

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2012] UKUT 157 (LC)
UTLC Case Number: LRX/28/2011

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*LANDLORD AND TENANT – part 2 of the Landlord and Tenant Act 1987 –
appointment of managers – extension of interim management orders – dispensing with
preliminary notices*

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE
LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON
RENT ASSESSMENT PANEL

BETWEEN:

EAGLESHAM PROPERTIES LIMITED

Appellant

and

JOHN JEFFREY

Respondent

Re: Various Flats in Drysdale Dwellings
Dunn Street
London E8 2DH

Before: Her Honour Judge Walden-Smith

Sitting at: 43-45 Bedford Square, London WC1B 3AS

on

10 May 2012

Mr Joe Gurvits of Y & Y Management Limited instructed directly by the appellant
John Jeffrey in person

© CROWN COPYRIGHT 2012

DECISION

Introduction

1. This is an appeal by way of review from the decision of the Leasehold Valuation Tribunal (“LVT”) for the London Rent Assessment Panel dated 17 January 2011. Permission to appeal was made to the LVT on 31 January 2011.

2. The LVT granted permission to appeal on 9 March 2011 on the issues of:

“(1) whether the Tribunal had jurisdiction to extend the management order after 24 June 2010, and

(2) whether in all the circumstances of the application, the Tribunal were correct, that the order ought to be extended”

3. The issue is therefore a narrow one: did the LVT have jurisdiction to extend the management order and, if it had jurisdiction, was the LVT correct in exercising that jurisdiction in the circumstances of this matter to extend the order. This involves a consideration of the provisions contained in part II of the Landlord and Tenant Act 1987 (“the LTA 1987”) with respect to the appointment of managers and, in particular, sections 22 to 24 of the LTA 1987. The appellant contends that the LVT did not have jurisdiction. The respondent seeks to uphold the decision of the LVT.

4. The appeal is by way of review.

The Background

5. Mr Jeffrey helpfully provided an explanation of the background to the order appointing a manager which had originally been made by the LVT on 24 June 2009. It is useful for me to summarise briefly that background herein.

6. Drysdale Dwellings is a purpose built block of twelve flats over four floors. As a result of the considerable concerns about the freehold owner (Eaglesham Properties Limited), through its managing agents Avon Estates Limited (“Avon Estates”), failing to maintain properly Drysdale Dwellings and its common parts – including but not limited to the outside areas – a group of leaseholders got together for the purpose of engaging with the landlord and its managing agents in an attempt to ensure that works were carried out to the block.

7. That group of leaseholders formed an informal leaseholders and residents association and, although not formally constituted, was recognised by the landlord. Mr Jeffrey was both one of that group and, as he did before me, represented their interests. Correspondence was entered into with Avon Estates in an attempt to have works carried out but the management at the block was, as was acknowledged by Mr Gurvitz for Eaglesham Properties Limited, far from satisfactory when Avon Estates were employed.

8. On 7 November 2008, a preliminary notice was served upon Eaglesham Properties Limited pursuant to the provisions of section 22 of the LTA 1987. On 5 December 2008, a letter was sent to the leaseholders by Y&Y Management Limited (“Y&Y”) stating:

“I am writing to inform you that we have now formally taken over the management for the above property from Avon Estates on behalf of the landlord, Eaglesham Properties. We hope that we can deal with any issues promptly and efficiently and look forward to a mutually convenient relationship”.

Arrears of service charge were then set out in an appendix to the letter and Y&Y requested that they be paid and it was said:

“We are looking to provide a full range of the required services at the property and are happy to hear any suggestions from you in this regard ...”

9. Having already served the section 22 notice, Mr Jeffrey took advice that suggested the residents should give Y&Y the opportunity to manage Drysdale Dwellings and a letter was sent on 10 December 2008 acknowledging that Y&Y were taking over the management and asking them what they intended to do, in particular with respect to a notice that had been served by Avon Management on 14 November 2008 pursuant to the provisions of section 20 of the Landlord and Tenant Act 1985 and which was considered by the leaseholders to be woefully inadequate. Y&Y responded on 12 December 2008 stating that they did not consider the section 20 notice to be inadequate and stating:

“We are happy to work with you as long as we have cooperation from all the leaseholders and if you try and work with us we trust you will find that you will receive a professional and efficient management service.”

10. A further detailed letter was sent on 22 December 2008 to Y&Y by Mr Jeffrey on behalf of the leaseholders indicating that if a satisfactory response was not received then they would proceed with the application to the LVT for a manager to be appointed. In the letter in response dated 24 December 2008, Y&Y stated that they were proceeding with the section 20 notices and that they were not connected with Avon Estates, they simply worked in the same building.

