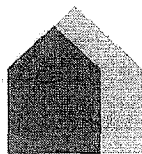


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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/OOAG/ LAM/1010/0003

**THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
SECTION 24 of the Landlord and Tenant Act 1985**

Applicant: Mr M. O'Brien

Respondent: Ermelli Bros Ltd

Premises: 1B Wilmot Place, London NW1 9JS

Date of Hearing 3 September 2010.

Appearances for Applicant: Mr M. O'Brien
Ms Greenaway – ERA Property Services Ltd

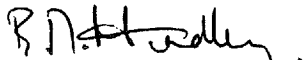
Appearances for Respondent Ms I. Ermelli

Also present Mr G. Kramer (Flat 1A)

Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Mr D. L. Edge FRICS

Date of Tribunal's Determination 3 September 2010

1. On 19 April 2010 the Tribunal issued a determination indicating that they were minded to appoint Stock Page and Stock as managers and receivers of the subject property for a period of one year,
2. However, subsequently the Tribunal was informed that Stock Page and Stock were not prepared to accept such an appointment for one year only and the parties were, therefore, offered the opportunity to propose an alternative manager and receiver.
3. Terms of business were received from ERA Property Services and a hearing was arranged for 3 September 2010 to enable the Tribunal to interview Ms Greenaway – the manager proposed by the applicant.
4. Mr Kramer said that he was not opposed to the appointment of a manager since the applicant had undertaken to pay his share of the costs of the appointment.
5. Ms Ermelli said that provided the manager understood that she should act impartially and that her appointment did not impose additional financial burdens on the respondent she was not opposed to the appointment.
6. The Tribunal questioned Ms Greenaway about her qualifications and experience and also allowed the applicant and Ms Ermelli to ask questions.
7. The Tribunal noted in their determination, dated 19 April, that the breakdown of relationships between the applicant and the respondents over a period of many years and their inability to resolve their differences justified the appointment of a manager. The Tribunal was saddened to note that despite the fact that the roof, which had been a significant factor in the application, had now been repaired and the County Court proceedings settled, relationships between the parties had not improved.
8. Accordingly, the Tribunal remains of the opinion that it is just and convenient to appoint a manager and receiver under Section 24(2)(b) of the Act and, therefore, appoints Ms Eleanor Rose Greenaway of ERA to act in accordance with the terms of the Order attached to this determination.



Chairman B. M. Hindley

3 September 2010

LON/OOAG/LAM/2010/0003

LEASEHOLD VALUATION TRIBUNAL

MANAGEMENT ORDER

Property: 1, WILMOT PLACE, LONDON NW1 9JS

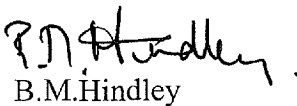
Applicant: Mr M.O'Brien

Respondent: Ermelli Brothers

Order for the appointment of Eleanor Rose Greenaway as Manager and Receiver.

1. That Eleanor Rose Greenaway of ERA ("The Manager") be appointed Manager and Receiver of the property for a period of 1 year with effect from 6 September 2010.
2. That she shall manage the property in accordance with:
 - a. the respective obligations of the landlord and the lessees under the leases by which the flats at the property are demised and in particular with regard to the repair, decoration, provision of services and insurance of the property and
 - b. in accordance with the duties of a manager set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban development Act 1993.
3. That she shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said leases.
4. That she shall account forthwith to the freeholder of the property for the payments of ground rent received by her and shall apply the remaining amounts received by her (other than those representing her fees hereby specified) in the performance of the covenants contained in the said leases.
5. That she shall be entitled to the following remuneration (which for the avoidance of doubt shall be recoverable as part of the said service charges in accordance with the leases, namely:
 - a. a basic annual fee of £400 per flat for performing the duties set out in paragraph 2.4 of the Code
6. The Manager shall have liberty to apply to the Tribunal for further directions.

Chairman:


B.M.Hindley

Date:

3 September 2010

**MANAGEMENT AGENCY AGREEMENT
THE SERVICES**

APPENDIX

FINANCE

Opening and handling bank accounts.

Preparing and sending out service charge estimates: Quarterly or as specified in the lease

Collecting service charges and reserve fund contributions including sending any required statements.

