

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

S.24 of the Landlord & Tenant Act 1987("the Act")

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/45UH/LVM/2006/0004
Property:	Guildbourne Court Chapel Road Worthing West Sussex BN11 1LZ
Applicants:	Miss Ward, flat 402 Miss Fryer, flat 404 Mr Brandon, flat 206 Mr Edwardes, flat 212
Respondent:	Netsafe Limited
Date of Hearing:	1 st December 2006
Venue:	Richmond Room, Stoke Abbott Road, Worthing West Sussex
Appearances:	
For the Applicant:	John Winter and Darren Winter of Messrs Worthing and District (Estate Management) Mr Robert Edwardes in person
For the Respondent:	Alistair MacLeod
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R.Wilkey FRICS (Valuer Member) Ms J Morris (Lay Member)
Date of Decision:	18 th December 2006

DECISION

The Tribunal does not have jurisdiction to deal with the application under Section 24 of the Landlord and Tenant Act 1987 (the Act) by reason of noncompliance with the provisions of Section 22 of the Act as to the preliminary notice.

REASONS

INTRODUCTION

1. This is an application under Section 24 of the Act for the appointment of a manager in respect of Guildbourne Court, Chapel Road, Worthing, West Sussex.
2. On the 7th August 2006, the Applicants' issued a notice to the Respondent purporting to be served under Section 22 of the Act ("the Notice").
3. Prior to the hearing the Tribunal had scrutinized the Notice and formed the provisional view that it failed to contain the prescribed information as provided for in the Act with the consequence that the Tribunal did not have jurisdiction to deal with the application.
4. This matter was raised with the parties at the hearing and it was agreed that the hearing would look at the issue of jurisdiction as a preliminary issue.

THE HEARING

5. The Tribunal submitted to the Applicants that the Notice was invalid because of the following:-
 - a. It did not contain the following statement as required by Section 22 (2)(b) namely, *"that the tenant intends to make an application for an order under section 24 to be made in respect of the premises but, (if paragraph d is applicable), that they would not do so if the requirement specified in pursuance of that paragraph is complied with"*.
 - b. It did not specify that 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 as provided for in Section 22 (2)(c)
6. Mr. Winter accepted that the Notice did not include the above information word for word, but questioned whether the words at the top of the Notice, namely 'notice for appointment of a manager', would suffice as the information required.
7. Mr. Edwardes stated that at the time the Notice was served the primary purpose was to encourage the landlords to consult with the leaseholders over the appointment of a new manager. At that time it was not their intention to invite the Tribunal to appoint a manager

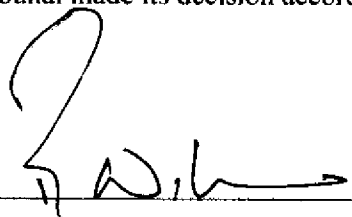
over the head of the landlord. It was for this reason that the Notice did not contain the information as set out in section 22 of the Act.

8. Mr. MacLeod did not wish to add anything to what had already been said.

Consideration

9. The Tribunal considered all the submissions made, and the notices and other documents received by the Tribunal. It ordered that the hearing should be adjourned for a period of seven days to allow the Applicants the opportunity to seek legal advice and if necessary to make written legal submissions about the validity of the Notice. The hearing was therefore adjourned for a period of 7 days to allow written representations to be made and it was made clear that a determination would be made on the 8th December 2006 based on the evidence then before the Tribunal.
10. On the 8th December 2006 the Tribunal re-convened and noted that a letter had been received from Messrs Osler Donegan and Taylor Solicitors instructed by the Applicants. They invited the Tribunal to exercise its discretion to dispense with compliance with Section 22 pursuant to its powers set out in Section 24(7)(b) of the Act. This section enables the Tribunal to make an order for the appointment of a manager even if there are defects in the Notice. The letter also maintained that the Tribunal could make an order under other sections in the Act even where no Section 22 notice has been served.
11. The Tribunal considered these submissions but concluded that this was not a case where it would be just or reasonable to dispense with full compliance with the provisions of Section 22. In the opinion of the Tribunal the purpose of a preliminary notice under Section 22 is to put the landlord on notice as to the grievances of the Applicant and if applicable to give the landlord a reasonable period of time to put right the matters complained of. In this case the omissions and defects in the notice are of such a nature and magnitude as to make it difficult for the Landlord to understand the nature of the Applicants grievances and the grounds to be relied on in seeking the appointment of a manager. We consider that the Respondent would be prejudiced by the Tribunal dispensing with the need for a compliant Section 22 notice whereas the Applicant can at any time proceed with a fresh application.
12. The Tribunal therefore found that the Notice did not comply with the requirements of Section 22 specifically in relation to subsections (2)(b)(c) and that it would not be appropriate to hear the substantive application in the absence of a compliant Section 22 Notice.
13. The Tribunal made its decision accordingly.

Chairman



R.T.A. Wilson LLB

Dated

18th December 2006

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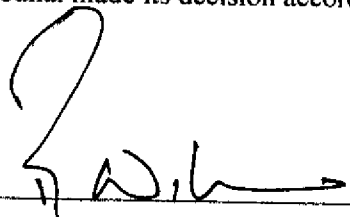
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Chairman



R.T.A. Wilson LLB

Dated

18th December 2006