

Y TRIBIWNLYS EIDDO PRESWL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0025/10/22

In the Matter of Flat 4, 52 Clive Road, Canton, Cardiff, CF5 1HG

And in the Matter of an Application under Section 48(1) Leasehold Reform Housing and Urban Development Act 1993

Applicant: Jane M Proctor

Respondents:

- (1) Gareth William Austin**
- (2) Jason Hadyn Austin**
- (3) David Iwan Wyn Jeffreys**

Tribunal:

- Colin Green (Legal Chair)**
- Mark Taylor MRICS (Surveyor Member)**
- Dr. Angie Ash FRSA (Lay Member)**

Date of Hearing: 16 January 2023

DECISION

The Applicant's section 42 notice is not valid and accordingly her application under Section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 is dismissed.

REASONS

Preliminary

1. This application has been made by Mrs. Proctor, the Applicant, under section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act"), seeking a renewal of her lease of Flat 4, 52 Clive Road, Canton, Cardiff, CF5 1HG ("Flat 4"). Chapter II of Part I of the 1993 Act gives individual tenants of flats who hold a long lease at a low rent the right to an extension of that lease. Mrs. Proctor's lease of Flat 4 is for a term of 99 years from 1 October 2004, which was assigned to her in December 2011. There is no dispute that it is at a low rent.
2. In order to exercise the right, the tenant must give notice of his or her intention to do so (referred to as "the tenant's notice") to the landlord and to any third party to the tenant's lease: section 42(2). The freehold reversion of 52 Clive Road has been vested in the three Respondents since May 1998 under title number WA94844. It is they

therefore, who constitute the landlord for such purposes. There are no third parties on whom such a notice needs to be served.

3. There is a notice dated 13 September 2022 signed by Mrs. Proctor, (“the section 42 notice”) which is expressed as being to the Third Respondent, Mr. Jeffreys, of 111 Cathedral Road, Cardiff CF11 9PH, and the First and Second Respondents, Gareth and Jason Austin, both of 192 Kings Road, Cardiff CF11 9DF. The section 42 notice identifies Mrs. Proctor’s lease, the premium she proposes to pay, the proposed terms of the new lease, the identity of her solicitors – Spencer Skuse & Potter Limited – who are authorised to accept service of any notices under Chapter II of Part I. Paragraph 7 of the section 42 notice provides:

“The date by which you must respond to this notice by giving a Counter Notice under Section 45 of the 1993 Act is: 15 November 2022”

4. Paragraph 8 states:

“Copies of this Notice are given to (if none then inset N/A): T Llewellyn Solicitors, Guildhall Chambers, Church Place, Neath, SA11 3LL”

5. It is not disputed that a copy of the section 42 notice was sent by Mrs. Proctor’s solicitors to T Llewellyn Jones under cover of a letter of 13 September 2022. That firm are the solicitors who have acted for the Respondents, and Mr. Jeffreys, a solicitor, is a director of T Llewellyn Jones. The covering letter contains no recipient reference and the copy in the hearing bundle is date-stamped 15 September, the date on which it was received by the Respondents’ solicitors. It provides as follows:

“Dear Sirs,

Re: Our Client: Jane Margaret Proctor
Your Clients: Mr David Iwan Wyn Jeffreys
Mr Jason Hadyn Austin and
Mr Gareth William Austin
Property: Flat 4 52 Clive Street, Canton,
Cardiff, CF5 1HG

We enclose a copy of the Section 42 Notice we have served directly upon your Clients, for your records.

We look forward to hearing from you, or indeed your Clients, in due course.”

6. By a letter dated 30 September, Mr. Jeffrey, apparently acting as the Respondents' solicitor, replied in the following terms:

"Dear Sirs,

Re: Your Client: Jane Margaret Proctor

Property: Flat 4, 52 Clive Road, Canton, Cardiff, CF5 1HG

We refer to the above and acknowledge your letter of the 13th September 2022 received by us on 15 September 2022.

We would be grateful if you would provide us with evidence of service upon the landlords directly.

