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Case No: LC-2024-407

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER
REF: MAN/OOCG/LAM/2023/0001

20 December 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – APPOINTMENT OF MANAGER – contents of notice under section 22 of the Landlord and Tenant Act 1987 – purpose of setting out the matters relied upon by the tenant – reasonable time for remediation – manager's conflict of interest

BETWEEN:

MR GUNES ATA

Appellant

-and-

SUSAN SINCLAIR

Respondent

St Mary's House, London Road,
Sheffield, S2 4LA

Upper Tribunal Judge Elizabeth Cooke
11 December 2024

Mr Katie Gray for the appellant, instructed by Ashfords LLP
Mr Anthony Verduyn for the respondent, instructed by Trowers & Hamlins LLP

The following cases were referred to in this decision:

A1 Properties (Sunderland) Limited v Tudor Studios RTM Company Limited [2024] UKSC 27
Billson v Residential Apartments Limited [1992] 1 AC 494
Shirayana Shokuan Co Limited v Danovo Limited [2005] EWHC 2589 (Ch)

Introduction

1. This is an appeal from a decision of the First-tier Tribunal to appoint a manager of the appellant's property pursuant to section 24 of the Landlord and Tenant Act 1987, on the application of the respondent who holds a long lease of a flat in the property.

2. The appellant was represented in the appeal by Ms Katie Gray and the respondent by Mr Anthony Verduyn, both of counsel, to whom I am grateful; both also appeared in the FTT.

The legal background

3. Part II of the Landlord and Tenant Act 1987 enables the FTT, on the application of a tenant of a flat, to appoint a manager of premises containing two or more flats. Its provisions are very different from the "right to manage" provisions of the Commonhold and Leasehold Reform Act 2002. The latter operate on a "no fault" basis; all the leaseholders have to do is to follow the correct procedure in order to acquire the right to manage a building, so long as the non-residential part of the building does not account for more than 25% of its floor area. Under the provisions of the 1987 Act, by contrast, the tenant has to show that there is something wrong with the landlord's or management company's management of the premises, and that it is just and convenient for the FTT to appoint a manager. As a matter of fairness, therefore, the prescribed procedure requires the tenants to tell the landlord what the problem is before the application to the FTT is made, and to give it the opportunity to put things right.

4. Those requirements are set out in section 22, which provides that before an application to the FTT for an order appointing a manager can be made, the tenant must serve a notice on the landlord and on anyone else with management responsibilities (such as a management company that is party to the lease). The notice must state the name and address of the tenant who intends to apply to the FTT, and must:

> "(2)(c) specify the grounds on which the court 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…"

5. Section 24 provides that the FTT may make an order appointing a manager to manage the premises, but only if it is satisfied:

> (2) (a) (i) 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 …, and
>
> [...](iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) (i) that unreasonable service charges have been made, or are proposed or likely to be made, and

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

(aba) (i) that unreasonable variable administration charges … have been made, or are proposed or likely to be made, and

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

(ac) (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

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

(b) … that other circumstances exist which make it just and convenient for the order to be made.

6. Thus grounds 24(1)(a) to (ac) are bipartite: there must be both a factual finding and a judgment that it is just and convenient for the order to be made. The statute does not require that it is that factual finding that makes it just and convenient for the order to be made; the facts are simply gateways. Ground 2(2)(b) is also bipartite, but in a slightly different way: again there have to be findings of fact that "other circumstances" exist, and then a judgment that it is just and convenient for the order to be made, but in this case it has to be those "other circumstances" make it just and convenient.

7. Section 24 also says this:

"(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 FTT] 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, or

(b) 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)."

The factual background and the section 22 notice

8. St Mary's House, on London Road in Sheffield, is a former office block converted to residential flats by the appellant in or around 2014. Planning permission for the development required that it be used solely for student accommodation. The appellant remains the freeholder of the building, and has let the flats on long leases to investment purchasers. The

leases provide that the landlord is responsible for the repair and maintenance of the building in return for a service charge in the usual way.

