

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property: 6 High Street, Winslow, Buckinghamshire MK18 3HF

Applicant: Mr Stephen Michael Johnson C Eng MICE of 122A Church Lane,
Greetham, Oakham, Rutland LE15 7NF and
Mr Daniel Black of Flat 2, 6 High Street, Winslow Buckinghamshire
MK18 3HF

**Respondent
Landlord:** Mrs Mairead Keswani, The Different Drummer, 94 High Street, Stony
Stratford, Milton Keynes MK11 1AH

Case number: CAM/11UB/LAM/2007/0001

Application: An application for the appointment of a manager (Section 24(1)
Landlord and Tenant Act 1987)

An application for the limitation of service charge arising from the
landlord's costs of proceedings (Section 20C Landlord and Tenant Act
1985)

Tribunal: Mr JR Morris (Chair)
Mr RW Marshall FRICS
Mrs J De M Ambrosè

Hearing Date: 19th June 2007

Attending Hearing:

Applicants: Mr S Johnson (Applicants' Representative)
Mr AJ Woodfield FRICS (Proposed Manager)

Respondent: Mr Z Keswani (Respondent's Representative)
Mrs Mc Knight (Respondent's Personal Assistant)

Note: A letter dated 29th May 2007 from Mr Daniel Black the Tenant of Flat 2 to the Tribunal
appointed Mr Johnson as the Tenants' Representative
A letter dated 6th June 2007 from the Landlord, Mrs Mairead Keswani, to the Tribunal
appointed Mr Zul Keswani, as the Landlord's Representative

DECISION AND STATEMENT OF REASONS

Preliminary

1. The Respondent made a request was made for an adjournment of the proceedings, which was refused by the Tribunal; a copy of the Decision is annexed.

The Application

2. The Applicants applied to the Tribunal under s 24(1) of the Landlord and Tenant Act 1987 for the appointment of a manager on the 9th January 2007. The Hearing took place on the 12th June 2007.

The Law

3. Under s 24(10) of the Landlord and Tenant Act 1987:
 - a) A Leasehold Valuation Tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this part [of the Act] applies -
 - a) such functions in connection with the management of the premises
 - or
 - b) such functions of a receiver
 - or
 - c) both as the Tribunal thinks fit.
 - (2) A leasehold valuation Tribunal may make an order under this section in the following circumstances, namely-
 - a) where the Tribunal is satisfied-
 - i) that the landlord is either in breach of any obligations owed by him to the tenant under his tenancy and relating to the management of premises in question or any part of them (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
 - (iii) that it is just and convenient to make the order in all the circumstances
 - (ab) where the Tribunal is satisfied -
 - (i) that unreasonable service charges have been made or are proposed to be made and
 - (ii) that it is just and convenient to make the order in all the circumstances
 - (ac) where the Tribunal is satisfied-
 - (i) that the landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under s87 of the Leasehold Reform, Housing and Urban Development Act 1993 (Codes Management Practice), and
 - (ii) that it is just and convenient to make the order in all the circumstances; or
 - (b) where the Tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
4. Where a tenant relies upon a notice served under section 22 of the Landlord and tenant Act 1987 it must:
 - (a) specify the tenant's name and address for service of notices
 - (b) state that the tenant intends to make an application for an order under section 24 in respect of the subject property but will not do so if the landlord complies with the requirements specified
 - (c) specify the grounds on which the Tribunal would be asked to make an order and the matters that would be relied on by the tenant for establishing those grounds
 - (d) where matters are capable of being remedied by the landlord, require the landlord within a reasonable time specified in the notice to take such steps for the purpose of remedying them as are to be specified