We confirm that issue is taken in respect of the notice and that it is defective in a number of ways.

The preamble to the notice is incorrect, the landlords names are incorrectly stated as are the addresses.

In addition you have not provided sufficient notice in accordance with Section 42.

We would invite you to withdraw your notice immediately.

On the basis that your client not prepared to do so we enclose herewith counter notice. Please acknowledge receipt. "

7. The enclosed section 45 counter-notice is dated 30 September and is signed by T Llewellyn Jones. The Respondent landlord's addresses are given as 111 Cathedral Road, Cardiff (Mr. Jeffrey), 12 St Quentin's Close, Cowbridge (Jason Austin), and 14 Darren Close, Cowbridge (Gareth Austin). Paragraph 4 of the counter-notice also gives those addresses as those at which notices under Part I Chapter 2 of the 1993 Act may be given. Paragraph 1(b)(i) of the counter-notice states that the section 42 notice has not been served on the appropriate persons and as such is not valid, and paragraph 1(b)(iii) states:

"The Tenant has not complied with the appropriate provisions of [the 1993 Act]."

8. This allegation is repeated in paragraph 2 of the counter-notice, and it is claimed that as such the section 42 notice is defective.
9. Mrs. Proctor made her application under section 48 on 17 October. On 7 November, Richard Payne, the procedural chairman, gave directions that the validity of the section 42 notice be determined as a preliminary issue, that the Respondents serve submissions and any evidence in support of the contention that the notice has not been served on the appropriate persons and as such is not valid ("the service issue"), and that Mr. Proctor has not complied with the appropriate provisions of the 1993 Act. In the light of the Respondents' written submissions, this latter issue was narrowed down as to whether the date specified in paragraph 7 of the section 42 notice by which the counter-notice is to be served is valid ("Date for service of the counter-notice issue"). Directions were also given for service by Mrs. Proctor of any submissions and statements in response. A skeleton argument and three witness

statements were provided on behalf of the Respondents, and in response Mrs. Proctor provided an email of 23 November.

10. The hearing took place via CVP on 16 January 2023. Mrs. Proctor appeared in person and Mr. Jeffreys appeared for the Respondents. The Tribunal is grateful for the assistance they provided in presenting their respective cases.

Service issue

11. The addresses of the Respondents set out in the section 42 notice have been taken from the proprietorship register of the Respondent's registered title. Mrs. Proctor's case was that service at those addresses was sufficient as a number of possible addresses had been provided over the years, and no notification of an address for service had been given to her under section 48 of the Landlord and Tenant Act 1987.
12. It was stated by Lewison L.J. in *Oldham MBC v. Tanna* [2017] EWCA Civ 50 at paragraph 28:

"I would hold that as a general rule, unless there is a statutory requirement to the contrary, in a case in which (i) a person (in this case the local planning authority rather than the council taken as a whole) wishes to serve notice relating to a particular property on the owner of that property, and (ii) title to that property is registered at HM Land Registry, that person's obligation to make reasonable inquiries goes no further than to search the proprietorship register to ascertain the address of the registered proprietor. It is the responsibility of the registered proprietor to keep his address up to date. If the person serving the notice has actually been given a more recent address than that shown in the proprietorship register as the address or place of abode of the intended recipient of the notice, then notice should be served at that address also."

13. In the present case, there is a service charge demand dated 1 January 2022, apparently sent under cover of a letter from the Respondents' solicitors dated 10 December 2021. The demand includes the following at the foot of the page:

*"In accordance with s47 of the Landlord and Tenant Act 1987 your landlord are Gareth William Austin of 14 Darren Close Cowbridge CF71 7DE, Jason Haydn Austin of 12 St Quentins Close Cowbridge CF71 1EZ and David Wyn Jeffreys of 111 Cathedral Road, Cardiff CF11 9PH
In accordance with s.48 of the Landlord and Tenant Act 1987 the address in England and Wales at which notices (including notices in proceedings) may be served upon your landlord is 14 Darren Close Cowbridge CF71 7DE, 12 St Quentins Close Cowbridge CF71 1EZ or 111 Cathedral Road, Cardiff CF11 9PH."*