Processing payments relating to the Property within expenditure limits and funds available or as reasonable expediency shall dictate: expenditure limit without consulting client to be agreed.

Accounting for services charges.

Providing information to accountants for preparing annual accounts.

Using best endeavours to collect current and ongoing routine service charge arrears but not action requiring legal work or LVT applications.

Issuing demands for administration charges and required summaries of rights.

Providing half yearly/ quarterly financial summaries to directors
Opening balance
Income
Expenditure
Closing balance

COMMUNICATION

Providing reasonable management information to the lessees:
This refers to queries that can be dealt with from the office. ERA reserves the right to charge an extra fee for any additional site visits and enquiries that require work e.g. searching archives, research, and substantial collation.

Liaising with the Client: Attending meetings with directors as agreed with client and providing regular reports

Attending lessee meetings as agreed with directors (extra charges may apply)

Consultation with the client on management matters

INSURANCE

Arranging buildings and other insurance and dealing with general claims (extra charges may apply for major claims)

TECHNICAL

Entering into and managing maintenance contracts on behalf of the Client.

Viewing, without the use of inspection equipment, the common parts of the Property to check condition and deal with any necessary repairs other than major repairs. Visits as agreed.

Preparing specifications and contracts for minor works and services such as cleaning, gardening, window cleaning and overseeing such works.

Organising periodic health and safety checks (but not specialist checks and tests) and ensuring appropriate risk assessments are in place.

LEGAL / ADMINISTRATION

Consultation with the client on long-term agreements except for consultation on the appointment of a managing agent

Dealing with day-to-day lessee issues, reporting to, and taking instruction from the Client on lessees' dissatisfaction.

Advising the Client on all relevant legislative and regulatory issues and general interpretation of leases.

Maintaining adequate/suitable files and records on the management of the Property.

Providing copy documents including insurance policies, copies of invoices and receipts, for which there may be a charge.

Keeping records of residents and tenancy details where provided.

Advising and liaising with the Client on management policy.

COMPANY SECRETARIAL WORK (EXTRA SERVICE IF REQUIRED)

The company secretary usually undertakes the following duties:

- (a) Maintaining the statutory registers.
- (b) Ensuring that statutory forms are filed promptly.
- (c) Providing members and auditors with notice of meetings.
- (d) Sending the Registrar copies of resolutions and agreements.
- (e) Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings.
- (f) Keeping or arranging for the keeping of minutes of directors' meetings and general meetings.
- (g) Ensuring that people entitled to do so, can inspect company records.
- (h) Custody and use of the company seal.

N.B. Arranging the AGM and / or EGMs may incur an extra charge

MANAGEMENT AGENCY AGREEMENT ADDITIONAL CHARGES

~~APPENDIX~~

- Any additional work entailed, where the information as listed in Appendix 4 is not forthcoming on the Takeover list.
- The collection of arrears existing at the time of takeover.
- The provision of lessee 'welcome packs'.
- Fees for specialist advice on assessment of major repairs and decoration or other issues.
- Negotiating with local and statutory authorities regarding operation or amendment or improvements to communal services as necessary.
- Drawing up and reviewing risk assessment plans. Advising on health and safety matters and other legislative requirements.
- Preparing specifications, obtaining tenders and supervising major works.
- Holding annual meetings with residents if required.
- Offering any vacant property for let.
- Advising and providing information on the transfer of leases.
- Responding to pre-contract enquiries.
- Advertising and recruiting site staff on behalf of the Client.
- Dealing with any pension issues relating to site staff.
- Subletting, changes of use and handling requests for any necessary approvals, lease extensions and variations.
- Preparing replacement cost assessment for insurance valuation purposes on buildings and landlord contents.
- Dealing with any major insurance claims.
- Preparing schedules of dilapidation or condition in respect of individual dwellings.
- Supplying additional copies of the accounts and other documents.
- Dealing with requests for improvements or alterations by leaseholders and related party wall matters
- Legal recovery of unpaid service charges or ground rents or action for non-compliance with leases including instructing solicitors and preparing for and attending Court/LVT .
- Carrying out appraisals of reserve funds including surveys of Property and reporting to Client.
- Preparing and monitoring major building works not covered by annual contracts, dealing with S20 consultations, including serving the required notices, instructing and liaising with specialist consultants, inspecting work in progress, and handling retentions.
- Preparing (*and having audited where required*) Client company accounts
- Company Secretarial Services:-
 - Acting as Company Secretary to the Client
 - Issuing membership or share certificates
 - Calling annual general or extraordinary meetings: preparing notices, attending and taking minutes.
 - Arranging venues for AGM's and EGM's.
 - Attending meetings of directors.
 - Attending meetings outside of specified hours.
 - Filing statutory company returns.
- Fees of specialist advisers.
- Providing any form of services to the Client over and above this Management Agency agreement in relation to the exercise by the lessees of Enfranchisement, the Right to Manage or as the result of the Appointment of a Manager by a LVT.
- Dealing with taxation issues relating to trust fund interest.