Description of the Property, Building and Estate and Inspection

5. The Property is the two upper floors of a three storey Victorian building under a pitched slate roof. The "Building" (as referred to in Clause 1 of the Lease) comprises retail premises on the ground floor together with a cellar and two flats on the upper floors, one on the first and one on the second floor. The ground floor premises include a single storey flat roof extension to the Building. The Building and courtyard area at the rear are referred to in the Lease in Clause 1 and the First Schedule as the "Estate". The common parts of the Building are referred to in the Lease as the "Retained Premises" and include the boundary walls and fences, halls, staircases and passages and the main structural parts of the Building including the roofs, foundations and exterior walls and any load bearing walls. The Retained Premises excludes the window frames and cills and any premises specifically demised. The part of the Estate demised to each Tenant is set out in the First Schedule of each Lease and is referred to as the "Premises".
6. The Tribunal inspected the Property, Building and Estate in the presence of the Applicants' and Respondent's Representatives.
7. The Tribunal inspected the exterior of the Building taking particular note of the Property and the interior of the common parts relating to the Property.
8. Access to the Property is through an archway referred to in the Lease as the "Access Way" leading from the front of the Building to the rear. At the rear there is a courtyard with parking for several vehicles and one space is designated for each of the flats. There is an alternative access to the rear of the Building but this is not for the use of the Tenants to the Property.
9. Access to the flats is up a flight of stairs. The first floor stairs are in a part of the Building that extends from the rear of the Building (referred to in these Reasons as the "Rear Stair Extension"). At the top of the flight to the first floor are two doors, one of which is to the first floor flat and the other is to the stairs leading to the second floor flat. Only the stairs to the first floor flat are part of the common parts. The stairs leading to the second floor flat are demised to that flat and are within the Building and not within the Rear Stair Extension.
10. The Tribunal viewed the Building and Property externally and made the following observations with particular reference to ongoing management:
 - The roof of the Rear Stair Extension was covered in a temporary fabric. The Parties stated that the roof had been leaking and this remedial action had been taken. More permanent remediation was required
 - The arrangement of guttering and down pipes was such that it appeared all the water from the rear roofs ran down onto and over the Rear Stair Extension roof. This arrangement needed to be reviewed. The guttering over the door to the Rear Stair Extension was blocked.
 - It appeared that the chimneys required re-flaunching and re-pointing the ridges re-bedding and the walls re-pointing.
 - The roof itself was in fair condition and the Parties stated the Building had been re-roofed 10 years ago.
 - The woodwork required re-decoration and stone cills required attention.
11. Internally the common parts were in poor condition. There were indications that the roof, now covered by fabric, had been leaking for some time and was in need of

substantial attention. As a result of the water ingress the decoration was damaged and in need of refurbishment following repair of the Rear Stair Extension roof.

The Lease

12. The Respondent is the freeholder and landlord of the Building and Property and undertakes the management. The Applicants are the Tenants of the two flats on the first and second floors above the commercial premises on the ground floor. A copy of the Lease was provided. The Lease dated 20th June 1996 is for a term of ninety nine years from 25th December 1995, as set out in Clause 2 of the Lease, at a rent of £100.00 per annum for the first 25 years, £200.00 per annum for the next 25 years, £300.00 per annum for the penultimate 25 years and £400.00 for the last 25 years of the term granted as set out in the Eighth Schedule to the Lease.
13. Clause 1 of the Lease sets out a number of definitions the most relevant being referred to in the Description of the Property, Building and Estate above. Clause 3 states that the Tenants covenant to observe and perform the obligations set out in the Fourth and Sixth Schedule and Clause 4 states that the Landlord will observe and perform the obligations set out in the Fifth Schedule. The Seventh Schedule sets out the manner in which the Tenants are to pay a contribution of the costs of the Landlord in fulfilling the obligations of the Fifth Schedule together with other costs set out in Part 2 of the Seventh Schedule.
14. The Fifth Schedule sets out the obligations of the Landlord, which include: Keeping the access ways in good repair and clean and tidy (Clause 2)
 - To inspect, maintain, repair redecorate and when necessary rebuild or renew the exterior of the Building and the Retained Premises
 - To keep the Building insured
 - To provide carpet, linoleum or other suitable floor covering for the staircase passageway (if any) and landing (if any) leading from the Access Way to the Premises
15. The Seventh Schedule provides for the payment of a Service Charge by the Tenants to meet the costs incurred by the Landlord in carrying out the obligations of the Fifth Schedule and other costs referred to in Part 2 of the Seventh Schedule.
16. The Tenant is obliged to pay a due proportion or an amount relative to the floor area of the Premises, of the Service Charge. The current due proportions are: 33% for Flat 1, 27% for Flat 2 and the remaining 40% is attributable to the ground floor and cellar retail premises. The Tenant is to pay on each quarter day an advance payment on account of the Service Charge payable for the current Service Charge Period. The Service Charge Period means the twelve months from the 25th March to the 24th March in each year or such other period as the Landlord shall determine.
17. The Landlord shall as soon as may be practicable and in any event will use her best endeavours to so do not later than three months after the end of each service charge period submit to the Tenant a statement duly certified by the Landlord's Accountant or Surveyor giving a summary of the Service Charge for the period just ended. Any balancing payment shall be paid by the Tenant or allowed by the Landlord.
18. The Lease also makes provision in the Seventh Schedule for a Reserve Fund "with a view to securing... that the Service Charge shall be progressive and cumulative rather than irregular". The Reserve Fund shall be kept in a separate trust fund and the interest earned upon such account shall be credited to the account in each year.

