

**MIDLAND RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

PRELIMINARY NOTICE

APPLICATION FOR THE APPOINTMENT OF A MANAGER

**LANDLORD & TENANT ACT 1987
(SECTION 22)**

TO

**Wenghold Limited
c/o Estate and Management Limited
Euro House
131/133 Ballards Lane
London
N3 1GR**

APPLICANT ACTING FOR THE SERVICE OF NOTICES

**The Secretary
Westside One Residents' Association
c/o Apartment 62 Westside One
22 Suffolk Street
Queensway
Birmingham
B1 1LS**

DATED 14 April 2008

WE, the persons whose names and address are set out in the First Schedule attached, GIVE YOU NOTICE, as follows:

1. This notice is served under Section 22 of the Landlord and Tenant Act 1987 by the tenants of apartments in Westside One, 22 Suffolk Street, Queensway, Birmingham, B1 1LS, (The Property).
2. The tenants intend to make an application for an order under Section 24 of the Act to be made by the Midland Rent Assessment Panel (Leasehold Valuation Tribunal) to appoint a manager in respect of the property but will not do so if you comply with the requirements specified in paragraph 5 below.
3. The grounds on which the Tribunal will be asked to make an order are set out in the Second Schedule attached.
4. The matters, which will be relied upon by the tenants for the purposes of establishing the grounds, are set out in the Third Schedule attached.
5. The matters, which are capable of being remedied by you and the steps to do so, are set out in the Fourth Schedule attached; the tenants require you to take the steps specified for the purpose of remedying those matters within a period of 14 days from the date of this notice, (or immediately where stated).
6. If your interest in the property is subject to a mortgage, Section 22(4) of the Act requires you to serve a copy of this notice on the mortgagees as soon as is reasonably practicable.

Address for the service of notices in connection with Part II of the Act and in proceedings:

The Secretary
Westside One Residents' Association
c/o Apartment 62 Westside One
22 Suffolk Street
Queensway
Birmingham
B1 1LS

APPLICATION FOR THE APPOINTMENT OF A MANAGER
NAME OF APPLICANT TENANTS AND APARTMENT ADDRESS

Names and Westside One apartment numbers of the tenants serving notice:

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Names and addresses, apartment numbers

Removed for Data Protection requirement.

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APPLICATION FOR THE APPOINTMENT OF A MANAGER
GROUND FOR THE APPOINTMENT OF A MANAGER

Grounds for the appointment of a new manager:

1. The landlord is in breach of obligation owed to the tenants under the lease.
2. The landlord is in breach of the Landlord and Tenant Act 1987, the Housing Act 1996, and the Commonhold and Leasehold Reform Act 2002.
3. The landlord has made/proposed unreasonable services charges.
4. The landlord is in breach of the Health & Safety at Work Act 1974, and the Regulatory Reform (Fire Safety) Order 2006 regulations.
5. The landlord is in breach of Part 5 of the Water Services Act 2007.
6. That other circumstances exist which make it just and convenient for the appointment of a manager.

APPLICATION FOR THE APPOINTMENT OF A MANAGER
MATTERS RELIED ON BY THE TENANTS

Matters relied on by the tenants:

1. Breaches of obligations owed to the tenants under the lease:

- 1.1. **Financial Accounting.** The lease requires landlord to serve annual service charge statements on leaseholders not later than 6-months after each auditing period. In particular the lease obligates that:
 - 1.1.1. Financial accounting must be conducted by a chartered accountant and/or person belonging to a professional body. (Sixth Schedule (para 25)).
 - 1.1.2. Any leaseholder has the right to scrutinise any invoice and financial statement. (Seventh Schedule (para 2)).
 - 1.1.3. Proper financial controls must be put in place for leaseholders to receive timely service charge bills with an accompanying notice of leaseholder's rights, and accountant's certificate. (Seventh Schedule (para 4)).
 - 1.1.4. Separate bank accounts for monies held in Trust. The landlord shall ensure that all money and reserve funds are kept in a separate trust fund account. (Tenth Schedule (para 3)).
- 1.2. **Professional Concierge.** Providing and paying for such persons as may be necessary in connection with the property. (Sixth Schedule (para 17)).
- 1.3. **Fire Alarm and Appliances.** Inspecting, reviewing and maintaining fire alarm and fire fighting appliances. (Sixth Schedule (paras 12 and 26)).
- 1.4. **Cleaning and external window cleaning.** Cleaning as necessary all internal and external faces of the windows in the property. (Sixth Schedule (para 11)).
- 1.5. **External facia of building.** Maintaining the property in good and substantial repair order, and replacing all worn and damaged parts thereof. (Sixth Schedule (para 8)).
- 1.6. **Refuse Storage Area.** Inspecting, maintaining and cleaning the refuse store area for the use of the property. (Sixth Schedule (para 3)).
- 1.7. **Supply of Water.** Lessees and tenants have the right to the free passage and running of water within the property and only be invoiced for the communal consumption of water. (Fifth Schedule (para 4)).

2. **Breaches of obligations owed to the tenants under the Landlord and Tenant Act 1985 and 1987, the Housing Act 1996, and the Commonhold and Leasehold Reform Act 2002:**

2.1. **Financial Accounting.** The Landlord and Tenant Act 1985 and 1987, and the Commonhold and Leasehold Reform Act 2002 require the landlord to provide annual service charge statements after each auditing period. Moreover, a leaseholder has the right:

2.1.1. To scrutinise any service charge invoice and financial statement.

2.1.2. To see proper financial controls put in place and to receive timely service charge invoices with an accompanying notice of leaseholder's rights. A demand for payment must be accompanied by a summary of leaseholder's rights and obligations in relation to charges.

2.1.3. To receive a breakdown of costs on which the service charge is calculated.

2.1.4. To have all financial auditing conducted by a professional chartered accountant/body, and to receive a signed certificate, the wording and intention of the certificate meeting that specified by the Act.

2.1.5. To be consulted about the appointment of managing agents through the Residents' Association.

2.1.6. To expect service charges to be held in a separate bank account and held in trust for the exclusive and sole use of the building.

3. **Unreasonable service charges:**

3.1. **Apportionment of Water.** The lease does not have provision for the landlord to charge by way of simple apportionment of consumer water supplied to individual dwellings. Apportioning apartment water usage by simply dividing the consolidated water utility bill by 63 (the total number of apartments within the building) is both unfair and illegal under the Water Services Act 2007. A single occupancy dwelling is in effect paying the same water charge for a two-bedroom dwelling occupied by 4 people.

4. **Breach of Health & Safety at Work Act 1974, and Regulatory Reform (Fire Safety) Order 2006 regulations.**

4.1. **Health & Safety.** There is a duty placed on the landlord for the building to be a safe, secure environment for owners (tenants), sub-tenants and their visitors.

4.2. There is a requirement under the Health & Safety at Work Act on the landlord:

4.2.1. To take reasonable care for the health and safety of employees [Concierge] and of other persons [owners/sub-tenants/visitors] who may be affected by the landlord's acts or omissions in the workplace [property].

4.2.2. As regards any duty or requirement imposed on any other person by or under any of the relevant statutory provisions, to co-operate with them [Concierge/owners] so far as is necessary to enable that duty or requirement to be performed or complied with.

4.3. **Regulatory Reform (Fire Safety) Order (RRO).** The landlord has a duty under RRO to meet the minimum fire regulations:

4.3.1. Property owners and landlords are required to carry out remedial work to deal with any fire hazard identified and must appoint a responsible person(s).

4.3.2. Under Article 9 RRO the responsible person [managing agent] must ensure a fire risk assessment is carried out to identify the general precautions required and take necessary action if required.