9. Initially the lettings to students were arranged by the appellant for the long leaseholders pursuant to a management agreement entered into at the time of the grant of the leases, but that agreement was brought to an end by the respondent and 63 other lessees in May 2022 and they now use Cloud Student Homes to manage their lettings.

10. On 23 December 2022 the respondent and those 63 other leaseholders sent to the appellant a notice under section 22 of the 1987 Act. As we have seen, the statute requires that the notice state both the grounds on which the FTT was going to be asked to make an order and the matters on which the tenant will rely in order to establish the grounds. The notice set out the grounds in its Second Schedule as follows:

> "1.The applicants have no confidence in the proper management of St Mary's House by [the appellant].
>
> 2.The Landlord and his Management Company are in breach of obligation owed to leaseholders under their leases.
>
> 3.The Landlord and his Management Company are in breach of obligation owed to leaseholders under the terms of the Management Agreement .
>
> 4. The landlord has made unreasonable service charges 2021 and 2022 and provided no budget for 2022.
>
> 5. Suspected breach of section 42 of the Landlord and Tenant Act 1985: Service Charges and Reserve Funds.
>
> 6.The Manager, Ms Jade Ata, Noble Design and Gunes Ata, Trading as Noble Design and Build, are in breach of the Code of Practice approved by the Secretary of State under section 87, the Leasehold Reform, Housing and Urban development Act 1993, the Service Charge Residential Management Code of the Royal Institute of Chartered Surveyors Code of Practice; RICS.
>
> 7.The Landlord denies the rights of St Mary's House leaseholders in respect of Sections 21, and 22 of the Landlord and tenant Act 1985; Service Charges, accounts and supporting documents.
>
> 8. Breach of the Environmental Protection Act 1990.
>
> 9. Other circumstances exist which make it just and convenient to appoint a manager."

11. In the Third Schedule to the notice were set out the matters on which the leaseholders proposed to rely in establishing the grounds. Under ground 1 it said:

> "Leaseholders receive no responses to requests for information. The building is falling into disrepair. The Landlord and his manager are obstructive. Summaries of expenditure are not made available. The accounting system is in disarray.

> Leaseholders do not know how their money is held. The treatment of student tenants is poor. Cash has been taken from tenants with no apparent receipting or accounting. Violence has been threatened by the Landlord. Infestation continues without resolution. Misinformation passed to tenants by the Landlord's manager. The situation is untenable."

12. The matters relied upon under ground 2 were lengthy and need not be set out in full here but I shall come back to them.

13. The fourth schedule gave the appellant 14 days to do the following:

> "Respond to S21 Notices
> Provide summaries of expenditure and budgets for 2021 and 2022
> Resolve infestation of St Mary's House
> Provide all keys outstanding.
> Provide substantiation of claimed arrears.
> Provide certified (by a third party) accounts and supporting documents for 2019, 2020,2021
> Provide copies of all ASTs for 2021- to July 2022 for the listed properties.
> Provide information in respect of Service Charge Trust accounts and Reserve Fund Trust accounts
> Provide evidential confirmation that overcharges of Ground Rent have been rectified."

14. The notice was served on 23 December 2022, and of course the holiday period came immediately after that date. The application to the FTT for the appointment of a manager was made by the respondent on 10 February 2023; the other tenants who had joined her in serving the notice were joined to the proceedings by the FTT as "Co-Joiners" so that they did not each have to pay an application fee.

The FTT's decision

15. Statements of case were filed by the respondent, as applicant, and by the appellant as respondent in the FTT; witness statements were filed and skeleton arguments exchanged prior to the hearing. At the hearing the FTT heard evidence including from the proposed manager.

16. In its decision the FTT set out the factual background and a summary of the difficulties that had arisen between the parties. At paragraph 16 the FTT said:

> "The allegations of poor management include a failure to produce accounts relating to the Service Charge, deducting the Service Charge from the lettings income without any explanation, failing to carry out adequate maintenance that has resulted in water ingress, a rat infestation, lifts that have been out of order for some time and unauthorised people entering the property."

