



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

Case reference : **LON/00AM/LAM/2016/0002**

Property : **108 Forest Road, London E8 3BH**

Applicant : **Mr Misha Manson-Smith**

Representative : **Seddons Solicitors**

Respondents : **(1) The Personal Representatives of
Primrose Arthurworrey (Deceased)
(2) Mr. M. Arthurworrey**

Representative : **In Person**

Type of application : **For the appointment of a manager**

Tribunal members : **Mrs S O'Sullivan
Ms M Krisko FRICS**

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

Date of decision : **3 February 2016**

DECISION

The application

1. By an application dated 11 January 2016 the Applicant seeks the appointment of a manager to manage the building known as 108 Forest Road, London E8 3BH (the "Building") pursuant to section 24 of the Landlord and Tenant Act 1987 (the "1987 Act") . The Applicant is the leaseholder of Flat A. He also applies for the dispensation from the requirements to serve a section 22 notice as he says the matter is urgent and a manager needs to be appointed as soon as possible.
2. Directions were made dated 19 January 2016. These provided for the tribunal to first consider whether it should dispense with the requirement to serve a section 22 notice in the week commencing 1 February 2016. Directions then followed in relation to the substantive application of whether a manager should be appointed.
3. The Applicant set out his grounds for the dispensation of a notice under section 22 in the application. It is said that the Building is in an advanced state of disrepair as a result of the Respondents' breaches of repairing covenants. On 8 November 2014 the Applicant wrote to the Second Respondent enclosing a surveyor's report in relation to the disrepair and in particular the guttering. No response has been received to that correspondence despite chasers being sent. It is said that the water penetration is so severe he and his family are unable to move into the flat. In addition it is said that the landlord recently cut off the electricity supply to the Building and it was necessary to make an application for an injunction for reinstatement of the supply. Further it is said that buildings insurance is at risk of lapsing as the Second Respondent has not paid his share of the service charges or insurance. The landlord had appointed a manager in April 2014 but it is alleged that the manager has resigned in December 2014 due to a lack of co-operation by the landlord.
4. Mr Mark Arthurworrey has made a statement in reply for the Respondents by emails dated 26 and 31 January 2016. The application to dispense with a section 22 notice is opposed. It is said that new managing agents, Victorstone, have now been appointed and that a works schedule has now been presented which will deal with the leaking gutter and other required works. It is denied that the Building is in an advanced state of repair. Although the landlord relies on an inspection report carried out by Conways Surveyors we were not provided with a copy but rather a photograph of the front and back pages. The landlord also provides a copy of an email dated 28 August 2015 sent to the previous managing agent which appears to confirm a payment of £600 in respect of buildings insurance.

5. The parties both go into some detail about the evidence given in the High Court but we did not consider this was relevant to the issue before us.

The tribunal's decision

6. A notice under section 22 has an important purpose which is to give the landlord a fair warning of the leaseholders' wish to replace his management and to allow time for the landlord to make good any deficiencies.
7. The Applicant has asked us to dispense with the requirement to serve a section 22 notice on the grounds of urgency. The provisions of section 22 allow us to dispense with the service of the notice where it has not been reasonably practicable to serve it. The relevant provisions are set out below. In this instance it is in our view clearly practicable that a notice can be served. Although the Applicant says that the Building is in total disrepair we have not been provided with a copy of the surveyor's report that is relied upon. Likewise the landlord disputes the allegations relating to disrepair but does not provide copies of its own reports. It appears that the Building is now insured, albeit with the Applicant saying that the leaseholders have paid the landlord's share and the landlord relying on an email to the previous managing agents which appears to confirm payment. In addition the landlord now says that it is appointing new managing agents and embarking on section 20 consultation in relation to the works now required although no evidence is produced in this regard.
8. Further we would mention that we do not have a copy of the lease and have therefore been unable to satisfy ourselves as to the landlord's obligations. In addition on any future application we would wish to see evidence that Mr Mark Arthurworrey is the personal representative of the First Respondent.
9. In all the circumstances we consider that it is reasonably practicable to serve a section 22 notice and indeed that the dialogue produced by such a notice may be of benefit to both parties in establishing what works are required to the Building and the extent of any arrears of service charge on the Respondents' part.
10. We therefore decline to dispense with the requirement to serve a notice under section 22 of the Act. As the tribunal has declined to dispense with the service of a section 22 notice it has no further jurisdiction in relation to this application and will therefore close its file.

The Law

11. Section 22 of the Act provides as follows;

22 Preliminary notice by tenant.

(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 leasehold valuation 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 leasehold valuation 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.

Name: S O'Sullivan

Date: 3 February 2016