19. The Landlord shall also be entitled to include in the service charge a reasonable fee for herself and managing agents for the carrying out and provision of services ... provided that the same shall not equate at any time to more than ten per cent (10%) of the total service charge expenditure or such other percentage as the RICS shall recommend.
20. Part 2 of the Seventh Schedule makes provision for the Landlord to charge other costs to the Service Charge in particular paragraph 15 enables the costs of any proceedings brought against the Landlord.

Applicants' Case

Documents

21. The Tribunal received copies of:
 - The application form for the Appointment of a Manager
 - The lease
 - The Section 22 Notice
 - Service Charge Accounts
 - Various invoices
 - Witness statements
 - Surveyor's Reports dated 2003 and 2006
 - Correspondence

Issues

22. The issues identified in the Application pursuant to Section 24(1) Landlord and Tenant Act 1987 for the Appointment of a Manager and related Section 22 Notice are:
 - a) That unreasonable service charges have been demanded
 - b) There is no effective management or maintenance of the Property
23. The Applicants sought an order for the appointment as manager of Mr AJ Woodfield, MRICS, MCIQB, MASI of The Maltings, High Street, Tingrith, Milton Keynes, MK17 9EN
24. Mr Johnson for the Applicants stated in written representations that to his knowledge a manager had not been appointed with relevant qualifications or experience since the Leases were granted in 1996. Service charges are not levied as prescribed by the Lease i.e. regularly and to meet genuine costs for maintenance. Mr Johnson believed that they were submitted when an owner sought to sell an assignment of the Lease. The Landlord does not answer requests for justification of the service charges. The Service Charge that was paid when Flat 1 was purchased in 2003 was not used for any maintenance works. In addition items that appeared on a Schedule of works drawn up in 2002 appeared again on a survey in 2006 indicating that the 2003 works were never carried out.
25. Mr Johnson added that he was assured when he bought his flat in 2003 that a manager would be appointed but so far this has not happened which is the reason for the present Application.

Section 22 Notice

26. Mr Johnson produced a Notice served on the 6th January 2007 pursuant to section 22 of the Landlord and Tenant Act 1985, which stated two grounds in Schedule 2:

- 1) That unreasonable service charges have been demanded
- 2) There is no effective management or maintenance of the Property

27. In Schedule 3 of the Notice it was submitted that unreasonable service charge demands had been made in that:
- Payments of substantial sums are demanded without prior notice
 - There is no substantiation of elements of the service charge demanded or documentary evidence provided to justify charges claimed
 - No advance consultation about the substantial sum currently being demanded
28. It was further submitted in Schedule 3 that no effective management or maintenance was in place in that:
- To the best of the Applicants' knowledge no significant maintenance has been carried out for the last 10 years. In respect of Flat 1 sums paid in advance in 2003 have not been used for any maintenance and works to be carried out under a schedule prepared in 2002 appeared again on a schedule in 2006.
 - Management charges for the years in 2005 to 2006 amount to £2,000 without any substantiation
 - Service charges have no reconciliation between payments made in advance and actual costs incurred (balancing calculation)
 - Service Charges are not levied on a regular basis consistent with good estate management
 - There has been no response to correspondence requesting explanation or substantiation of service charges
 - No evidence has been provided of competitive quotes for maintenance work being obtained to give best value to tenants
29. The fourth schedule sought an agreement by the Landlord to the appointment of an independent manager within 14 days.
29. Mr Johnson stated that he received a letter dated 22nd January 2007 from the Landlord. The Landlord said, "Most companies will only deal with commercial properties but submitted the names of two people who might be prepared to manage the Property". These were Mr Paul Maddon of Aitcheson Rafferty and Mr Phillip Stainsby of Dougal Duff. The Landlord also stated that she was "obtaining three quotes form local builders to carry out repairs to the building." no response had been received and therefore proceedings were commenced. Mr Johnson replied by a letter dated 28th January 2007 that the Tenants were considering the names put forward but were also looking into other local practices. He also stated in relation to the repair works that it would be necessary for the Landlord to carry out a consultation under section 20 of the Landlord and Tenant Act 1985. In a letter dated February 2007 Mr Johnson submitted the name of Mr Woodfield as a proposed manager. Details of Mr Woodfield's qualifications and referees were sent to the Landlord. However in a letter dated 13th March 2007 from the Landlord to Mr Johnson the Landlord rejected the appointment of Mr Woodfield. Mr Johnson said that the Tenant's therefore continued with their application to the Tribunal.

