

**SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

LANDLORD AND TENANT ACT 1987, SECTION 24

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/29UL/NAM/2003/0014

Property: Cherry Court, Cherry Garden Avenue,
Folkestone, Kent

Applicant: Mr M L Irwin

Respondents: Mr A B Atkins

Date of Hearing: 3rd March 2004

Members of the Tribunal: Mr I. W. Collins FRICS IRRV (Chairman)
Ms J A Talbot MA (Cantab)
Ms L. Farrier

**RE: CHERRY COURT, CHERRY GARDEN AVENUE, FOLKESTONE,
KENT**

The Application

1. This is an application dated the 13th October, 2003, under Section 24 of the Landlord and Tenant Act 1987, by a tenant, Mr Irwin, in respect of Cherry Court, Cherry Garden Avenue, Folkestone, Kent. The application is for the appointment of a manager.
2. The building comprises a purpose built block of 36 flats and the applicant is the leasehold owner of flat 11.
3. The applicant in supporting information has confirmed the service of a Section 22 Notice under the Landlord and Tenant Act 1987.

THE STATUTORY PROVISIONS

1. **Section 24** of the Landlord and Tenant Act 1987 as amended by Section 86 of the Housing Act 1996 provides that a leasehold valuation tribunal may, on an application for an order under this section, by order appoint a manager to carry out such functions in connection with the management of the premises as the tribunal thinks fit.

The tribunal must be satisfied that the landlord is in breach of an obligation owed by him to the tenant. Where an application for an order was preceded by the service of a notice under section 22 of the same Act the tribunal may, if it thinks fit, make such an order notwithstanding that the notice failed to comply with the requirements of that section.

2. Section 22 of the Landlord and Tenant Act 1987 requires that before an application for an order under section 24 is made, a notice under this section must be served on the landlord by the tenant. The notice must include prescribe information including:

- a) details about the tenant and landlord
- b) intention to make an application for an order and details of the premises
- c) specify the grounds on which the tribunal will 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 the landlord, require the landlord, within such reasonable period as is specified in the notice, to take steps to remedy them
- e) contain further information as regulations may prescribe. This is contained within schedule 2, part II of the Leasehold Valuation Tribunals (Service Charges, Insurance etc) Order 1997

INSPECTION

1. The Tribunal inspected the property on the 3rd March 2004 in the presence of Mr M L Irwin, the applicant, Mrs M Garnham, Mr Ash representing Maltbys the managing agents and Mr A B Atkins the freeholder.
2. Cherry Court is an imposing 4 storey purpose built block of apartments erected in 1936. The construction is of brick with a top floor tile fronted mansard elevations and flat asphalt roof. The windows are fitted with replacement pvc window units. There are three common entrance halls and internal staircases accessing the individual apartments. A large, marked out, car park fronts the entrances to the apartments.
3. The premises stands in a substantial corner plot in a residential area to the north west of Folkestone town centre.
4. A visual inspection was made of the exterior, common entrance halls and roof of the premises. No access was made to any individual flat. It was noted that the exterior was generally in fair order. The inspection of the roof identified that some areas of flashing are in poor order and that the quality of some of the recently renewed mansard tiles and associated works are not of a high standard. There is evidence of some further recent remedial work and removal of builders debris.

THE HEARING

A hearing took place at the Dover Town Hall, Biggin Street, Dover on the 3rd March 2004. The hearing was attended by Mr M L Irwin, the applicant, Mrs M Garnham, Mr Ash representing Maltbys the managing agents and Mr A B Atkins the freeholder.

(1) Jurisdiction

The Chairman welcomed the parties and confirmed the back ground of the application and the Statutory provisions of sections 22 and 24 of the Landlord and Tenant Act 1987.

The tribunal noted that the applicant had not fully complied with the specific requirements of section 22 of the Act in respect of a number of fundamental matters including; details of the landlord and tenant, specifying the grounds on which the tribunal would be asked to make such an order, works to be remedied and the provision to the tribunal of necessary documents.

The applicant acknowledged the requirement for such detailed information, as part of any application for the appointment of a manager under the provisions of section 24 of the Act.

The landlord pointed out that in his opinion the relevant notices had not been served on him as the freeholder, with any notices which had been served being sent to Maltbys the agents acting on behalf of the management company.

The chairman adjourned the meeting to consider the tribunals jurisdiction of the application.

CONSIDERATION

The Tribunal noted that the notice under section 22 of the Act, served on the freeholder, was substantially defective with insufficient details included. The tribunal had not received sufficient information to understand the legal structure between the tenant, the management company and the freeholder, or the detailed grounds on which the tribunal were being asked to make an appointment of a manager.

The tribunal considered the provisions of section 24 (7) of the Act, which enables the tribunal to make an order, notwithstanding that the section 22 notice failed to comply with the necessary requirements. The tribunal did not consider it fit to make such an order.

DECISION

The Tribunal decided that the section 22 notice was defective and that the tribunal did not have jurisdiction to proceed with consideration of making an order under section 24 of the Act to appoint a manager.

Dated 3rd March 2004

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I. W. Collins (Chairman)