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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1987

LON/00AH/LAM/2010/0021

Premises: Flats 2 & 3
1 Burgoyne Road
London SE25 6JT

Applicants: Mrs A Bolina (Flat 2)
Ms S Erogbogbo (Flat 3)

Represented by: Dr Bolina

Respondent: Mr BJ Dawkin

Tribunal: Mr NK Nicol
Mr H Geddes JP RIBA MRTPI
Mrs Grover JP

Date of Hearing: 16/07/10

Date of Decision: 16/07/10

REASONS FOR DETERMINATION

1. The subject property at 1 Burgoyne Road, London SE25 6JT is an end-terrace house converted into three flats. The Applicants are the lessees respectively of two of the flats, nos.2 and 3. The Respondent owns the freehold and the remaining flat, no.1. The Applicants have applied for the appointment of a manager to manage the property in place of the Respondent. The Tribunal's power to make the order derives from s.24 of the Landlord and Tenant Act 1987, the relevant parts of which read as follows:-

24 Appointment of manager by a leasehold valuation tribunal

- (1) 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 applies—
 - (a) such functions in connection with the management of the premises,
or
 - (b) such functions of a receiver,
or both, as the tribunal thinks fit.
- (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—
 - (a) where the tribunal is satisfied—
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (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
 - (ii)
 - (iii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ab) where the tribunal is satisfied—
 - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (aba) where the tribunal is satisfied—
 - (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(abb) where the tribunal is satisfied—

(i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

2. By a determination dated 13th October 2009 the Tribunal held, on the Respondent's own admission, that he had not complied with the consultation requirements under s.20 of the Landlord and Tenant Act 1985. The Applicant's service charges for those works were therefore limited to a total of £250 each. Since that time, the relationship between the parties has broken down. The Applicants have sought to raise and resolve a number of issues, including at least six of which they regard as serious, but they have not been resolved. Dr Bolina, the husband of the Applicant lessee of Flat 2 has made attempts to mediate, as he terms it, without success.

3. The response from the Respondent has at times descended into the abusive and has included clear refusals to comply with his obligations. This is amply demonstrated by his own letters which include the following:-

The "butter won't melt in my mouth" demeanour [the Applicant lessee of Flat 3] wore was typical of the game she plays, underneath it there lies something rather more sinister, and a good actress.

I very much regret the parting gesture of whether or not she is Nigerian which I have long suspected, but it is true that they are the most corrupt country in the world bar none as recorded in both The Times and Financial Times very recently.

I have no intention of spending any money on the property other than items of work affecting flat 1 to protect my own investment.

It is more than disappointing to discover that you too are a thief!

4. It is clear that the Respondent regards the Applicants, at the very least, as bad and difficult lessees. There is no evidence whatsoever to support such an allegation but, even if there were, the Respondent's attitude is unprofessional and unacceptable in a person who bears the serious responsibilities set out in the covenants in the Applicants' leases. As well as demonstrating an unacceptable attitude, his correspondence demonstrates that his relationship with the Applicants had indeed broken down. He did not respond to either the s.22 preliminary notice or these proceedings and so the Tribunal has been provided with no reason to reach a different conclusion.
5. By a determination dated 15th March 2010 the Tribunal dismissed the Applicants' previous application for the appointment of a manager on the basis that the preliminary notice required by s.22 of the Landlord and Tenant Act 1987 was defective. Accordingly, the Applicants served a fresh notice, via their solicitors, on 16th April 2010. The Tribunal is satisfied that there are no grounds to impugn this notice.
6. The Applicants asserted that there is a number of problems at the property which require urgent attention, including a leaking roof and guttering in disrepair. They assert that the Respondent has refused to manage the property properly or at all over at least the last two years. In the circumstances, the Tribunal is satisfied that the Respondent is not complying with his obligations either as a landlord under the lease or as a manager under the RICS Code of Management and that this situation is likely to continue for the foreseeable future unless changed by the intervention of the Tribunal.
7. The Applicants put forward Mr Naylor of May & Philpot as their proposed Tribunal appointee to manage the property. As well as providing a statement summarising his company's qualifications and terms, Mr Naylor attended the Tribunal hearing on 16th July 2010 to answer the Tribunal's questions. The Tribunal is satisfied that he and his firm are more than capable of managing the property to the required standard at a reasonable level of remuneration. The

Respondent apparently wrote to Mr Naylor directly last week, although the Tribunal has not seen his letter, indicating that he understood that Mr Naylor would be appointed and asking to meet him. From this, and his failure to attend the Tribunal hearing, the Tribunal takes that the Respondent has no current objection to Mr Naylor as manager of the property.

8. By reason of the Tribunal's determination of 13th October 2009, if nothing else, it is clear that the statutory grounds in s.24(2) of the Landlord and Tenant Act 1987 for the appointment of a manager have been made out. In any event, in the light of the matters set out above, the Tribunal is satisfied that it is just and convenient to make an order appointing May & Philpot as the manager of this property. Accordingly, the Tribunal makes the order set out in the appendix to this determination.

Chairman.....*N.K. Neal*

Date 16th July 2010

APPENDIX

To Tribunal determination 16th July 2010

1. May & Philpot is appointed as manager of the property at 1 Burgoyne Road, London SE25 6JT for a period of five years commencing from 16th July 2010.
2. During the period of appointment, May & Philpot shall:-
 - (a) Collect and apply the service charges (including the insurance contributions) payable by the lessees of the property.
 - (b) Comply, insofar as it is possible to do so, with the Respondent's covenants under the relevant leases.
 - (c) Enforce the lessees' covenants under the same leases.
 - (d) Take all reasonable steps, including, if necessary, by court action, to recover any service charge arrears arising during the period of appointment.
 - (e) Supervise all building works undertaken at the property, for which they may charge up to 12% of the costs of such works as a supervision fee for any works for which consultation is required in accordance with s.20 of the Landlord and Tenant Act 1985.
 - (f) Prepare and serve on all lessees an annual service charge account.
 - (g) Comply with all statutory requirements owed as a manager of the property.
 - (h) Comply with the requirements of the current RICS Code of Management.
3. May & Philpot shall be entitled to charge, as proposed on their behalf, £200 plus VAT per flat per year for their services, subject to an inflationary increase permitted by their standard terms of business.
4. Each of the parties and May & Philpot may apply at any time to vary or discharge this order, including to provide further directions, alter the period of appointment or change the rate of remuneration. Any such application must be supported by a statement setting out the current circumstances at the property and full reasons as to why the application has been made.