Evidence

30. Mr Johnson provided Service Charge Accounts as follows:

2003 – 2004 & 2003 – 2004 Version 1

	2003 – 2004	2004 - 2005
	£	£
Insurance	1,330.34	1,241.90
Repairs/Maintenance Survey Fees	359.00	300.00
Management Fees	198.93	154.09
Total	1,888.27	1,696.09
Flat 1 @ 33%	623.13	559.71
Flat 2 @ 27%	509.83	457.94

2003 – 2004 & 2003 – 2004 Version 2

	2003 – 2004	2004 - 2005
	£	£
Insurance	1,330.34	1,241.90
Repairs/Maintenance Survey Fees Management Fees	561.88	595.59
Total	1,892.22	1,837.49
Flat 1 @ 33%	624.43	606.37
Flat 2 @ 27%	510.90	496.12

2005 – 2006 Version 1

	2005 - 2006
	£
Insurance	1,398.57
Repairs/Maintenance	15,000.00
Legal Fees	900.00
Survey Fees	352.50
Accountants	195.00
Management Fees	1,784.60
Total	19,630.67
Flat 1 @ 33%	6,478.12
Flat 2 @ 27%	5,300.28
Shop	7,852.26

2005 – 2006 Version 2

	2005 - 2006
	£
Insurance	1,264.00
Legal Fees	200.00
Accountants	125.00
Management Fees	317.80
Total	1,906.80
Flat 1 @ 33%	629.24
Flat 2 @ 27%	514.83
Shop	762.72

2006 – 2007

	2006 - 2007	
	£	
Insurance	1,398.57	
Repairs/Maintenance		15,000.00
Legal Fees	900.00	
Survey Fees	352.50	
Accountants	195.00	
Management Fees	1,784.60	
Total	4,630.67	15,000.00
Flat 1 @ 33%	1,528.12	
Flat 2 @ 27%	1,250.28	
Shop	1,852.27	

31. In written representations Mr Johnson stated that:

- Accounts for 2003-2004 & 2004 – 2005 Versions 1 and 2 were received in February 2005
- Accounts for 2005 – 2006 Version 1 was received in July 2006
- Accounts for 2005 – 2006 Version 2 and 2006 - 2007 were received in September 2006

Mr Johnson stated that the only time that accounts and invoices for service charges were sent to Tenants were when they sought to assign their Leases.

32. Invoices were supplied as follows:

- John Graham, Surveyor for Schedule of works – dated 25th March 2003 - £300.00
- Heath Crawford for Insurance – dated 9th September 2005 - £1,398.57
- Dunhams Solicitors for Various property matters – dated 27th April 2006 - £470.00
- Dunhams Solicitors for Various matters – dated 5th June 2006 - £528.75
- BJ & D Soul for clearing drains – dated 30th October 2006 - £340.75
- Heath Crawford for Insurance – dated 14th September 2006 - £1,456.67
- Aitchison for Valuation Report – dated 20th September 2006 - £846.00
- Dunhams Solicitors for Service Charge issues – dated 26th February 2007 - £881.25

33. Mr Johnson stated that the solicitor's invoices, apart from one, did not necessarily relate to the Property. He also stated that the works identified in the survey by John Graham in 2003 had not been carried out.