17. In paragraphs 22 to 25 the FTT recorded an application by Ms Sinclair (the applicant before the FTT, the respondent to the appeal) to adduce further evidence: a refusal by Sheffield

City Council to grant an HMO licence (that is, a licence to operate a house in multiple occupation, or HMO, under the Housing Act 2004) in respect of one of the flats on the basis that the appellant was not a "fit and proper person" to manage the HMO. The City Council said that the appellant was not a fit and proper person because he had committed a number of offences; and that the same refusal was going to be issued in respect of all the flats managed by him or by his company. Five offences were listed, apparently all in respect of failure to comply with management regulations including fire safety precautions. The appellant had been prosecuted for four of the offences and had either pleaded guilty or had not appeared, and had been fined (and in one case ordered to pay a victim surcharge). For the other offence, in respect of 145 breaches of regulations, civil penalties had been imposed by the City Council. The new evidence was admitted, on the basis that had not been available at an earlier date.

18. The FTT was told that the appellant was appealing the civil penalties. Both parties have drawn my attention to the FTT's decision in that appeal made on 25 September 2024; but this is an appeal by way of review and the decision of 25 September 2024 post-dates the decision now appealed and so is not relevant to the appeal.

19. The FTT then set out the relevant statutory provisions, and at paragraphs 26 to 49 summarised the evidence and the parties' arguments, including Mr Ata's challenge to the validity of the notice.

20. Under the heading "Reasons" the FTT at paragraphs 58 and following identified four issues for determination:

    a. whether the application had been made by the tenant of a flat; the FTT at paragraph 59 found that the application was correctly brought and there is no appeal from that;

    b. whether all the units leased by the applicant and her "Co-joiners" were flats within the meaning of the statute, and the FTT decided in paragraphs 60 to 62 that they were; again there is no appeal from that point;

    c. Whether the notice was valid, paragraphs 63 to 65; and

    d. "Whether the allegations against the respondent's conduct were proved and sufficient to justify the appointment of a manager" (paragraphs 66 to 72).

21. Under the third issue, the validity of the notice, the FTT considered first whether a proper ground was stated in the notice. It decided that ground 2 had been properly stated, that what the applicant complained of was indeed breaches by the appellant of its obligations as landlord, and that breaches of the landlord's obligations to repair and maintain the property fell within ground 2. Second the FTT considered, and rejected, the argument that the notice was invalid because it did not give a reasonable time for remediation.

22. The fourth issue was the core of the FTT's determination, under which it had to assess whether the allegations were proved and whether it was just and convenient to appoint a

manager. The FTT said that the appellant did not deny the failure of the lift and the heating system, nor the rat infestation or the water ingress. It noted that the appellant blamed the tenants for failure to pay service charges and that "the parties have reached an impasse". It noted the appellant's convictions and said that they were relevant. It said that there was a lack of transparency in the service charges, and a lack of detail in the invoices rendered by "Fix1st", the appellant's own company which he uses for work on the property. It noted the absence of any evidence from the appellant that the property was insured. It concluded at paragraph 73:

> "In taking into account all these matters and in making its determination regarding the appointment of a manager, the Tribunal finds the requirements of s 24(2)(a)(i) are met and it is "just and convenient" to make an appointment under s 24(2)(b)."

23. I have no doubt that the FTT meant to say "24(2)(a)(iii)" rather than 24(2)(b). The fact that the requirements of section 24(2)(a)(i) are found to have been met is insufficient for a management order to be made; the ground is as we have noted bipartite, so that the FTT also has to find that it is "just and convenient" under section 24(2)(a)(iii). That is clearly what it was doing; the FTT in its refusal of permission to appeal stated that the one ground it found to have been satisfied was section 24(2)(a). It is not plausible to suppose that by paragraph 73 the FTT meant to say that one limb only of section 24(2)(a) was satisfied and to introduce a new idea, ground 24(2)(b), without elucidation. Its focus was on the breaches of covenant relating to repair and maintenance, and those facts together with the appellant's convictions and his failures to provide information made it just and convenient to make an order pursuant to section 24(2)(a).

