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

Case Reference : CHI/21UF/LAM/2014/0015

Property : Falaise, West Quay, Newhaven, East
Sussex

Applicant : Richard Papworth and others

Representative : Ms Sue Massingham

Respondents : West Register (Realisations) Limited

Representative : CMS Cameron McKenna LLP, solicitors

Type of Application : Preliminary issue: dispensation with
service of sec 22 notice on appointment of
manager

Tribunal Members : Judge D Agnew

**Date and venue of
Hearing** : 13th January 2015
Paper determination

**Date of
Decision** : 13th January 2015

DECISION AND REASONS

Decision

1. The application for dispensation from the requirement to serve a section 22 notice prior to applying to the Tribunal for the appointment of a manager in this case is **REFUSED**. It follows that the Tribunal has no jurisdiction to proceed with the application and therefore proposes to strike out the application. If any party objects to the striking out it must do so in writing to the Tribunal office (with a copy being sent to the other party/ies by **4pm on 28th January 2015**). If no such representations are received by that date the application will automatically be struck out.

Reasons

Background

2. On 5th November 2014 the Applicant applied to the Tribunal for the appointment by the Tribunal of a manager for the property Falaise, West Quay, Newhaven, East Sussex BN9 9GG ("the Property") under section 24 of the Landlord and Tenant Act 1987. It was stated on the application form that no section 22 notice had been served on the landlord and dispensation was sought from the requirement to serve such a notice. No reason was given as to why no section 22 notice had been served and no grounds were specified in the application form as to why the Tribunal should grant dispensation.
3. Directions were issued on 13th November 2014 providing for the determination of a preliminary issue as to whether or not dispensation should be granted.
4. The preliminary issue was directed to be dealt with on the basis of written representations rather than by way of an oral hearing unless either party objected within 28 days of receipt of the directions. Neither party did object.
5. The directions also provided for the parties to submit their written representations by 4th December 2014 in the case of the Applicant and 8th January 2015 in the case of the Respondent.

The parties' cases

6. The Applicant's statement of case was in fact dated 5th December 2014. It comprised a statement and supporting documents relevant to the whole question as to whether or not a manager should be appointed but it gave no valid reason as to why it was not practicable to serve a section 22 notice on the landlord or why dispensation to serve such a notice before making the application to the Tribunal should be dispensed with.
7. The statement of case by the Respondent's solicitors made that very point and went on to say that this was not a case where it was not reasonably practicable to serve a section 22 notice. Indeed, there was nothing to prevent such a notice being served. As this had not been done the purpose of the requirement, namely, to give the landlord the opportunity of remedying any fault on its part in connection with the management of the premises, had been denied. In the

absence of a section 22 notice, the application should not have been made and should be struck out.

The law

8. Section 21 of the Landlord and Tenant Act 1987 ("the Act") states that:
"The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a [leasehold valuation tribunal (now a First-tier Tribunal (Property Chamber) (Residential Property)] for an order under section 24 appointing a manager to act in relation to those premises."
9. Section 22 of the Act provides 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 must (subject to subsection 3) be served on –
 - (i) the landlord, and
 - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or part of them are owed to the tenant under the tenancy."
10. By section 22(2) the matters the notice must specify are set out. They include giving notice that an application to the Tribunal for appointment of manager is intended by the applicant but that this will be avoided if certain specified requirements are complied with. The grounds for appointment of manager must also be set out and the steps the applicant requires the recipient to take in order to remedy the defaults.
11. Section 22(3) states that:-
"A [First-tier Tribunal (Property Chamber)] (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section in a case where it is satisfied that it would not be reasonably practicable to serve such a notice, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit".

The determination

12. It is clear from the foregoing extracts from the Act that the circumstances in which a Tribunal may grant dispensation from the service of a section 22 notice are limited to situations where it is not reasonably practicable to serve such a notice. The Tribunal's discretion is not therefore unfettered. Notwithstanding that the Applicant was given the opportunity by the Tribunal's directions to state why it was considered not reasonably practicable to serve such a notice, no reasons were given. As the Respondent says in its submission, the usual situation where a dispensation may be granted is where the landlord is missing and its whereabouts are unknown. In this case, however, the landlord is a company with a registered office and there is no stated reason why it would be impracticable to serve the landlord with a section 22 notice at its registered office. The fact that a notice under section 5

of the Act concerning the intended disposal of the freehold had been served on the lessees does not, in the Tribunal's view, mean that service of a section 22 notice would be impracticable.

13. As section 22(1) of the Act requires that such a notice be served before an application to the Tribunal for appointment of a manager can be made, it follows that where this has not been done, the application is a nullity and should be struck out as the Tribunal has no jurisdiction to hear the application.
14. Rule 9(4) of Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states that a Tribunal may not strike out the whole or part of proceedings for want of jurisdiction without first giving the parties an opportunity to make representations in relation to the proposed striking out. The Tribunal therefore proposes to delay the strike out to give the opportunity for such representations to be made. Unless they are received by the Tribunal office within 14 days of the date of this determination the application will automatically be struck out.
15. As a post script, the Respondent's solicitors have pointed out that the correct name of the Respondent is West Register (Realisations) Limited and not West Register Limited as the Applicant had stated in the application form. The Tribunal therefore orders that West Register (Realisations) Limited shall be substituted for West Register Limited in these proceedings.

Dated the 14th day of January 2015

Judge D. Agnew

Appeals

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.