35. Mr Johnson supplied witness statements as follows:

- Mr Patel of the ground floor property stated that to the best of his knowledge no maintenance or repair work had been carried out by the Landlord during the past 10 years and that he had no objection to the appointment of an independent manager
- Mr Sam Gilbert and Ms Anna Berry stated that they were leaseholders of Flat 2 until June 2006. They stated that on the 8th December 2005 their solicitor wrote to the Landlord with standard questions. Only two out of thirteen questions were answered on 19th January 2006 despite a number of reminders. No answers were received in respect of the remaining eleven

questions. A sale was eventually completed in June 2006 and on 23rd July 2006 a demand for £5,400.28 in respect of Service Charges in advance was received. No explanation of the charges was given and the demand was not compliant with the Lease or the law in that the amount would have been subject to the consultation procedure under section 20 Landlord and Tenant Act 1985 but no consultation had been undertaken.

36. Mr Johnson provided copies of two Surveyor's Reports. The first was a Report by John Graham FRICS commissioned by the Landlord in October 2002 relating to a range of works including repairs to the concrete courtyard, the archway over the Access Way, the Rear Stair Extension, the guttering and re-pointing of brickwork. The second was a Report by Aitchison Raffety commissioned by the Landlord in September 2006 relating to a range of works including re-bedding ridge tiles, re-flaunching and re-pointing chimney stacks, repairs to the concrete courtyard, the archway over the Access Way, the Rear Stair Extension, the guttering and re-pointing of brickwork. Particular mention was made of the Rear Stair Extension leaking.
37. Mr Johnson said that a number of the matters referred to in the first Report were repeated in the second report, which he said demonstrated that no maintenance work had been carried out in the period between the two Reports. He said that although the Landlord referred to obtaining estimates the Tenants had not received any estimates or notices pursuant to the section 20 consultation procedure.
38. Mr Johnson provided a Schedule of Manager's Duties and prospective costs.
39. Mr Johnson also provided a copy of a 'without prejudice' letter dated 19th March 2007 in which he said he had sought to settle the matter on payment by him to the Landlord of £5,499.47 provided the landlord co-operated with his solicitor in respect of the assignment of the Lease and an agreement regarding the works to be carried out and their cost. No letter in reply was submitted.
40. The Tribunal asked Mr Woodfield a number of questions relating to his qualifications and experience. He replied that he had been a builder since 1978 and was a Member of the Chartered Institute of Builders. He had carried out the work of a building and quantity surveyor for many years with his own firm but had only relatively recently formally qualified as a chartered surveyor himself. He was the freeholder of a block of 8 flats and another of 6, which he managed. As a practising surveyor with a firm of chartered building surveyors and consultants he had professional indemnity insurance. He had his own accountant who would prepare service charge accounts. He offered names of two individuals as referees.

Respondent's Case

41. Mr Keswani stated that he had another appointment and could not stay long at the Hearing. He said that it had been understood that the proceedings were to be withdrawn and referred to Mr Johnson's 'without prejudice' letter dated 19th March 2007.
42. He stated that the accounts had been certified and that he had asked for a letter from the Accountant saying as much but had not received one. He said that the Landlord had carried out works and then had charged the actual amount in the Service Charge. There was no sinking fund and therefore the Landlord had to fund repairs and reclaim the cost from the Tenants. The Tribunal asked Mr Keswani about the invoices; in particular that the solicitor's invoices did not appear to correspond to the amount demanded and that it was not clear what work the invoices were for. Also

there were discrepancies between the Service Charge Accounts submitted. Mr Keswani replied that all the invoices were provided and represented the work actually done. He referred to an invoice from John Graham for a Schedule of works dated 25th March 2003 in the sum of £300.00 itemised in the Service Charge for 2004-5. He added that a 10% Management Fee had been charged as permitted in the Lease.