24. The FTT then went on to consider the manager proposed by the tenants, Mr Harvey Mills, a director of Cloud Student Homes (see paragraph 9 above)**,** and appointed him for a period of three years. That appointment has not yet taken effect because the FTT gave permission to appeal, and stayed its decision pending appeal. Permission was granted on three grounds.

25. The first was that "the gateway ground upon which the Tribunal relied was not particularised in the preliminary notice."

26. The second was said by the FTT in its summary of the grounds for appeal to be that "the Tribunal did not allow a reasonable time for the breach to be remedied", but that it is not what the appellant said, and there is no requirement in the statute that *the FTT* allow time for remediation; the FTT put it correctly at paragraph 16 in its decision granting permission: "The second ground of the appeal is that the preliminary notice did not allow sufficient time for the Appellant to remedy the breach, only giving 14 days commencing on 23rd December 2022".

27. The third ground was that "it was not appropriate to appoint Harvey Mills as the manager due to a potential conflict of interest."

28. The FTT added that whilst the first ground was a point of law, so far as the second and third grounds were concerned "permission to appeal is given upon the submissions the Decision was inadequately reasoned."

29. It is important to note that there is no challenge to the FTT's reasoning under what it described as the fourth issue, namely whether the allegations had been proved and whether it was just and convenient to appoint the manager; permission was not even sought to appeal the FTT's assessment that the ground under section 24(2)(a) was made out. The challenge is solely to the validity of the section 22 notice and to the choice of manager.

Ground 1: failure to "particularise" the breaches of covenant in the notice

The arguments

30. What the appellant says is that the FTT made its order on the basis that he had been in breach of his management obligations in the respondent's lease, and that the breaches found were failures to repair and maintain the property. Yet the respondent did not give any particulars of such failures in her notice. Indeed, there is no mention of failure to repair or maintain in the material relating to ground 2 in the Third Schedule to the notice. Under section 24(7) the FTT has a discretion to make an order notwithstanding that the notice did not meet the requirements of section 22; but the FTT did not say that it was exercising that discretion. And it could not properly have done so, because the notice did not fulfil its purpose, namely to show the appellant exactly what was alleged against him as a basis for an order.

31. At first sight there is some force in that argument. Ground 2 in the Second Schedule to the notice alleged breaches of the landlord's covenants, yet the "matters relied on" under Ground 2 in the Third Schedule did not refer to failure to maintain or repair. True, under ground 1, which stated that the tenants had no confidence in the management of the property – the points set out in the fourth Schedule included "The building is falling into disrepair" and "Infestation continues without resolution". But there is no detail of the disrepair or of the infestation. Ms Gray said that the notice did not tell the appellant what it was the tenants complained of, and as a result he had "no opportunity" to put matters right. She argued that if the FTT thought the notice was valid it did not say why, and that the appellant is entitled to a proper explanation and moreover that if the FTT thought the notice was valid that was an error of law. She pointed out that a section 22 notice is the converse of a notice given under section 146 of the Law of Property Act 1925. The latter alerts the tenant to the reasons why the landlord seeks to forfeit his lease, and therefore has to tell the tenant what is said to be wrong and the steps needed to put it right; the section 22 notice tells the landlord what is said to be wrong before his valuable right to manage is taken away from him. Ms Gray pointed to the comparison drawn between a section 22 notice and a section 146 notice both in *Woodfall: The Law of Landlord and Tenant* at paragraph 28-043 and in the *Encyclopedia of Housing Law.*

32. For the respondent, Mr Verduyn pointed out that the FTT bundle included correspondence between the tenant's representative and the appellant from which it was clear that the appellant had been aware for a long time of the problems with rats, water ingress, the lifts and the heating. He said that the appellant knew all he needed to know, particularly in light of the fact that he admitted the relevant breaches of covenant (see paragraph 22 above). Ms Gray countered that the appellant had in fact denied that there was any further problem with

the heating; but it is clear from the appellant's witness statement that he admitted that there *had been* a problem with the heating although he told the FTT that it had been resolved.