14. In the Tribunal's view, the use of "or" in the second paragraph – notification pursuant to section 48 – means that any of the three addresses mentioned can be used for the service of a notice. Therefore, service at 111 Cathedral Road, Mr. Jeffreys' home address, would amount to good service on all three Respondents.
15. Mrs. Proctor asserted that she may not have received the demand and covering letter, or that they were backdated, but accepted that she had seen the demand before September 2022.
16. The difficulty that arises is that there was no evidence that the section 42 notice had actually been posted to any of the addresses mentioned above, taken from the proprietorship register or the service charge demand of 1 January 2022. The witness statement of Mr. Jeffreys confirms the correspondence set out in paragraphs 5 to 8 above, but states that he did not receive the Section 42 Notice at his home address of 111 Cathedral Road, and the statements of Jason and Gareth Austin, which give their current addresses as 12 St Quentin's Close, Cowbridge and 14 Darren Close Cowbridge respectively, state that they had not received or been served with the section 42 notice and did not see it until they were served with the Tribunal papers under cover of a letter dated 21 October 2022. Neither Jason nor Gareth Austin were available to confirm their statements, but the Tribunal accepts their evidence. On any footing, the section 42 notice was never sent to their current addresses.
17. The issue of service was raised at the outset in the Respondents' solicitors' letter of 30 September (paragraph 6 above), it was specifically directed to be determined as a preliminary issue, and is addressed in the Respondents' skeleton argument, to which Mrs. Proctor responded in her email of 23 November. In the light of this, it is troubling that the point was never addressed by Mrs. Proctor's solicitors by way of reply to the letter of 30 September, which requested evidence of service, and no evidence was provided at the hearing from Mrs. Proctor's solicitor that the section 42 notice was actually posted. The evidence from Mr. Jeffreys was that he never received the notice at 111 Cathedral Road. Mrs. Proctor said she had received a letter from her solicitor to say that the notice had been posted to the Respondents, but that letter was not provided by her. Accordingly, the Tribunal must conclude that the section 42 notice was not served on any of the Respondents.
18. Mrs. Proctor's main argument was that there must have been service as the Respondents' counter-notice was served. In the Tribunal's view however, all that this establishes is that the Respondents' solicitors received her solicitors' letter of 13 September, which enclosed a copy of the section 42 notice. That is not disputed. The question is, did provision of the section 42 notice under cover of her solicitors' letter amount to good service? The Tribunal does not consider it did as it is clear from the terms of the letter of 13 September that the notice was not being served, but provided for information purposes: "for your records". In addition, it was at best only received by Mr. Jeffreys, a solicitor at the firm, not either of the other two Respondents.

19. On the basis however, that this is wrong, and that receipt of the section 42 notice under cover of the letter of 13 September did amount to good service on the Respondents, the second of the two preliminary issues arises.

Date for service of the counter-notice issue

20. Section 42(3)(f) of the 1993 Act requires that the tenant's notice must,

“specify the date by which the landlord must respond to the notice by giving a counter-notice under section 45”

21. Section 42(5) provides,

“The date specified in the tenant's notice in pursuance of subsection (3)(f) must be a date falling not less than two months after the date of the giving of the notice.”

22. The two months is calculated after the date the notice was given (received) and does not include that date. The date given in paragraph 7 of the s. 42 notice is 15 November 2022 (paragraph 3 above).

23. The letter of 13 September is date-stamped as having been received on 15 September. Two months after that date is 16 November, so that the date given in the section 42 notice is less than two months after the date of the giving of the notice; it is one day short.

24. Therefore, even if the section 42 notice was validly served under cover of the letter of 13 September, the notice is invalid for this reason, see: *John Lyon Grammar School v. Secchi* [1999] EWCA Civ J1011-15. As a result, the Tribunal has no jurisdiction to consider Mrs. Proctor's application under section 48(1) of the 1993 Act, and it must be dismissed.

Dated this 24th day of January 2023

C. R. Green
Tribunal Judge