5. **Breach of Water Services Act 2007**

5.1. Part 5 of the Water Services Act 2007 contains provisions relating to metering of water supplies and waste water discharges, enabling a water services provider to supply water and measure the volume of water supply or rate of discharge of waste water via a meter and charge a standing charge in respect of meters provided.

6. **That other circumstances exist which make it just and convenient for the appointment of a manager**

6.1. **Silence.** Presently the landlord and managing agent have both decided not to:

6.1.1. Respond to the requests made by the officers of the Residents' Association for information on repair work, defects, and detail of administration and service charges.

6.1.2. Reply to any leaseholder that has requested for assistance, information, and details of their own administration and service charges.

6.2. **Realised benefits.** For a leaseholder to enjoy all the benefits of the lease they can expect to:

6.2.1. Communicate with the landlord and managing agent.

6.2.2. Work in partnership with landlord and managing agent in order to gain a level of trust.

6.2.3. Have confidence in the managing agent in their control of the service charge deficit, which presently is in excess of £140,000.

6.2.4. See the managing agent visiting and inspecting the building on a regular basis. Moreover, the property managers to act in a proactive, courteous and businesslike manner.

APPLICATION FOR THE APPOINTMENT OF A MANAGER
MATTERS SPECIFIED IN THE THIRD SCHEDULE WHICH ARE CONSIDERED CAPABLE
OF REMEDY AND STEPS REQUIRED TO REMEDY THEM

Matters specified in the Third Schedule which are considered capable of remedy; steps required to remedy them:

1. Breaches of obligations owed to the tenants under the lease:

- 1.1. **Financial Accounting.** The Association and leaseholders have asked to be provided with the certified service charge and administration accounts for period 1 July 2006 to 30 June 2007. Leaseholders cannot be expected to wait any longer, (especially in view of the past performance of where repeated promises were made to distribute the preceding 4 years of accounts).
- 1.2. All leaseholders are suffering as a direct consequence of their omission and are unable to properly challenge the payment/levying of service charges by way of a planned, separate LVT application. The service charge and administration accounts for year ending 30 June 2007 must be provided immediately.
- 1.3. Notwithstanding the above, a number of invoices with associated entries to the day journal for year ending 30 June 2007 have been scrutinized prior to pending certification. The preliminary observations show:
 - 1.3.1. Invoices and day journal entries were inappropriate and should have been forwarded to the landlord for their settlement.
 - 1.3.2. Payments to contractors for items that were under guarantee and therefore should not have been paid in any circumstance.
 - 1.3.3. Some invoices being better paid under a building insurance settlement claim.
 - 1.3.4. Duplication of expenditure where extra insurance premiums for the same period have been paid.