33. Mr Verduyn argued that if the Tribunal was against him and found that the notice had been inadequate, then the Tribunal should substitute its own decision, and exercise the discretion conferred by section 24(7) so as to make an order appointing the manager nonetheless.

Discussion

34. It is apparent both from the appellant's statement of case in the FTT and from the FTT's decision itself that his argument about the notice challenged a number of the grounds set out in the Second Schedule to the notice on the basis that they did not match the statutory provisions, and also challenged the details given of the matters relied on by the tenants in the Third Schedule to the notice. In particular, the appellant said that ground 1 (the tenants' loss of confidence in the management of the property) was not a valid ground. As to the breaches of covenant set out in the Third Schedule under ground 2, the appellant said that most of the matters complained of were not breaches of the landlord's covenants in the lease. I do not need to set out the detail because of the way the FTT resolved the matter: at its paragraph 65 the FTT accepted that ground 1 was not a valid ground because it related to the appellant's obligations under the agreement to manage the sub-lettings (see paragraph 9 above), but accepted that ground 2 was valid since it corresponded to section 24(2)(a)(i). It went on:

> "The respondent argued that the Tribunal should not consider breaches of the obligation to repair and maintain the Property since this had not been included within the Notice. The Tribunal finds this issue is one that falls within ground 2 above and is therefore to be considered."

35. That paragraph is opaque but appears to have been intended to say that the reference within the Third Schedule, under ground 1, to failure to repair and maintain in fact fell within the scope of ground 2 and so could validly be considered within that ground. That was a sensible approach since the notice was clearly saying that the matters relied upon by the tenants included that the property was in disrepair and infested with rats, which would obviously engage the landlord's obligations under the lease. To ignore those matters just because they were set out under ground 1 when they were relevant to ground 2 would be obviously unfair.

36. What the FTT did not then do was to discuss the adequacy of the details given of the failure to repair and maintain.

37. Was that an error of law that invalidated the FTT's decision? The answer to that is twofold. The first is that in my judgment the FTT did not need to deal with the point because it was not part of the appellant's case in the FTT that the notice was defective in that way; he knew all about the complaints of disrepair and the rat infestation and was not saying that he was given insufficient detail about them. The second is that in any event, had the point been argued it would have been unsuccessful.

38. To explain my first point, about the appellant's case, I start with Ms Gray's skeleton argument in the appeal. She said that the appellant had raised consistently throughout the

proceedings the point that the notice did not set out the matters that would be relied on by the tenant for the purposes of establishing the ground contained in section 24(2)(a) of the 1987 Act. In support of that submission Ms Gray referred to paragraph 24 of the appellant's statement of case in the FTT and to paragraph 23 of her skeleton argument before the FTT.

39. Paragraph 24 of the appellant's statement of case in fact referred to the "matters relied on" in support of the breaches alleged under Ground 2, none of which related to repair and maintenance. The appellant's statement of case in the FTT did not suggest that he did not know what was the disrepair relied upon or that he did not know about the rat infestation. In his witness statement in the FTT the applicant discussed the allegations about the lifts, the heating system, the rat infestation, fire precautions and the entry of an unauthorised person. But again he did not suggest that any of that had come as a surprise to him. Paragraph 23 of Ms Gray's skeleton argument in the FTT said this:

> "23. The Applicant now appears to rely on alleged breaches of the obligation repair and maintain the Block, however these allegations were not raised (save for in the most general fashion) in the preliminary notice and they accordingly are unable to found an application for the appointment of a manager. There is no expert evidence that demonstrates that the Block is out of repair. "

40. Again, there is no suggestion there that the appellant did not know what was complained of. The objection to the notice is a formal one, that the breaches were stated in too general terms but there is no suggestion that the appellant was confused. What appears to have been argued before the FTT was that the notice was invalid because the grounds themselves were incorrect, and in particular that ground 1 was not a valid ground; it was not argued that the material in the Third Schedule about the disrepair and the infestation were inadequate.