11. Estimates were then provided by Y&Y and Mr Jeffrey wrote on behalf of himself and the other leaseholders forming the “Drysdale Dwellings Resident Association” on 28 January 2009 (in error the letter says 2008) setting out in detail the concerns of the leaseholders; the failures to comply with the requirements of section 20 of the LTA 1985 (as amended by the Commonhold and Leasehold Reform Act 2002); and that in all the

circumstances they felt it necessary to progress to the LVT for the appointment of a manager. The response from Y&Y is contained in the letter dated 5 February 2009, stating that they would defend any application to the LVT for the appointment of a manager.

12. The application to appoint a manager pursuant to the provisions of section 24 of the LTA 1987 came before the LVT on 26 and 27 May 2009. Mr Gurvits, of Y&Y, opposed the appointment of a manager and did not accept that the problems at Drysdale Dwellings were major, albeit that he accepted that they might be if you lived there. In a careful and thorough Decision, promulgated on 24 June 2009, the LVT set out details of the difficulties at Drysdale Dwellings and details of the proposed manager – John Mortimer Property Limited.

13. The LVT considered the tests set out in section 24(2) of the LTA 1987, including that the LVT may only make an order under this section:

- (a) where the tribunal is satisfied –
 - (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 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) it is just and convenient to make the order in all the circumstances of the case

or

- (abb) where the tribunal is satisfied –
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act [the holding of service charges in trust/in a designated account], and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case”

14. Having inspected the premises and having heard evidence from all the parties, the LVT determined that the appellant (the respondent to the original application) was in breach of clause 5(5) of the lease which imparts on the landlord an obligation to keep in repair the structure and roof, and also to decorate and maintain the common parts. The LVT also determined that the landlord was in breach of his obligations to keep the common access ways clean and lit and the communal gardens and amenity areas clean and tended. The LVT further found that Mr Gurvits had failed to deal with the obligations of the lease in an efficient and timely manner and that no good reason had been put forward on the landlord’s behalf for this breach. The LVT found that as managing agent he did not “*appear to have an adequate grasp of technical or health and safety matters, both of which needed to be addressed if the landlord was to*

adequately remedy the breach of the lease.” Further the LVT were not given any evidence that the accounts held by the landlord were held in compliance with section 42 of the Landlord and Tenant Act 1987. In the circumstances, the LVT found that breaches of the lease had been made out and that section 42 had not been complied with and determined it was just and convenient to make the order

15. However, the LVT expressed concern that the proposed manager, John Mortimer, was overly optimistic about the time it would take to remedy matters given the seriousness of the problem and the LVT was further concerned about the general nature of the plans that had been set out.

16. In the circumstances, the LVT determined to make an interim order for an initial 12-month appointment and provided that the parties may, subject to satisfactory performance of John Mortimer and an appropriate management plan, return to the Tribunal “after the expiry of a year” to ask for a further order. The order itself provided in terms that the appointment was for “an interim period of 12 months with effect from 24 June 2009”.

17. In addition to providing that John Mortimer Property Management Limited be appointed the Manager and Receiver of Drysdale Dwellings for an interim period of 12 months from 24 June 2009, the order of the LVT provided that the manager shall produce a written progress report for the LVT with copies to be sent to the applicants and the respondents (the appellant in this matter) no later than 24 May 2010 (that is a month before the expiry of the interim order) and appear at a hearing fixed for “(date to be confirmed)”.

18. Mr Jeffrey said that he and the other members of the leaseholders group genuinely thought, from the wording of that order, that the LVT would fix a date and that they did not need to take any steps and that it was only when they realised that no hearing had been fixed (after the expiry of the 12 months) that they applied for a date to be fixed.

19. Mr Gurvits said that Y&Y wrote on 1 July 2010 asking for the reports that had been ordered by the LVT and pointing out that the interim management order had lapsed and that Y&Y were instructed by Eaglesham Properties Limited to take over the management.

20. Subsequent to that letter from Y & Y, Mr Jeffrey contacted the LVT concerning the fixing of a hearing to extend the appointment of the manager beyond the initial 12-month period. Y & Y objected to the extension of the management order and the application was set down for hearing on 1 December 2010 in order to deal with whether the LVT had jurisdiction to make an order extending the management order and whether it was just and convenient to make a further management order and that was the reason why the report had not been provided by 24 May 2010 as directed

21. At the hearing of the application to extend the interim order on 1 December 2010, Mr Gurvits on behalf of the appellant, submitted that the LVT did not have jurisdiction to make an order as the original order had ended without being renewed and it would not be appropriate to dispense with the service of a further section 22 notice where the circumstances which may exist at the premises cannot be considered to be the failings of the freehold owner and its agent when there has been an appointed manager in place for a year. Mr Jeffrey submitted that significant progress had been made by the appointed manager but that a lot of time had been spent chasing up the accounting information.

Jurisdiction to extend the interim appointment

22. Section 24(9) of the LTA 1987 provides that an LVT may, on the application of any person interested, vary or discharge an order made under section 24. The narrow issue for determination is whether the section 24 appointment of a manager for an interim period can be so varied in the circumstances of this matter. If not, is it possible for the LVT to dispense with the requirement of the service of a preliminary notice under section 22 of the LTA 1987 and make a new order under section 24 of the LTA 1987.