- 1.4. The landlord is required to provide the following within 14 days or sooner:
 - 1.4.1. The amended service charge budget currently in force since that provided by your managing agent to leaseholders for period 1 July 2007 to 30 June 2008 where the projected income was £118,430.
 - 1.4.2. A breakdown against budget headings of all under and over spending for periods: 1 July 2006 to 30 June 2007, and 1 July 2007 to 30 June 2008.
 - 1.4.3. A list of all known creditors of the service charge account fund, (ie those companies where the managing agent has been unable to settle payment of invoices).
 - 1.4.4. A forecast of expected known/predicted expenditure for any single item/service greater than £7,500 by year for the next 15 years.
 - 1.4.5. A detailed explanation as to what the present service charge account deficit relates to, when and how such was incurred.
 - 1.4.6. An undertaking by the landlord that all leaseholders, (through the officers of the Residents' Association), will be involved in the allocation of service charges, and the monitoring of the expenditure against budget.
- 1.5. **Professional Concierge.** The management agreement requires the landlord to employ and provide a full-time building concierge. The landlord and managing agent must immediately provide the details of the expected duties, terms and conditions of employment, salary and hours of work.
- 1.6. **Fire Alarm and Appliances.** Inspecting, reviewing and maintaining fire alarm and fire fighting appliances. The landlord must immediately provide the details of the measures to be taken, and costs involved, to meet the required standard for alarm and fire fighting appliances as set out in the last fire safety assessment report.
- 1.7. **Cleaning and external window cleaning.** Cleaning as necessary all internal and external faces of the windows in the property. The landlord and managing agent must liaise with the building contractors of adjacent construction sites with a view to cleaning the exterior building/windows. The landlord must provide immediate confirmation; with copy letter to contractor(s) showing this has been commenced.
- 1.8. **External facia of building.** Maintaining the property in good and substantial repair order, and replacing all worn and damaged parts thereof. The landlord must consult NHBC and/or building's insurance company in respect to the ongoing and marked deterioration of external wood and brick facia. The landlord must provide immediate confirmation; with copy correspondence showing this process has been commenced.
- 1.9. **Refuse Storage Area.** Inspecting maintaining cleaning the refuse store area for the use of the property. The landlord and managing agent must make safe the refuse storage area and repair defects immediately.
- 1.10. **Supply of Water.** Lessees and tenants have the right to the free passage and running of water within the property. The landlord and managing agent must liaise with leaseholders and Severn Trent Water Authority in respect to the return of individual water metering and invoice accounting. The landlord must provide immediate confirmation this process has been commenced, with their copy correspondence to Severn Trent Water Authority; and offer assurance that leaseholder will be reimbursed for over payment of apartment water billing.

2. Breaches of obligations owed to the tenants under the Landlord and Tenant Act 1985 and 1987, the Housing Act 1996, and the Commonhold and Leasehold Reform Act 2002:

2.1. Financial Accounting. The Landlord and Tenant Act 1985 and 1987, and the Commonhold and Leasehold Reform Act 2002 require the landlord to:

- 2.1.1. Provide an annual service charge audited statement for the period year ending 30 June 2007. This must include a breakdown of costs on which the service charge is calculated. The statement must be circulated to all leaseholders immediately.
- 2.1.2. Ensure all financial accounting and end of year audits meet the standards set by the professional bodies as referred to within the Act. The landlord must immediately state this has been done to date.
- 2.1.3. Immediately put in place proper financial and management controls in respect to service charge expenditure. The landlord must immediately explain and make known to leaseholders the financial management controls/plans that have been put in place to restore the current service charge deficit.
- 2.1.4. Ensure their agent demands service charges in the correct manner. The landlord must confirm that demands for payment will always be accompanied by a summary of leaseholder's rights and obligations in relation to charges.
- 2.1.5. Consult leaseholders through the officer of the Residents' Association with the appointment of a new managing agent. The landlord must provide an immediate undertaking of this right.
- 2.1.6. Immediately confirm that service charge monies are held in a separate account and held in trust purely for the benefit of leaseholders.
- 2.1.7. Provide the trading name of the bank at which the service charge current and deposit account(s) are held; the branch at which accounts are kept; and the type of account(s) with signatories of these accounts. The landlord must provide these details within 21 days or sooner.
- 2.1.8. Provide the present service charge bank balance, including any cash holding and money retained within sinking fund accounts. The landlord must provide up to date balances within 21 days or sooner.

3. **Unreasonable service charges:**

3.1. **Apportionment of private apartment water.** The lease does not have provision for the landlord to charge by way of simple apportionment of apartment water. Without consultation, in 2004 the managing agent had unilaterally changed to 'flat-rate' billing for water that once had been individually metered. The landlord must provide immediate confirmation of the return to metered consumption billing and give immediate assurance that leaseholder will be reimbursed for over payment of apartment water billing.

4. **Breach of Health & Safety at Work Act 1974, and Regulatory Reform (Fire Safety) Order 2006 regulations:**

4.1. **Health & Safety.** There is a requirement for the building to be a safe, secure environment for owners (tenants), sub-tenants and their visitors. The landlord must immediately comply with all Health & Safety rules where necessary; and the managing agent must immediately promulgate the insurance certificate of employer's liability.