41. Second, had the point been argued it could not have succeeded; and indeed if I am wrong in supposing that the point was not argued, or not argued in that way, and if it is in fact the case that it was fully argued and the FTT failed to deal with it, then in my judgment the argument was doomed to failure.

42. I say that because the purpose of the requirement to "specify … the matters that would be relied on by the tenant for the purpose of establishing those grounds" is, as Ms Gray acknowledged, to inform the landlord of what it is that the tenant complains of. The answer to the question whether a particular notice achieves that purpose is inevitably fact-specific. There is no precise requirement in the statute; the instruction to "specify … the matters" does not tell us how much needs to be said, but what needs to be said is what the landlord needs to know.

43. If the allegation of disrepair had come as a surprise to the appellant then certainly the details given would be insufficient; but the appellant was well aware of the nature of the complaints made. There is no finding of fact by the FTT to that effect because that was not in issue before it; at no stage did the appellant say he was taken by surprise or insufficiently informed by the notice about the disrepair or the infestation. There is no suggestion to that effect in his statement of case, or his witness statement. Had he suggested as much the tenants would have disagreed and his evidence would have been challenged, on the basis of the correspondence in the bundle before the FTT which showed that these complaints were

long-standing, and the FTT would then have had to make a finding about the extent of is awareness; but that did not happen because the appellant did not make that suggestion. What he did complain about was that there was not enough time given to do the tasks specified in the fourth schedule which I shall address under the second ground. But Ms Gray's suggestion in the appeal that he had "no opportunity" to address the problems of disrepair and infestation because he did not know what the problems were was, I am afraid, obviously incorrect.

44. In those circumstances the notice did what it was supposed to do. It stated that the landlord was in breach of covenant; and it stated that the breaches of covenant concerned were disrepair and infestation. In other words, the appellant was alerted to the fact that the disrepair and rat infestation of which he was already well aware were among the reasons why the tenants said that he was in breach of his obligations.

45. Accordingly the notice was not invalidated by failure to set out in enough detail the matters relied upon by the tenants; it said all that it needed to say. To set aside the FTT's decision on the basis that it did not decide the point would be pointless because the outcome would be the same in any event.

46. I have not referred in the discussion above to the Supreme Court's decision in *A1 Properties (Sunderland) Limited v Tudor Studios RTM Company Limited* [2024] UKSC 27, to which both parties referred. That decision is about what happens when there has been a failure to follow the procedure set out in the statute; there has been no failure in the present case. If there had been insufficient detail given in the Third Schedule to the notice, then *A1 Properties* would have been engaged because the statute does not specify the consequences of a failure to meet the requirement to specify the matters relied on is one: although section 22 provides that no application can be made if no notice is given, if there are deficiencies within the notice the FTT can exercise its discretion to make an order nonetheless (section 24(7). But, as I say, none of that arises because the FTT was correct to find that the notice was valid.

The second ground of appeal

47. The second ground of appeal is that the notice did not give the appellant sufficient time to remedy the disrepair and the infestation, 14 days being insufficient especially in the holiday season. Indeed, it is pointed out that the Fourth Schedule did not mention disrepair at all, only the infestation, yet the disrepair should have been capable of remedy.

48. It can be seen from the correspondence between the parties' representatives that the parties regarded the 14 days specified in the notice as 14 working days, and also that the appellant asked for an extension to 25 January 2023. The application to the FTT was not made until 10 February 2023, some seven weeks after the date of the notice. In all that time the appellant did nothing about the disrepair or the infestation, nor indeed for some months after that; the FTT said at its paragraph 65:

> "It was also argued that it was unreasonable to specify the period for remedy to be 14 days when the notice was dated 23 December 2022. Here, the Tribunal notes the submissions made by the Applicant that even though only 14 days were provided for

> within the Notice no attempt to remedy the grounds had been made before the application was made in April 2023. The Tribunal does not find the 14-day period over the Xmas holidays was a detriment to the respondent."