- Any matters relating to rent reviews.
- Answering of queries from the lessees where excess work arises from the unreasonable expectations of those lessees.
- Providing detailed legal advice on any of the above.
- Providing accommodation for meetings and inspection of documents and the facility to make photocopies.



Residential
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TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/OOAG/ LAM/1010/0003

**THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
SECTION 24 of the Landlord and Tenant Act 1985**

Applicant: Mr M. O'Brien

Respondent: Ermelli Bros Ltd

Premises: 1B Wilmot Place, London NW1 9JS

Date of Hearing 25 March 2010

Appearances for Applicant: Mr M. O'Brien
Ms A. Ives-O'Brien
Mr J. Karim (Ringleys Chartered Surveyors)

Appearances for Respondent Mr G. Chambers (Gisby Harrison Solicitors)
Ms I. Ermelli
Ms S. Ermelli
Mr T. Renouf
Mr J. Campbell
Mr M. Leach
Mr J. Mellor

Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Mr D. L. Edge FRICS

Date of Tribunal's Determination 19 April 2010

1. This is an application, dated 28 January 2010, under Section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager. A preliminary notice under Section 22 of the Act had been served on the respondents on or about 24 December 2008.
2. The subject property, according to photographs provided by the applicant, is a flat situated on the second floor of a semi detached, three storey, flat roofed building, built circa 1960, also containing a first floor flat, with commercial premises and a garage at ground floor level. The attached building is similarly configured and the freehold is also owned by the respondents.
3. At the commencement of the hearing the Tribunal established that the application was being made under Section 24(2) of the Act. Accordingly, the Tribunal invited the applicant to rehearse each of the alleged breaches and the respondents to reply.
4. The application is made in respect of only the building containing the applicant's flat, does not relate to the commercial premises and is not supported by the leaseholder of the first floor flat – Mr Kramer.
5. There is a considerable history of a breakdown in relationships between the applicant and the respondents. Sometime prior to May 2008 the applicant carried out works to the second floor flat without first seeking the consent of the respondents. This resulted in an application by the respondents under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 to the Leasehold Valuation Tribunal (LON/OOAG/LBC/2009/0029).
6. The determination of the Tribunal was that there had been breaches of Clauses 2(5) and 2(7)(b) of the lease although they considered that the breaches had either been remedied or could easily be remedied. They expressed the hope that the parties could reach a reasonable accommodation without the necessity for further litigation.
7. Whilst the Tribunal made no determination as to whether the costs of the application were, in fact, recoverable under the lease, they determined that if they were, only 50% should be allowed.
8. However, during the course of the present hearing it emerged that the respondents had subsequently commenced an action in the County Court in respect of the breaches and had sought costs of £13,789.71p, plus further legal costs, interest and court fees. Ms Ives said that the action was presently stayed on their paying costs of £6,204.85p and that only the counterclaim of the applicant was set down for hearing.
9. Mr Kramer provided a witness statement and, early in the course of the hearing to enable him to leave, the Tribunal heard evidence from him. Mr Kramer said that in the past few weeks Ms Ives had informed him of roof leaks. He confirmed that they had also discussed the lighting to the staircase in the building and that he had discovered that his demise included the first floor landing area and that, therefore, the light outside his flat came within his demise.
10. Also to enable him to leave, the Tribunal heard from the manager proposed by the applicant, Mr Karim of Ringleys Chartered Surveyors, who had an office in very close proximity to the subject building. He said that he was a member of the Institute of Residential Property Managers and an associate director of the firm where he had worked for the past five years. He said that whilst a building such as the subject would, generally, not require management, the failure of the relationship between the landlords and the tenant made it just