4.1.1. There is a duty of care placed on the landlord to draw up a schedule of common area/building defects, latent or otherwise, that directly affect enjoyment or safety of employees (Concierge, Property Manager, etc), leaseholders and or their visitors to the building. It is entirely reasonable that such an audit and schedule, (providing defect, location and costs to be rectified), be presented to applicant leaseholders and Residents' Association within 14 days.

4.2. **Regulatory Reform (Fire Safety) Order (RRO).** On 3 October 2006, the managing agent commissioned a risk assessment audit that preempted the reform fire regulations that came into force in 2007. The audit was conducted on behalf of the landlord with the assessment carried out by their contractor and expert advisor, Companion Health and Safety. It is understood 17 of the 20 recommendations had been classed as Very High (immediate action) or High (risk to health and safety is substantial or worse and/or represents a serious contravention of legislation).

4.2.1. The landlord must immediately adopt the recommendations of the fire risk assessment report so the building is made safe and RRO compliant. The landlord must confirm to all leaseholders this has been undertaken.

4.2.2. The landlord is to immediately instruct the managing agent to routinely test the fire alarm system, and practice and promulgate the evacuation procedures as recommended by the report. The landlord must immediately confirm to all leaseholders and the officers of the Residents' Association this has been undertaken.

4.2.3. The landlord must provide a copy of the current fire assessment report to the applicant leaseholders and Residents Association within 21 days.

5. **Breach of Water Services Act 2007**

5.1. Part 5 of the Water Services Act 2007 contains provisions relating to metering of water supplies and waste water discharges, enabling a water services provider to supply water and measure the volume of water supply or rate of discharge of waste water via a meter and charge a standing charge in respect of meters provided.

5.1.1. The landlord and the managing agent must arrange with Severn Trent Water Authority to set up individual apartment water accounts and all leaseholders must be informed of the arrangements within 21 days.

5.1.2. The landlord must provide an assurance that a return to separate apartment water metering and billing is to take place with immediate effect.

6. That other circumstances exist which make is just and convenient for the appointment of a manager

6.1. **Silence.** Presently the landlord and managing agent have both decided not to:

6.1.1. Respond to the requests made by the Residents' Association. The landlord is to immediately confirm they have instructed their staff, and the managing agent to respond to all request for information on repair work, defects, and detail of administration and service charges.

6.1.2. Reply to any leaseholder. The landlord is to immediately confirm they have instructed their staff, and managing agent to respond to requests for assistance, information, and details of administration and service charges.

6.2. **Realised benefits.** For a leaseholder to enjoy all the benefits of the lease they expect to:

6.2.1. Communicate with the landlord and managing agent. The landlord must immediately confirm their staff, and the managing agent will communicate with leaseholders and/or the Residents' Association who may at times be acting on leaseholder's behalf.

6.2.2. Work in partnership with landlord and managing agent in order to gain a level of trust. The landlord and managing agent must immediately explain what it is they are doing to regain the level of trust between all parties concerned.

6.2.3. Have confidence in the managing agent in their control of the service charge deficit, which presently is in excess of £140,000. The landlord and managing agent must confirm they are actively seeking to restore the service charge deficit. The managing agent must immediately state and explain why they have not been forwarding service charge invoices to new leaseholders whom have recently acquired an interest in the building.

6.2.4. See the managing agent visiting the building on a regular basis. The managing agent must immediately promulgate an advance schedule of regular building inspection appointments which specify the date and time of their property managers visiting the building.

6.3. **Unreasonable Service Charge Costs.** The paying of administration costs in the collection of service charges and ground rent when the previous and present managing agent failed to keep proper financial controls or records, and lost track of the whereabouts of leaseholders over a period of 5 years is unreasonable.

6.3.1. The managing agent must recalculate administration charges in respect to what has been provided to date, and the landlord must immediately confirm the reduction of such to leaseholders within 14 days.