49. I believe the reference to April 2023 should be to the date of the respondent's Statement of Case in the FTT, which was dated 4 April 2023.

50. What the FTT was saying was that even if the appellant had been given 14 days outside the holiday period, or even a much longer period, he would not have done anything, as is demonstrated by the fact that he did nothing for over four months. Accordingly even if the period was too short, and even though no period at all was given for the disrepair, that made no difference and the notice was not invalidated.

51. Ms Gray argued that the correct test was not whether there was any detriment to the appellant, but whether the time allowed was realistic, and the FTT had said nothing to show that 14 days was a realistic period for resolving the infestation. Mr Verduyn pointed out in response that it is well established in the context of section 146 notices that where the recipient of the notice is intransigent and is clearly not going to do anything, then the period given cannot be regarded as unreasonable; he referred to *Shirayana Shokuan Co Limited v Danovo Limited* [2005] EWHC 2589 (Ch), where Sir Donald Rattee (sitting as a High Court Judge) quoted Sir Nicholas Browne-Wilkinson (as he then was) in the Court of Appeal in *Billson v Residential Apartments Limited* [1992] 1 AC 494 p.508B to E:

> "All that the statute requires is that a reasonable time to remedy the breach must elapse between service of the notice and the exercise of the right of re-entry or forfeiture. If the actions of the lessee make it clear that he is not proposing to remedy the breaches within a reasonable time, or indeed any time, in my judgment, a reasonable time must have elapsed for remedying the breaches once it is clear that they are not proposing to take the necessary steps to remedy the breach but are committing further breaches."

52. I asked Ms Gray what a reasonable time would have been, and she referred to the appellant's witness statement where he claimed that a programme of pest control works was needed, and said that some work had been done by May 2023. In fact as the FTT found at its paragraph 67, the appellant carried out work only after an Improvement Notice had been served by Sheffield City Council.

53. I agree with Ms Gray that the test for validity of the notice is whether a reasonable time was allowed; but again what is a reasonable time is fact-specific, and it is specific not only to the nature of the work but to the facts of the case including the behaviour of the parties. It does not take 14 days to contact a pest control company, and in that sense the time allowed in relation to the infestation was reasonable. Furthermore in circumstances where the recipient of the notice did nothing to deal with the infestation or the disrepair during the notice period, nor during the longer period that intervened before the application was made to the FTT, nor for some months thereafter, he cannot be heard to say that the notice did not give him a reasonable time to remedy the breaches of covenant unless he can show that it was impossible for him to do anything during that time, which he did not make the slightest attempt to show. The period given made no difference to what he was going to do – and I think that was what the FTT meant when it said that it was not a detriment to him.

54. Accordingly in my judgment the FTT reached the right conclusion. Its reasoning could have been better articulated but the FTT's reference to the fact that the appellant did nothing until April will have made it perfectly clear to him why his argument about the time allowed carried no weight.

Section 24(7) and the exercise of discretion

55. Had I come to a different conclusion about either or both of the first two grounds of appeal, I would have had no hesitation in setting aside and re-making the FTT's decision with the same outcome, exercising the discretion conferred by section 24(7) of the 1987 Act. It is abundantly clear both that the respondent proved that the property was in a very poor state as a result of the appellant's poor management, and that it was just and convenient for an order to be made, and indeed there is no appeal against those two core conclusions by the FTT. The notice itself was not drafted in the way a lawyer would have done, but that is not a criticism; it made perfectly clear in the tenants' own words what the problems were said to be and why the FTT was going to be asked to appoint a manager, and none of the material relied on was the slightest surprise to the appellant. If the notice did in any way fall short of what section 22 required it would have been entirely appropriate to make an order nonetheless.