23. Section 22(3) of the LTA 1987 provides that a LVT may (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 section 22 on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person. The person to be served in this matter is the freehold owner, Eaglesham Properties Limited. No new section 22 notice has been served upon Eaglesham Properties Limited and I do not consider that the LVT could properly have dispensed with service of the preliminary notice by reason of the provisions of section 22(3) of the LTA 1987. There is not, in my judgment, any evidence to suggest that it would not be reasonably practicable to serve such a notice on the appellant and, as a consequence, the LVT could not dispense with service of a preliminary notice in the circumstances of this matter.

24. The LVT accepted the submission of Mr Gurvits on this matter and determined, in the Decision promulgated on 17 January 2011, that it could not dispense with the requirement to serve a preliminary notice pursuant to section 22. The LVT went on to consider whether it could extend the period of the order that it had made.

25. The LVT determined that it was possible to continue the management order notwithstanding that the interim management order had expired by effluxion of time. This decision appears to be based upon the merits of the situation, the LVT setting out the various reasons as to why a management order was appropriate. In particular, that the tribunal had been satisfied in May 2009 that there had been serious and substantial breaches of the Lease and that the LVT had not been satisfied that the provisions of section 42 of the LTA 1987 (which requires service charge contributions to be held on trust) had been complied with; that Eaglesham Properties Limited had failed to pay the proportion of service charges on five properties still within their ownership; and that there was an absence of transparency in the keeping of accounts. The LVT also accepted that there were shortcomings in the wording of the order and ambiguities in the

decision and that may have contributed to the uncertainty of Mr Jeffrey on behalf of the leaseholders as to whether there should be an application to the LVT . The LVT were also satisfied from the evidence before them, including the photographs seen of Drysdale Dwellings, that improvements had been made at Drysdale Dwellings while the order had been in place.

26. In paragraph 44 of the Decision promulgated on 17 January 2011, the LVT acknowledged the difficulties caused by the wording of the original decision that the parties are to return to the Tribunal “after the expiry of a year” but in paragraph 46 refer to the application to the LVT being made some days “after the expiry of the order” and “whilst the order had lapsed”

27. The conclusion reached by the LVT was that “the circumstances at the premises are such that the need for the order still exists and it is right in all the circumstances for the management order to be continued.” (see paragraph 48 of the decision promulgated on 17 January 2011). If the LVT had jurisdiction to make such an order then I do not consider that there would be any reason for interfering with that order. It was a quite proper conclusion to reach on the basis of the evidence presented before the LVT.

28. However, in my judgment the LVT did not have jurisdiction to make such an order. The original order made on 24 June 2009 was for a term of 12 months. As a consequence the appointment of John Mortimer as the appointed manager for that interim period lapsed on 23 June 2009 and thereafter the freehold owner was again responsible for the maintenance of the block pursuant to the provisions of clause 5(5) of the lease.

29. Once the interim order has lapsed and the functions of the management of the block reverted to the freehold owner, through their appointed manager, there is no jurisdiction to extend the original order.

30. While there may be very good reason for an interim order to be extended, there cannot be such an extension once the interim order has come to an end. That would not be an extension, but a new order, and that requires the service of a preliminary notice under section 22 (unless dispensed with under section 22(3)). If there was an extension after the original order had come to an end that would lead to complete confusion as to who is responsible for managing the property between the end of the original order and the extension granted after the interim order has come to an end.

31. In light of that conclusion on the construction of section 24 of the LTA 1987, the appeal must be allowed and the management of Drysdale Dwellings reverts back to Eaglesham Properties Limited through their appointed managing agents at the expiry of the interim order.

The Accounts and Other Documentation

32. In paragraph 2 of the order of the LVT made on 24 June 2009, the LVT ordered that Mr J Gurvits of Y&Y Management shall provide all sums of monies held on trust together with bank statements, invoices and documents relating to the property, together with a statement showing all income and expenditure of the property since November 2008. Mr Jeffrey says that this part of the order has not been complied with by Mr Gurvits and that has made the job of managing the block more difficult.

33. I had considered that it would be possible for me to make an order, in furtherance of the Tribunal's case management powers, to make an order that the appellant provide the financial information set out in paragraph 2 of the order of 24 June. On reflection, I do not consider that I can make this order but I will state that Mr Gurvits does still have the obligation, pursuant to the order made by the LVT, to provide that information.

Conclusion

34. This appeal is allowed.

35. While, on the basis of the evidence available to the LVT, it was quite proper for the LVT to conclude that the management order should continue, the interim order had already expired and was therefore no jurisdiction for the interim management order to be extended. The management therefore vests back to Eaglesham Properties Limited.

Dated 24 May 2012

Her Honour Judge Karen Walden-Smith