FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AH/LAM/2020/0027**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	:	**Russell House, 58 Sydenham Road, Croydon CR0 2FJ and Dunedin Court, 60 Sydenham Road, Croydon CR0 2EF**
Applicant	:	**Various Leaseholders**
Representative	:	
Respondent	:	**(1) Vega HoldCo 6 Limited (2) Trinity (Estates) Property Management Limited**
Representative	:	**(1) Did not appear (2) Mr J Castle of counsel**
Type of application	:	**Appointment of Manager**
Tribunal member(s)	:	**Judge S Brilliant Mr A Harris LLM FRICS FCIArb Mr A Lewicki FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**25 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined in a remote hearing.

We were referred to four electronic bundles, totalling 633 pages.

Decision of the tribunal

1. The application is struck out for the reasons set out below.

2. The parties must within seven days of receipt of this decision send to the Tribunal and each other short submissions as to whether an order should be made under s.20C Landlord and Tenant Act 1985.

The background

3. Russell House and Dunedin Court are two blocks of flats situated in Sydenham Road, Croydon. There are 49 flats in all.

4. On 21 March 2020, a number of the lessees in these blocks served or purported to serve a preliminary notice for an application for the appointment of a manager pursuant to s.22 Landlord and Tenant Act 1987.

5. The owners of 12 of the 49 flats were named as the applicants. Other flat owners were later joined to the application.

6. However, Mr Chotai candidly admitted that the majority of the lessees in the blocks were not parties to the application. He said that if he had the majority of the lessees on his side, the application would not have been for the appointment of a manager but for the right to manage.

The hearing

7. At the hearing, the Applicants were represented by one of their number, Mr Chotai. The First Respondent (landlord) did not appear. The Second Respondent (liable for repair and maintenance liabilities under the relevant leases) was represented by Mr J Castle of counsel. We are grateful to both Mr Chotai (who is not a lawyer) and Mr Castle for their clear and concise submissions.

The preliminary notice: statutory requirements

8. s.22 of the 1987 Act provides:

> (1) Before an application for an order under section 24 **[for the appointment of a manager]** 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 be served by the tenant on—
>
> (i) the landlord, and
>
> (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy[1].
>
> (2) A notice under this section must—...
>
> (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;

[1] In this case the Second Respondent.

(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** (our emphasis), to take such steps for the purpose of remedying them as are so specified; …

9. However, there is a savings provision to be found in s.24(7) which provides:

(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—

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

The preliminary notice: contents

10. The fourth schedule to the preliminary notice set out the matters the Applicants considered to be capable of remedy.

11. This list included:

(a) The current parking enforcement company to have its contract withdrawn with immediate effect or more established controls implemented to ensure that only authorised vehicles are permitted access to the premises.

(b) A full and complete structural survey to be completed by a RICS qualified surveyor, and a full and complete CHP assessment to be completed by a qualified heating engineer.

(c) Following completion of the report, the Respondents to contract with accredited tradesmen to remedy structural deficiencies in the premises. This to be carried out at the expense of the developer or development manager.

(d) Credit notes are to be issued to reflect the credit owed following financial inaccuracies.

(e) Independently certified or professionally audited maintenance accounts for all the service charge years from 2012 to 2019 to be completed and sent to the lessees.

(f) The Respondents' accountants to provide complete and unrestricted access to enable an inspection of the accounts, records and receipts for the above service charge years.

(g) A copy of the security protocols report to be sent to the lessees, with express directions and deadlines imposed on how security is going to be improved and standards maintained going forward.

(h) A fire risk assessment to be carried out by H&SE or by an independent specialist.

(i) All management fees and charges for the CHP system administration fee to be annulled.

12. The preliminary notice stated:

"We" require the "Landlord" to take steps specified for the purpose of remedying those matters within a period of ***ONE MONTH (30 days)*** *from the date of this notice.*

13. Mr Castle submitted that the preliminary notice failed to comply with s.22(2)(d) of the 1987 Act because he failed to give the Respondents a "reasonable period" in which to remedy the complaints. We agree. A reasonable

amount of time has not a lapsed, especially for matters (b), (c) and (h).

Dispensation: s.24(7) of the 1987 Act

14. s.24(7)(a) is set out above. We were told by Mr Castle that there does not appear to be any authority that sets out the principles to be applied by the Tribunal when considering making an order under s.24(7)(a).

15. Mr Castle referred us to paragraph 23-29 in Service Charges and Management (4th ed 2-18):

If the periods specified are not reasonable, all is not lost. Landlord and Tenant Act 1987 s.24(7)(a) permits the tribunal, if it thinks fit, to make an order notwithstanding that any period specified in the notice was not a reasonable period. In the authors' experience, the tribunal tends to think fit in most cases where the landlord has still not taken appropriate steps by the date of the tribunal hearing (by which time a considerable further period of time is likely to have passed).

16. As we have said, the preliminary notice is dated 21 March 2020. It is now 20 May 2021, 14 months later. Normally, 14 months might have been an adequate period in which the Applicants' complaints could have been remedied[2].

17. But this was not a normal 14 months. Far from it. On 16 March 2020, five days before the preliminary notice, the Prime Minister advised against non-essential travel and contact. The writing was by then on the wall. On 23 March 2020, two days after the preliminary notice was served, the first lockdown came into effect. We do not consider that there has been any sufficient period of time since then during which the matters considered capable of remedy in the fourth schedule could in practice have been remedied.

18. Both parties were given an opportunity to make representations at the hearing on this preliminary point as to whether the preliminary notice was valid or not. We have found it was not. There is therefore no prospect of the Applicants' proceedings succeeding and we strike the proceedings out pursuant to r.9(2)(e) of the Tribunal Procedure (First–tier Tribunal) (Property Chamber) Rules 2013.

19. It was not suggested to us that the notice might be severable. In any event, in the circumstances of this case (particularly when stripped of items (b), (c) and (h), where the Applicants were not in the majority, it would not have been just and convenient to have appointed a manager .

20. The Applicants might wish to consider whether many of the individual items complained about did in fact amount to a breach of the lease, and that their grievances might better be resolved by applications under ss.22 and 27A of the 1985 Act rather than by an application to appoint a manager.

21. We record for the sake of completeness that days after the hearing Mr Chotai wrote in asking for certain evidence and representations to be excluded. Whatever the merits (which we doubt), such an application is, of course, far too late

22. We shall decide whether a s.20C order is just and equitable in the circumstances after seeing the parties' further submissions.

Name: Simon Brilliant **Date: 25 May 2021**

[2] Assuming that the Applicants' complaints could be made out as breaches of the leases (which we need not decide on this preliminary issue).

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First- tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).