Service Charge Demands

18. Ms Ives complained that the applicant was not included in any consultation and had, therefore, received no Section 20 notice concerning the roof. Mr Chambers said that this was because, as a corollary to the current proceedings in the County Court, she was not recognised as a tenant.
19. Ms Ives also alleged that the service charge invoices served on the applicant had not been in the proper form since they showed no address to which monies should be sent.
20. Mr Chambers responded that the rule covering this requirement had come into force only in 2007. He maintained that the situation had now been remedied and that only a technical breach had occurred. However, Ms Ives was able to show that demands to Mr Kramer were still being sent in the same format.

Obligations under the lease

21. Ms Ives described an incident in April 2009 when one of her tenants in the subject flat had put up an unauthorised dish on the exterior of the building. She had tried, on his behalf, to obtain the respondents' permission and, having failed to receive any response, her husband had removed the dish. She, therefore, queried an invoice sent by the respondents' solicitors on 9 June 2009. The invoice was from Mr Renouf and claimed £77.22p for attending with two men and a van and to remove the Sky dish, which had earlier been taken down by the applicant.
22. Mr Chambers called Mr Renouf to give evidence concerning the account. He said that he had attended the premises on 29 April 2009 having been asked to look at the drains, check out the tiling in the basement and take down the aerial. He admitted that the charge of £77.22p in fact covered all these items.
23. In the course of the explanations concerning this incident the Tribunal had occasion to look at photographs of the subject premises. These showed that the two garages were of considerable size rather than the small garages (not big enough for a car) as commented on earlier by Mr Leach.

Electrical Wiring

24. Ms Ives produced photographs showing the poor state of the electrical wiring in the common parts from 20 September 2008 – 3 March 2010. Mr Renouf had attached a notice in the common parts, dated 20 September 2008, stating that great care should be taken when using the stairs during the hours of darkness because the electrical supply was likely to fail without warning.
25. Mr Chambers said that remedial works had been carried out on 3/4 March 2010 and these had been certified by an independent testing company.
26. Ms Ives was critical of both the work and the obtained certificate.

The Future

27. Mr Campbell called Ms Irene Ermelli. She explained that she had a degree and had worked both as a teacher and as a secretary of a management company. She accepted that the applicant had not had a good relationship with

her sister, Ms Susan Ermelli, but suggested that matters could be different now that their parents were dead and she was involved.

Final Submissions

28. Mr Chambers said that neither the respondents nor Mr Kramer wanted a manager appointed because the building contained only two flats, their management requirements were minimal and the additional cost not economical. In any event, the necessary breaches of covenant had not been established.
29. He repeated that so far as the roof was concerned the necessary steps had now been taken with the service of a Section 20 notice on the other lessee and that there could be no breach until proper notice had been given.
30. He maintained again that subsidence insurance had been in place throughout the applicant's tenure. He said that the lighting had been rectified recently and that any deficiency with regard to the certification of the work would be remedied.
31. He attributed the lack of consent to the dish to the outstanding Section 146 notice and the importance, in the circumstances, of not recognising the applicant as a tenant.
32. Mr Chambers asserted that it had not been established that it would be just and convenient to appoint a manager because the applicant was the author of his own misfortune and had failed to pay the costs involved in the previous hearing.
33. Ms Ives saw the previous hearing as the crux of the matter. She accepted that alterations had been done without permission but said that reinstatement had taken place and that the subsequent County Court action by the respondents was a way of continuing to punish her. She maintained that, in any event, it was a claim for costs, and not an application for forfeiture.
34. Ms Ives said that the respondents had been served in December 2008 with a detailed notice of required repairs and that the mediation meeting of 30 September 2009 had not been a cosy chat, as implied by Mr Chambers. She asserted that repairs had been done to the adjacent roof but that nothing had been commenced in respect of the subject building until this application. She contended that what works had been carried out had been effected by unqualified staff. She said that she considered the appointment of a manager so important that she was willing to pay Mr Kramer's contribution. She stated that she would be unable to deal with Mr Leach.