43. Mr Keswani said that some of the repairs were due to the Tenant's causing damage and referred to a bicycle being kept on the landing, which had caused damage to the wall of the Rear Stair Extension.
44. The Tribunal asked Mr Keswani whether he was aware that a consultation procedure pursuant to section 20 of the Landlord and Tenant Act 1985 was needed with reference to the Service Charge amount of £15,000 for repairs. He said that he was not a lawyer and was not aware that the procedure was required. He re-iterated the point that work could not be carried out unless there were funds available. He said that the Tenants had paid the insurance and ground rent but this was only because they intended to sell the Lease. As they had not paid the service charge for repairs these could not be undertaken. The Landlord was not able to pay for repairs out of her own pocket.
45. The Tribunal referred Mr Keswani to the Inspection stating that they had found signs of neglect in that maintenance work appeared overdue. It was also stated that the arrangement regarding the down pipes meant that the guttering and roof over the Rear Stair Extension were overloaded. Mr Keswani said that maintenance work had been carried out on the Property. He referred to the re-roofing of a flat roof extension to the ground floor retail premises that had been paid solely by the Tenant of those premises and for which the Tenants of the Flats had not been asked to contribute. He also said that work was currently being carried out on the Property in relation to the rear Stair Extension as would have been noted on the Inspection.
46. Mr Keswani stated that the Landlord was happy for an appropriately qualified surveyor and independent manager to be appointed. However, following a brief series of questions, Mr Keswani concluded by saying that the manager proposed by the Applicants was neither appropriately qualified nor, he felt, independent. He said that Mr Woodfield had limited experience of property management and was the flat Tenants' appointment. He doubted that Mr Patel, the occupier of the retail premises would consider him acceptable.
47. Mr Keswani left while the Tribunal were completing its questioning of Mr Woodfield, the proposed manager. Before leaving the Tribunal asked him if he had anything else to say regarding the case, to which he replied that he had not.

Decision

48. The Tribunal considered the evidence of the parties. It found that Mr Johnson's 'without prejudice' letter dated 19th March 2007 was clearly a personal offer to settle and not a statement that the Application was to be withdrawn.
49. In relation to the reasonableness of the Service Charges the Tribunal took account of the Service Charge account in general and each item in particular.
50. In relation to the Service Charge Accounts in general the Tribunal found that:
 - There were unexplained discrepancies between two versions of the 2003 – 2004, 2004 – 2005 and 2005 – 2006 accounts. For the 2003 – 2004 accounts,

Version 1 gives the total as £1,888.27 but Version 2 gives the total as £1,892.22. For the 2004 – 2005 accounts, Version 1 gives the total as £1,696.09 but Version 2 gives the total as £1,837.49. For the 2005 – 2006 accounts, Version 1 includes £15,000 for repairs and £352.50 for Survey Fees, which are omitted from Version 2, and the Legal Fees and Accountants fees differ.

- The accounts are undated other than the reference to the period therefore it is not clear whether these are budgeted accounts for payments in advance or actual costs. Mr Keswani stated that they were the actual costs but left the discrepancies unexplained. It can only be presumed that the second version is the one that the Landlord intended to be paid. If Version 1 is budgeted and Version 2 is actual then there needs to be a balancing figure. It also needs to be made clear how the budgeted accounts are calculated e.g. a percentage rise on the previous year's actual costs.
- There was no evidence that an accountant as required by the Landlord and Tenant Act 1987 or a surveyor as required by the Lease had certified these accounts. There is no indication in the accounts as to the accounting year and whether it is as stated in the Lease or has been altered by the Landlord.
- The Service Charge did not appear to be invoiced each quarter in advance on a budgeted assessment as required by the Lease.
- A sinking fund was not itemised although provision for doing so was made in the Lease.

51. The Tribunal then considered the individual items.

52. The Applicants did not question the insurance and had paid the premiums. The Tribunal deemed the following insurance premiums to be reasonably incurred:

- 2003-2004 - £1,330.34
- 2004-2005 - £1,241.90
- 2005-2006 - £1,398.57

The insurance premium of £1,398.57 was deemed to be a reasonable budget for 2006-2007 however it was noted that the invoice for the actual premium is £1,456.67. This was a similar annual increase to previous years and was therefore determined as reasonable.

53. In respect of Repairs, Maintenance and Survey Fees for 2003 – 2004 there was no invoice or other evidence adduced for the amount of £359.00 in Version 1 of the Accounts and therefore the Tribunal determined it to be unreasonable.

54. In respect of Repairs, Maintenance and Survey Fees for 2004 – 2005 there was an invoice for £300.00 for Surveyor's Report, which corresponded to the item and cost in Version 1 of the Account. The Tribunal therefore determined this to be reasonable.

55. Version 2 of the Account for both years lacked clarity, as it appeared to include the Management Fee as well. The Tribunal noted that the Landlord had presented two differing accounts for the same years but on the point of reasonableness of Service Charge only took Version 1 into account, as Version 2 appeared to be erroneous.

