

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT 1987
SECTION 24**

PROPERTY: 78 Highbury Park London N5 2XE

APPLICANTS: Mr ANDREW D P GORDON (FLAT B)
MR WILLIAM JAY (FLAT A)
MR LUKE PIASECKI (TOP FLOOR FLAT)

RESPONDENTS: ASSETHOLD LIMITED (FREEHOLDER)
EAGERSTATES LIMITED (MANAGING AGENT)

TRIBUNAL

Mrs T I Rabin

Date of Tribunal's decision: 10th January 2007

LON/00AU/LAM/2006/0020

78 Highbury Park London N5 2XE

FACTS

1. The Applicants are the long leaseholders of the three flats located at 78 Highbury Park London N5 2XE ("the Building"), the First Respondent is the Freeholder and the Second Respondent is the Managing agent. On 12th November 2006 the Applicants made an application under Section 24 of the Landlord and Tenant Act 1987 ("the Act") for the appointment of a manager for the Building, having previously made applications for the determination of the reasonableness of service charges levied for the Building under Section 27A (1) Landlord and Tenant Act 1985 ("the 1985 Act") under number LON/OOAU/LSC/2006/0381.
2. The Tribunal gave directions on 24th November 2006 which included the requirement for a statement to be served by the Appellants by 8th December 2006 specifying the grounds upon which the Applicants were relying for an order to dispense with the service of a notice under Section 22 of the Act. The directions also required that the terms and conditions for the appointment of the proposed manager should be served on the Respondents by 22nd December 2006. The directions also provided that the dispensation of the Section 22 Notice be considered by the Tribunal at a separate hearing on the basis of written submissions only and laid down requirements in relation to the application under Section 27A of the 1985 Act which was set down for a hearing commencing on 2nd April 2007. This decision relates only to consideration of whether the service of a Section 22 Notice can be dispensed with.

THE TRIBUNAL'S JURISDICTION

3. The Tribunal's jurisdiction to appoint a manager is set out in Sections 21 to 24 of the Act. Section 21 gives the tenant or tenants of a flat or flats in any premises the right to apply to the Tribunal for an order under Section 24 appointing a manager to act in relation to those premises. Before an application is made for such an order, Section 22(1) of the Act provides that the tenants must serve a preliminary notice on the landlord and any person (other than the landlord) by whom an obligation relating to the management of the premises.....is owed to the tenant under his tenancy

4. Section 22 (2) of the Act sets out the requirements of the Notice as follows. The Notice must (inter alia):
- (a) specify the tenant's name, the address of his flat and an address(which may be the address his flat) at which any person on whom the notice is served may serve notice on him.....
 - (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 the premises.....
 - (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
 - (e) contain such information (if any) as the Secretary of State may by regulations prescribe.
5. Under Section 22(3) the Tribunal may by order dispense with the requirement to serve a notice under Section 22 on a person where it is satisfied that it would not be reasonably practicable to serve such a notice but the Tribunal may direct that such notices are served or such other steps are taken as it thinks fit.

EVIDENCE AND DECISION

6. The Applicants sent a letter to the Tribunal dated 8th December 2006 which was copied to the Respondents and which purported to be a submission as to the grounds on which the Tribunal should order that the service of a Section 22 Notice could be dispensed with. This letter complained about the service provided by the Respondents, complained of threats being made and stated that the Applicants had instructed an independent management company to proceed with an application on behalf of the Applicants for the Right to Manage through an RTM Company. The Respondents disputed that the preliminary notices had been properly served and that the Applicants now felt that an application for the appointment of a manager would be more appropriate than the Applicants managing the Building under the Right to Manage. The Applicants requested that the application under Section 24 of the Act be heard together with the application under Section 27A of the 1985 Act.
7. The Second Respondent replied stating that the Applicants had not provided any grounds for the Tribunal to consider dispensing with the requirement to serve a Section 22 Notice, denying the allegation of threats and pointing out that the Applicants had adequate time to serve the Notice. They also stated that the question of dispensing with the Section 22 Notice should not be considered at a full hearing and requesting that the Tribunal proceed to consider the application on the basis of written representations as set out in the directions.
8. The Tribunal notes that the Applicants have made no attempt to serve a Section 22 Notice on the Respondents nor have they given any explanation as to why this has not been done. They appear to be trying to convert an unsuccessful attempt to take over the management of the

Building themselves through an RTM Company into an application for the appointment of a manager. The two procedures are very different. The Right to Manage is governed by Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 and gives tenants the right to manage a property where they are long leaseholders through an RTM Company. An application can be made to the Tribunal for a determination that the RTM Company was entitled to acquire the right to manage the premises where the landlord disputes this right. Although the Applicants have stated that the Respondents dispute their right to manage, they have not chosen to make such an application to the Tribunal.

9. The appointment of a manager is a very different application and is made under Section 24 of the Act. The Tribunal can appoint a manager to manage premises where it is satisfied that the grounds for making the application have been proved and that it is just and equitable to make such an appointment. The manager is appointed by the Tribunal and not by the tenants, although the tenants can nominate a manager. The Act requires that the landlord is served with a notice under Section 22 which contains the information set out in Section 22(2) in order that the landlord can be made aware of the tenants' complaints about the standard of management and the grounds on which the tenants are making the application. It also gives the landlord a reasonable opportunity to respond and remedy any matters capable of remedy.
10. The Applicants have been in touch with the Respondents regarding the services and there is no reason why they could not have been served with the appropriate notice and given a period of time in which they could respond to the complaints. The Applicants bundle of documents relating to the Section 24 application contains letters from the Second Respondent addressed to the individual Applicants spanning a period of about six months but no indication that the Applicants have submitted a detailed summary of their complaints to either Respondent. In addition, the Applicants have failed to comply with the direction to provide the terms and conditions for the appointment of the chosen manager or details of his experience. This is essential if the Tribunal is to consider appointing the manager selected by the Applicants and the list of property management services offered by the chosen manager and taken off their website is not sufficient for the purpose.
11. The Tribunal can find no grounds upon which an order to dispense with the requirement to serve a notice under Section 22 of the Act should be made. The Applicants have not shown any reason why it would not have been reasonably practicable for them to have served the required notice on the Respondents with whom the Applicants have been in regular touch and for whom addresses have been provided by the Applicants. It is not fair to the Respondents, in the absence of any impediment, not to have the grounds upon which the Applicants are seeking an order under Section 24 of the Act set out in full in accordance with the requirements of Section 22 so that they are made aware of the basis of the application and are given an opportunity to respond. In such an application the Tribunal must have

the grounds set out in the Notice and confirmation that the Respondents have been served with the Notice in order that a determination can be made as to whether the Respondents have been in breach of their obligations in relation to management and that it would be just and convenient to appoint a manager to manage the Building.

12. In view of the fact that no evidence was provided by the Applicants that it was not reasonably practicable for a Section 22 Notice to be served on the Respondents the Tribunal will not make an order dispensing the service of the Notice. It follows that the application for the appointment of a manager cannot proceed and will be dismissed. The application under Section 27A of the 1985 Act will proceed in accordance with the Directions.

TRIBUNAL:


for **MRS T I RABIN JP**

10th January 2007