The third ground of appeal

56. The third ground of appeal is that Mr Mills should not have been appointed as manager because of potential conflicts of interest between his role as the FTT's appointee, owing duties to the FTT, and his role as director of the letting agent, Cloud Student Homes, now engaged by 63 of the lessees.

57. The appellant's Statement of Case in the FTT made this point, saying that Mr Mills was "not an independent third party, rather he is an agent of the leaseholders. His appointment as manager of the Block could give rise to a conflict of interests". In his witness statement the appellant said nothing about a conflict of interest, but explained that he was unhappy about Mr Mills' appointment because of the involvement of Cloud Student Homes in the dispute between himself and the tenants. Ms Gray's skeleton argument before the FTT said the same as the Statement of Case about a conflict of interest, again without elucidation. That being the case, I have to disagree with Ms Gray's statement at the hearing that the conflict was "front and centre" of the appellant's case in the FTT; on the contrary, it was a brief and unexplained suggestion. Had much reliance been placed on it, more would have been said.

58. The FTT noted at its paragraph 52 that "The Respondent asserted that this appointment would create a conflict of interest". At paragraph 56 it said:

> "When questioned about any conflict of interest, Mr Mills advised that he did not foresee any issues. R Verduyn, counsel, proposed that should Mr Mills be appointed a provision could be made within the management order for Mr Mills to resign as the lettings manager of a flat within the property where any conflict arose."

59. In its conclusion the FTT did not address the suggested conflict directly, but said at paragraph 74 that it "considered the significant criticisms of his proposed appointment by

the Respondent" and went onto say why it considered the Mr Mills was a suitable appointee by reference to his experience and competence.

60. Ms Gray pointed to the FTT's *Practice Statement: Appointment of Managers under Section 24 of the Landlord and Tenant Act 1987* (January 2022) where paragraph 6 states:

> "Before appointing a person as a Manager, the Tribunal will need to be satisfied that the Manager would have no conflict of interest in taking up appointment. The Manager must also seek to avoid conflict of interest in the placing of contracts and discharging their other duties during their appointment. A conflict will occur if the dealings would be regarded by the average consumer as conflicting with the Manager's obligations under the order. If in doubt the Manager should seek directions from the Tribunal."

61. Accordingly, she argued, the potential conflict was an important issue for the FTT. She suggested that conflict might arise if an assured shorthold tenant used his flat in a way that breached the terms of the long lease, or if works were required that made it difficult for the long lessees to sub-let the flats. It may be that the FTT thought that no conflict existed or that conflict could be resolved, but its decision does not say what it thought.

62. Mr Verduyn pointed out that no examples of potential conflict were given to the FTT; there was simply an assertion that there was a potential conflict with no explanation as to how that might arise. Accordingly, he said, the appellant cannot complain if the FTT dismissed the point out of hand; there was nothing for the FTT to express a view on. In any event, to have the same manager for the building and the sub-lettings is a common arrangement, and indeed the appellant himself has been in both roles.

63. In my judgement it is clear from the FTT's paragraphs 52, 56 and 74 that it was aware of the suggestion that there might be a conflict of interest and did not think there was one. In the absence of elucidation of the argument by the appellant before the FTT he cannot complain about the absence of detailed consideration by the FTT. Again he is picking up a point that was not developed at first instance; in the absence of any explanation by way of example it is difficult to see that the FTT could have said much about it save to acknowledge the appellant's criticisms of the appointment and move on. The suggested potential conflict was not on any reckoning a reason not to appoint Mr Mills as a manager; had the FTT thought there was anything in the point it would have commented on the suggestion that the Management Order might contain provision for Mr Mills to detach himself from the management of a flat if a conflict arose, but clearly the FTT did not think that even that was necessary.

64. There is no substance in this ground of appeal and it fails as did grounds 1 and 2.

Conclusion

65. The appeal fails. I have asked the parties' representatives to agree the terms of the Management Order, which the Tribunal will make; failing agreement I will determine its terms on the basis of written representations by the parties.

Upper Tribunal Judge Elizabeth Cooke

20 December 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.