56. In respect of Repairs and Maintenance for 2005 – 2006, Version 1 includes an amount of £15,000. The consultation procedure under section 20 of the Landlord and

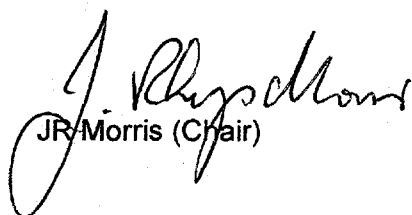
Tenant Act 1985 would appear to be required for these works. No evidence was adduced as to what works had been carried out if the costs had been incurred and or what work is to be carried out if they were to be incurred. The Tribunal therefore determined the amount to be unreasonable.

57. In respect of Legal Fees for 2005 – 2006, Version 1 of the accounts refers to an amount of £900 whereas Version 2 refers to an amount of £200. The invoices produced do not correspond to the cost of the items and are expressed too vaguely to be attributed to costs incurred in relation to the Service Charge. The Tribunal therefore determined both amounts to be unreasonable.
58. No invoice or other evidence supports the item of Survey Fees for 2005 – 2006 in Version 1. The Tribunal therefore determined the amount to be unreasonable.
59. No invoice or other evidence supports the item of Accountants Fees for 2005 – 2006 in either Version 1 or 2. The Tribunal therefore determined the amount to be unreasonable.
60. What appears to be a budgeted account for 2006 – 2007 is a repeat of Version 1 of the 2005 – 2006 account. As for the earlier account the sum of £15,000 is not substantiated and the consultation procedure under section 20 of the Landlord and Tenant Act 1985 would appear to be required for these works. The Tribunal therefore determined the amount to be unreasonable. The Legal Fees and Accountants fees are also unsubstantiated and the Tribunal therefore determined both amounts to be unreasonable. An invoice for £846.00 was submitted for a Survey of Condition, which was also submitted. The Tribunal therefore determined that the budgeted sum of £352.50 is reasonable.
61. **The Tribunal determined on the evidence referred to that the Service Charge Accounts are not well managed and that unreasonable Service Charges have been made.**
62. The Tribunal found from its inspection that the Property had not been maintained in accordance with the Lease. The Tribunal found that defects identified in the 2003 Survey by John Graham were also included in the 2006 Survey by Aitchison Raffety as stated by the Applicants. It also found that the Property was in need of repair particularly in relation to the roof of the Rear Stair Extension and the guttering.
63. **The Tribunal determined on the evidence that the landlord is in breach of obligations owed to the tenant under the tenancy relating to the management of the Property.**
64. The Tribunal noted and shared some of Mr Keswani's concerns regarding the qualifications and experience of Mr Woodfield but did believe him to be independent. The Tribunal therefore obtained references from Mr Woodfield's referees and requested and obtained from Mr Woodfield evidence of his insurance, accountancy arrangements and awareness of the demands of management in general and of the Property in particular. In regard to the latter Mr Woodfield submitted a Schedule of Condition in respect of the Property.
65. Copies of all documentation received from Mr Woodfield were sent to the Landlord for comment. The Landlord replied in a letter dated 1st August 2007 received by the Tribunal on 6th August 2007 and stated that the Landlord did not consider him a suitable surveyor. A reputable firm with experience of tenanted properties from Buckingham or Milton Keynes would be more appropriate.

66. The Tribunal took account of Mr Woodfield's relatively limited experience of management and balanced against this his considerable experience of maintaining buildings. The Property is in need of repair and maintenance. **Therefore the Tribunal considered it just and convenient that Mr Woodfield be appointed as the manager for a period of two years. The Tribunal also appoint Mr Woodfield as Receiver in respect of the Service Charges but not in respect of the Ground Rent, which is reserved to the Landlord. The Order is annexed hereto.**

Application under 20C Landlord and Tenant Act 1985

67. An application was made by the Applicant for the limitation of service charge arising from the landlord's costs of proceedings.
68. It was submitted by the Applicants that if the Tribunal found in their favour it was just that an order should be made.
69. The Landlord was requested to make submissions on this matter in the Directions but did not do so.
70. The Tribunal found in favour of the Applicant and was satisfied that it is just and convenient to appoint a manager. The Tribunal found that the Landlord had had opportunity to present appropriate Service Charge Accounts and to either appoint a manager or manage the Property more diligently. The Tribunal therefore found that the proceedings could and should have been avoided and therefore determined that an Order should be made.


JR Morris (Chair)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property: 6 High Street, Winslow Buckinghamshire MK18 3HF

Applicant: Mr Stephen Michael Johnson of 122A Church Lane, Greetham, Oakham, Rutland LE15 7NF and
Mr Daniel Black of Flat 2, 6 High Street, Winslow Buckinghamshire MK18 3HF

Respondent Landlord: Mrs Mairead Keswani, The Different Drummer, 94 High Street, Stony Stratford, Milton Keynes MK11 1AH

Case number: CAM/11UB/LAM/2007/0001

Application: An application for the appointment of a manager (Section 24(1) Landlord and Tenant Act 1987)

Tribunal: Mr JR Morris (Chair)
Mr B Edgington

DECISION

AND

REASONS FOR REFUSAL OF ADJOURNMENT

1. A request was made from the Tribunal Office for dates to avoid from the 11th June to 6th July 2007 in order that a date could be set for the hearing. The parties were required to answer within 14 days of the 30th April and were informed that if the Tribunal did not hear from them within this period the date would be set for the hearing and that it was unlikely that this would be altered without good reason. No response was received from the parties and therefore a date was set for the hearing of 12th June 2007. A letter informing the parties of this date was sent on the 14th May 2007. The Respondent sent a letter dated 14th May 2007 by fax on the 17th May 2007 signed by J MacKnight, Secretary to the Respondent, stating that the Respondent would not be available until mid July and August.
2. The date for the Tribunal having been set, the Tribunal were obliged to consider this letter as a request for an adjournment and the Respondent was asked for reasons. The Applicant was asked whether he had any response.
3. The Respondent stated in a letter dated 23rd May 2007 that she could not attend a hearing until 24th June 2007 as she was in Ireland on business and that this had been arranged months ago and requested that the hearing be adjourned until later in June.

EASTERN LEASEHOLD VALUATION TRIBUNAL

**IN THE MATTER OF SECTION 24(1) OF THE LANDLORD AND TENANT ACT 1987
AND
IN THE MATTER OF 6 HIGH STREET, WINSLOW, BUCKINGHAMSHIRE MK18 3HF
("THE PROPERTY")**

BETWEEN

APPLICANTS (TENANTS)

**STEPHEN MICHAEL JOHNSON
AND
MR DANIEL BLACK**

AND

RESPONDENTS (LANDLORD)

MAIREAD KESWANI

ORDER FOR THE APPOINTMENT OF AJ WOODFIELD AS MANAGER

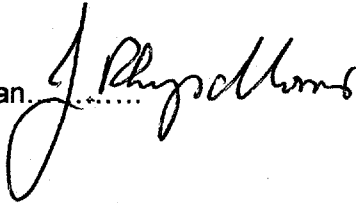
UPON hearing the evidence of the Applicant and Respondent

IT IS ORDERED THAT:

1. Mr AJ Woodfield, MRICS, MCIOB, MASI ("the Manager") of The Maltings, High Street, Tingrith, Milton Keynes, MK17 9EN be appointed Manager and Receiver of the Property with effect from the 10th August 2007 for two years.
2. The Manager shall manage the Property in accordance with:
 - a) The respective obligations of the Lessor and the Lessees under the Leases by which each of the flats at the Property are demised
 - b) The duties of a Manager as defined by and set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institute of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
 - c) All statutory requirements, including those included in the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987, as amended.
3. In particular the Manager shall:
 - a) Review the insurance of the property, obtaining quotations and arranging insurance, as necessary.
 - b) Prepare and annual service charge budget, including if required a sinking fund provision.
 - c) Recover the agreed service charge from the Lessees.

- d) Prepare a maintenance plan of the repair and redecoration of the exterior and common parts of the property.
 - e) Deal expeditiously with routine repairs.
 - f) Liase with vendor's and purchaser's solicitors in connection with the sale of the individual flats.
 - g) Maintain a current and a deposit account for the sinking fund and account to the Lessees periodically for monies raised and expended.
4. The Manager shall receive all sums by way of payment of service charges arising under the said Leases but shall not receive sums by way of ground rent.
5. The Management Fee shall be ten per cent (10%) of the total service charge expenditure or such other percentage as the RICS shall recommend in accordance with the Lease.
6. This Order shall remain in force until 9th August 2009 or until it is varied or revoked by a further Order of the Tribunal and the Applicants and the Respondent shall each have liberty to apply to the Tribunal for further directions.

Chairman



Date: 8th August 2007