent with the view that the power to appoint a manager is potentially a draconian power in respect of the freehold interest. The Tribunal are satisfied that the Application was premature and therefore an abuse of process. To allow it to continue would subvert the relevant statutory provision of giving the Respondent time to remedy the matters complained of.

15. Having so found the Tribunal must exercise its discretion as to whether to strike out the Application or only part of it. The Tribunal are of the view that item 5 on the Notice by referring to a three month period maybe construed as applying to all the remedial matters and therefore it would be artificial to sub divide aspects of the Application that maybe preserved intact following the finding of abuse of process. In terms of exercising its discretion as to the totality of the present Application, the Tribunal are mindful that to strike out an application in its entirety is a draconian power that must be used sparingly; in effect it will stop the present litigation. However the Tribunal considers themselves bound by the express wording of Section 24 (2) (d) which is designed to allow the landlord a reasonable time in which to remedy matters before the court is ultimately asked to appoint a manager. The Tribunal are satisfied that those provisions have not been complied with and for the reasons set out in this decision hereby dismiss the Application.

16. The decision of the Tribunal is therefore that the Application lodged on 19th November 2008 to the Tribunal to appoint a manager is an abuse of process and that the matter be dismissed. This does not preclude Mr. Rowe from issuing another Notice at any point in the future at which time he must comply with the statutory requirement to allow the Respondent the time specified to remedy the identified matters.

17. The Tribunal makes no Order for Costs.

Chairman.....

Date.....25/2/09.....