Alternative Quotations

35. At the end of the hearing the Tribunal indicated to the parties that, whilst not yet having come to a decision that a manager should be appointed, they considered the costs proposed by Mr Karim to be excessive for a building of this size and nature. They, therefore, offered both parties the opportunity to propose alternative managers within the next 14 days.
36. After the hearing the Tribunal received e-mails from both parties.
37. Ms Ives appeared to have misunderstood the Tribunal's direction at paragraph 35 above and was expecting a further hearing. After the situation was again explained to her by the clerk in a series of further e-mails she put forward two

- alternative managers, Stock Page Stock and ERA Property Services Ltd, both located in EC1. Stock Page Stock's charges were quoted as £200 per annum per unit plus VAT and ERA's were £400 per annum per unit with no VAT.
38. Further e-mails were received from Irene Ermelli and on 2 April 2010 she wrote 'whilst we do not agree to the external appointment of a manager, as a concession, we are volunteering to be involved in the appointment of a managing agent for one year or until such time as the situation between Ermelli Bros and Mr and Mrs O'Brien has become more viable.'

Costs

39. Also received after the hearing were submissions on costs under Section 20C of the Landlord and Tenant Act 1985 from both parties. Ms Ives wrote that such costs should not be imposed. Mr Chambers said that the lease did not permit such recovery.
40. So far as costs under Schedule 12, paragraph 10(2)(b) of the Commonhold and Leasehold Reform Act 2002 is concerned Mr Chambers considered that the applicant had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Particularly he was concerned that having issued a Section 22 notice in December 2008 the application had not been brought until January 2010. He claimed that the delay had been a tactic 'to bolster' the County Court claim set for hearing on 28 and 29 April 2010 and to hinder the claimant's claim in the same action.
41. The applicant sought reimbursement of fees under Regulation 9 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003.
42. Mr Chambers was of the opinion that the Tribunal should not exercise this discretion because of the manner in which the applicant had conducted the proceedings.

Tribunal's Determination

43. Because of the concession offered by Ms Irene Ermelli the Tribunal proposes, under Section 24(1), to appoint a manager by interlocutory order for a period of one year to carry out, in relation to the subject premises, such functions in connection with the management of the building as are required for its maintenance and good management.
44. As indicated at the hearing the Tribunal considers the costs of the manager proposed by the applicant (Messrs Ringleys) to be excessive for the amount of work that appears to be necessary.
45. The alternative managers proposed by both parties have been considered by the Tribunal and in their opinion Stock Page Stock would appear to be the most suitable in terms of both their location and their charges.
46. Accordingly, on the submission to the Tribunal by Stock Page Stock of suitable terms of management for a one year period, the Tribunal are minded to appoint them as managers of 1A and 1B Wilmot Place, London NW1 9JS with effect from 4 May 2010.
47. The Tribunal is proposing to make this interlocutory order, under Section 24(2)(b) on the basis that circumstances exist which make it just and

convenient to make the order without determining whether the matters complained of amount to breaches of covenant.

48. The circumstances which form the basis of the Tribunal's determination are the total breakdown of relationships between the applicant and the respondents over a period of some years and their inability to resolve their differences.
49. The Tribunal notes that Mr Chambers, in a letter to the Tribunal dated 8 April 2010, writes that the Tribunal can make an appointment only if breaches have been determined. The Tribunal does not accept that its jurisdiction is limited in this way.
50. The Tribunal would hope that at the end of the manager's year the subject premises would have been put into sound repair and that further management involvement would not be required.
51. The Tribunal considers that the appointment of Stock Page Stock is in the interests of both parties and would emphasise that the manager will be the appointee of the Tribunal. When Stock Page Stock submit their management proposal to the Tribunal it will be copied by the Tribunal to both parties who may, at that time, comment on the proposed terms and/or request a further hearing to be attended by the proposed manager.

Chairman B. M. Hindley

Date 19 April 2010