

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/21UC/LAM/2003/0002

Re: 28 Cavendish Place, Eastbourne, East Sussex BN21 3JA ("the Premises")

BETWEEN

Kerry Evenden (Flat 1)
Gary Jordan (Flat 3)
Stefan Olivier (Flat 4)

("the Applicants/Tenants")

and

SINCLAIR GARDENS INVESTMENTS (KENSINGTON) LIMITED
("the Respondent/Landlord")

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. The Application before the Tribunal by the Applicant/Tenant was for the Appointment of a Manager under the provisions of Section 24 (1) of the Landlord and Tenant Act 1987 ("the Act")

2. INSPECTION

The Tribunal inspected the premises on the morning of the hearing in the presence of the applicant, Ms Evenden. The Building was a detached property near the centre of Eastbourne. It appeared to have been constructed in the 19th century and had been converted into 5 self-contained Flats in the 1980s. From inspection the rendering around the main front door appears to be in need of repair and the external decorations generally needed attention. Some replacement double glazed windows had been installed in some of the flats. Repair works appeared to have been carried out in the side passageway and doors had been fitted to the externally sited gas meter cupboards. An inspection of the common parts indicated that these had been recently redecorated. The floor coverings were in a satisfactory condition and the lights in the common parts were in a satisfactory working order.

3. HEARING

A Hearing was held in Eastbourne at which the following persons were present:

a. The Tenants, Ms Evenden and Mr Jordan attended

b. For the landlord, Mr Stephen Goodman and Roger Harvey from Hurst Management, the Managing Agents attended.

4. PRELIMINARY MATTERS

- a. The Tenants had purported to serve a Notice under Section 22 of the Act on the Landlords. The Tenants Application Form for the appointment of a Manager indicated this, but in addition they had claimed to have made an application to the Tribunal to dispense with service of the Preliminary Notice under Section 22 (3) of the Act. Ms Eveneden on behalf of the Applicants confirmed that this was an error and they had not intended to apply for an application to dispense with service of as Section 22 Notice.
- b. There was a copy of the Section 22 Notice with the Tribunal's papers. All that had been lodged with the Tribunal was the first and second pages of the standard Form LVT/5A. The spaces on the front page of the form had been filled in. However Paragraphs 3, 4 and 5 on the front page of the Form referred to the Second, Third and Fourth Schedules respectively. There were no such Schedules attached to the Form.
- c. Mr Goodman confirmed that there were no such Schedules attached to the Form he had received. When questioned Ms Eveneden was unable to produce any copy of the said Schedules as her computer had crashed and she had lost them. She had failed to keep any backup copy or hard copy and she was unable to produce them.
- d. The Landlords claimed that the Section 22 Notice was defective as they had not been served with the Schedules giving the details of what they were being requested to do and giving them an opportunity of remedying them, as required by Section 22 of the Act. The Landlords opposed the Application for the appointment of a Manager.
- e. The Tribunal dealt with this matter as a Preliminary point. Following written and oral representations from both sides the Tribunal retired to consider the matter.

5. CONSIDERATION

A. The Tribunal first of all considered the wording of Sections 22 and 23 of the Act.

- (i) Section 22 specifically says that "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 ... be served on the landlord by the tenant. That section then goes on to say exactly what has to be contained in the Notice. The purpose of the Notice is to tell the landlord exactly what the tenant is complaining about and what needs to be done to remedy the defects.
- (ii) Section 23 says that no application for an order (*for the appointment of a Manager*) under Section 24 shall be made ... unless... the period specified (*in the Notice*) has expired without the landlord having taken the steps he was required to take in pursuance of that provision

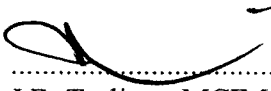
B. The Tribunal then read through the Notice which the Tenants claimed to have served on the Landlord. No copies of any attached Schedules had been received by the Landlord and none were produced by the Tenants. The burden of proof was on the Tenants to produce those Schedules and they had clearly failed to do so.

C. In the circumstances the Tribunal had no option but to declare the Section 22 Notice invalid. They decided to do so for the reasons set out above. Accordingly the Application by the Tenants must fail due to their failure to serve a Notice in the correct form. The Tribunal decided to dismiss the Application and makes an Order as attached.

6. DECISION

Accordingly for the reasons given above the Tribunal makes an Order as attached.

Dated this 10th day of February 2004


.....
J.B. Tarling MCIM
(Chairman)

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/21UC/LAM/2003/0002

Re: 28 Cavendish Place, Eastbourne, East Sussex BN21 3JA ("the Premises")

BETWEEN

Kerry Evenden (Flat 1)
Gary Jordan (Flat 3)
Stefan Olivier (Flat 4)

("the Applicants/Tenants")

and

SINCLAIR GARDENS INVESTMENTS (KENSINGTON) LIMITED
("the Respondent/Landlord")


ORDER OF THE LEASEHOLD VALUATION TRIBUNAL

UPON HEARING the Applicants/Tenants and the Respondent/Landlord

IT IS ORDERED as follows:

That the Application by the Applicants/Tenants for the appointment of a Manager under Section 24 of the Landlord and Tenant Act 1987 is hereby dismissed.

Dated this 10th day of February 2004


.....
J.B. Tarling MCIM
(Chairman)