

11522



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

**Case Reference** : CHI/00ML/LAM/2015/0012

**Property** : 8 Portland Place, Brighton BN2 1DG

**Applicants** : DP and BM Trenear-Thomas (Flat 2)  
AGJ Birks and JS Chapman(Basement flat)  
LM and SJ Scahill (Flat 4)  
K A Keen (Flat 5)

**Representative** : -

**Respondent** : Danute Liuba Cranfield

**Representative** : -

**Type of Application** : Appointment of a manager

**Tribunal Member(s)** : Mr D Banfield FRICS  
Judge D Agnew

**Date and place of hearing** : 3 February 2016  
Brighton Family Centre

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DECISION

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**The Tribunal finds the Applicants' section 22 Notice to be invalid and of no effect.**

**The Tribunal therefore declines to appoint a Manager under S. 24 Landlord and Tenant Act 1987**

## Background

- 1) The Applicants seek an order appointing Marcus Staples of Deacon & Co as a manager under Section 24 of the Landlord and Tenant Act 1987 (“the Act”).
- 2) The Applicants also seek an order under S.20C of the Act that the costs incurred by the landlord in connection with the proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- 3) On 12 October 2015 the Applicants served a Preliminary Notice on the Respondent under section 22 of the Act giving notice that the tenants intend to make an application for an Order under Section 24 of the Act paragraph 5 of which stated: “ *The matters which are capable of being remedied by you and the steps to do so are set out in the Fourth Schedule attached, the tenants require you to take the steps specified for the purpose of remedying those matters within a period of 7(seven) days from the date of this Notice*”.

The First Schedule listed the names and contact addresses of the applicants

The Second Schedule set out the grounds for the appointment of a Manager:-

- “ *1.The freeholder is in breach of obligations owed to the leaseholders under the lease (breaches of covenant)*
- 2. The freeholder is in breach of the Code of Practice approved by the Secretary of State under Section 87, Leasehold Reform, Housing and Urban Development Act 1993*
- 3. There are other circumstances that make it just and convenient to appoint a manager.”*

The Third Schedule set out the various breaches complained of.

The Fourth Schedule set out the steps required to remedy those matters specified in the Third Schedule capable of remedy:-

*“The matters in 1.3.2 and 1.3.3 above are capable of remedy. If the freeholder provides details of the proposed contractors who will be asked for estimates, the proposed specification and cost and a timescale for carrying out work (consistent with the nature of the repair and the time of year – roof repairs being all the more urgent in winter) by return, with a credible plan and a date for commencement of work within seven days, then*

*the leaseholders will take this into account in considering whether to proceed with a Section 24 application.*

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- 4) By Directions dated 3 November 2015 the Tribunal set out a timetable for the proper disposal of the matter indicating that unless either party objected the matter would be determined without an oral hearing.
- 5) By an email dated 1 December 2015 the Respondent objected to the matter being dealt with on the papers and a hearing was therefore held at the Brighton Family Centre on Wednesday 3 February 2016.

## **The Law**

### ***Landlord and Tenant Act 1987***

#### *S.22 Preliminary notice by tenant,*

*“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,*

*(2) A notice under this section must-*

*(a).....*

*(b).....*

*(c).....*

*(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.....”*

#### *S.24 Appointment of manager by the court.*

*“(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—*

*such functions in connection with the management of the premises, or*

*such functions of a receiver,*

*or both, as the tribunal thinks fit.*

*(2) the tribunal may only make an order under this section in the following circumstances, namely—*

*where the tribunal is satisfied—*

*that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and*

*(ii). . . . .*

*(iii) that it is just and convenient to make the order in all the circumstances of the case;*

*(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22 the tribunal may, if it thinks fit, make such an order notwithstanding—*

*that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or*

*that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3)”*

**Landlord and Tenant Act 1985**

S.20C

*Limitation of service charges: costs of proceedings.*

*“(1)A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a First –tier tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*

*(2).....*

(3)The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.”

### **The Inspection**

6) The Tribunal inspected the property prior to the hearing in the presence of Mr Trenear - Thomas and other lessees and Mrs Cranfield. They noted the now replaced panel at basement level and the water damaged floor in flat 2. They observed that the property was in shabby external condition although the flat roof above flat 2 appeared to have recently been replaced.

### **The Hearing**

- 7) The hearing was attended by Mrs and Mrs Trenear-Thomas and Mr Birks on behalf of the Applicants and Mrs Cranfield the Respondent. The proposed manager, Mr Staples also attended.
- 8) The Tribunal referred to the circumstances which needed to occur before a Tribunal would appoint a manager and said that in view of the Respondent's conviction in the Magistrates' Court under Section 22 of the Landlord and Tenant Act 1985 the requirements of S.24(a)(i) of the Act had been met.
- 9) In her statement of case and witness statement Mrs Cranfield had challenged the validity of the S.22 Notice on the grounds that; the time limits *were both unreasonable and impossible*, the Notice is unsigned and was in a small font and difficult to follow .
- 10)The Tribunal therefore determined that the validity of the notice would be decided as a preliminary issue.
- 11) Mr Trenear Thomas explained that the intention of the Notice was to enter a dialogue with the Respondent so that a timescale could be agreed and that the form of the Notice was as suggested by LEASE. He was unable to explain the reference to “by return” in the Fourth Schedule to the Notice given that the other references were for a response within 7 days. He said that all he expected was the provision of three proposed contractors from whom estimates etc could be obtained.
- 12)Mrs Cranfield reiterated her objection to the Notice being neither signed nor with a covering letter and said that she was left unsure of

what the lessees required her to do. She explained that it was impossible to get contractors to respond “by return” and that in her opinion the Notice was designed to ensure she was unable to meet its requirements.

### **Decision**

13) The Tribunal agrees with Mrs Cranfield that the time limits set out in paragraph 1 of the Fourth Schedule are confusing in that on a normal reading there appears to be both a requirement for details of three proposed contractors, a proposed specification, costs and timescale “by return” and also “within 7 days”. We also consider that even if the time limits were reasonable the Notice is unclear as to what action is required. We may accept that it is simply a list of contractors that is initially required but how does that square with “a date for commencement of work within 7 days”? We accept that the Applicants considered the Notice to be a means to start a dialogue but that is not its purpose under the Act. The remedial measures set out must be capable of remedy within a *reasonable period* and the Tribunal finds that this was not the case here. Clearly “by return” was impossible and “within 7 days” was not much better. Even if the period had been reasonable the Respondent would still be uncertain of what was required of her.

14) The Tribunal then looked at S.24(7) of the Act to determine whether there were any circumstances which would permit the Tribunal to make an order on the grounds set out in subsections (a) and (b) but found that there were none. Subsection (a) refers to the periods specified in the Notice and subsection (b) to any failure in respect of compliance with Section 22(2) of the Act. Neither subsection dealt with the situation of uncertainty and was therefore of no assistance to the Applicant. **As such the Tribunal find the Notice to be invalid and therefore decline to appoint a Manager under S.24 Landlord and Tenant Act 1987.**

15) For the avoidance of doubt the Tribunal finds no merit in the Respondent’s grounds relating to lack of a signature or size of font.

### **Section 20C**

16) The Applicants have failed in their application and as such the Tribunal decline to make an Order restricting the Respondent’s ability to place

any costs in respect of these proceedings on the service charge account. It was noted, however, that Mrs Cranfield stated that in any event she did not intend to do so.

D Banfield FRICS (Chairman)

9 February 2016

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking