



**HM Courts
& Tribunals
Service**



**Residential
Property
TRIBUNAL SERVICE**

**RESIDENTIAL PROPERTY TRIBUNAL
LONDON RENT ASSESSMENT PANEL & TRIBUNAL**

Case Reference: LON/00AT/HYI/2012/0014

**DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 133 & 134 OF THE HOUSING ACT 2004**

Applicants: London Borough of Hounslow
Respondent: Mr C Donohue
Property: 99 Vicarage Farm Road, London, TW3 4NN
Date of Hearing: 28 September 2012

Appearances

Applicant

Mr K Dickens	Empty Property Officer
Mr J Bhatia	Case Officer
Mr A Salarkia	Group Manager

Respondent

Mr C Donohue	In person
--------------	-----------

Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)
Mr H Geddes
Mrs J Clark

Introduction

1. This is an application made by the Applicant under sections 133 and 134 of the Housing Act 2004 (“the Act”) for an interim empty dwelling management order (“EDMO”) to be made in respect of the property known as 99 Vicarage Farm Road, London, TW3 4NN (“the property”).
2. The factual background of this matter was largely a matter of common ground and can be stated shortly.
3. The registered proprietor of the property remains Mr James Donohue. Apparently, he died intestate some time ago and the Respondent, Mr Christopher Donohue, his only child, has not applied for a grant of representation in relation to his estate.
4. The Applicant asserts that the property has been left unoccupied since 2000 and as a consequence is now in a state of advanced disrepair. In recent years the Applicant has made a number of unsuccessful attempts to get the Respondent to repair the property. Having failed to do so, the Applicant made this application to the Tribunal on 8 August 2012 for an interim EDMO to enable it to carry out the repairs and ensure that the property was habitable.

The Law

5. The substantive law in relation to the determination of this application is set out in section 134 of the Act. This provides:

“(1) A residential property tribunal may authorise a local housing authority to make an interim EDMO in respect of a dwelling to which section 133 applies if the tribunal –

- (a) is satisfied as to the matters mentioned in subsection (2), and*
- (b) is not satisfied that the case falls within one of the prescribed exceptions.*

(2) The matters as to which the tribunal must be satisfied are –

- (a) that the dwelling has been wholly unoccupied for at least 6 months or such longer period as may be prescribed,*
- (b) that there is no reasonable prospect that the dwelling will become occupied in the near future.*

- (c) *that, if an interim order is made, there is a reasonable prospect that the dwelling will become occupied,*
- (d) *that the authority has complied with section 133(3), and*
- (e) *that any prescribed requirements have been complied with.*

(3) *In deciding whether to authorise a local housing authority to make an interim EDMO in respect of a dwelling, the tribunal must take into account –*

- (a) *the interest of the community, and*
- (b) *the effect that the order will have on the rights of the relevant proprietor and may have on the rights of third parties.*

(4)...

(5)...

(6) *An order under subsection (5)(a) may, in particular, include exceptions in relation to –*

- (a) *dwelling that have been occupied solely or principally by the relevant proprietor who is at the material time temporarily resident elsewhere;*
- (b) *dwelling that are holiday homes or that are otherwise occupied by the relevant proprietor or his guests on a temporary basis from time to time;*
- (c) *dwelling undergoing repairs or renovation;*
- (d) *dwelling in respect of which an application for planning permission or building control approval is outstanding;*
- (e) *dwelling that are genuinely on the market for sale or letting;*
- (f) *dwelling where the relevant proprietor has died not more than the prescribed number of months before the material time."*

6. The exceptions referred to in section 134(1)(b) above are set out in the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 ("the Order"). Paragraph 3(j) of the Order provides that an application for an interim EDMO cannot be made where *"the person who was the relevant proprietor of it (the property) has died and six months has not elapsed since the grant of representation was obtained in respect of such person"*.

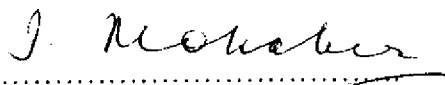
Hearing and Decision

7. The hearing in this matter took place on 28 September 2012. The Applicant was represented primarily by Mr Dickens, an Empty Property Officer, who has dealt with this matter from inception. The Respondent appeared in person.

8. That Respondent told the Tribunal that his father had died intestate and that, as his only child, he was entitled to apply for a grant of representation in relation to his estate. However, for various reasons, he had not as yet done so. He submitted, therefore, that the exception under paragraph 3(j) of the Order applied in this instance and that the Applicant was not entitled to make this application. Consequently, the Tribunal had no jurisdiction to make an order for an interim EDMO.
9. Mr Dickens said that this legal point had not been considered by him even though that it had been raised in the Respondent's statement of case. However, he argued that the Tribunal had granted such an application in 2007 based on similar facts.
10. Mr Dickens, helpfully, provided a copy of the decision, which was made in relation to 12 Sunningdale Avenue, Hanworth, Middlesex (LON/00AT/HYI/2007/1). Having considered the decision, the Tribunal ruled that it did not provide any assistance because the point taken by the Respondent in this matter had not been raised or dealt with.
11. The Tribunal then adjourned the hearing for a short while to enable Mr Dickens to obtain legal advice from the Applicant's legal department on the Respondent's submission. Having done so, Mr Dickens informed the Tribunal that the Respondent's submission was being conceded as being correct and that the application was formally withdrawn.

Dated the 28 day of September 2012

CHAIRMAN.....



Mr J Mohabir LLB (Hons)