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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 24 of the Landlord & Tenant Act 1987
(Application to appoint a Manager) and Section 20C of the Landlord & Tenant Act 1985
(Recovery of Costs)

Case No. CHI/29UE/LAM/2011/0006

Property: 8 Salisbury Road
Dover
Kent
CT16 1EU

Between:

Ms S. Fox ("the Applicant")

And

Mr. D.R. Green ("the Respondent")

Dates of Hearing: 12th December 2011
14th February 2012

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM
Ms L. Farrier

Date Decision Issued: 21st February 2012

8 SALISBURY ROAD, DOVER, KENT CT16 1EU

Decision

1. Mr. John Hunter FRICS, MCI Arb, Dip FBA (London), Dip Arb. is appointed as manager to carry out in relation to 8 Salisbury Road, Dover, Kent CT16 1EU ("the subject property") all the functions in connection with the management of the subject property and all the functions of a receiver for three years from 14th February 2012.

2. Mr. Hunter's charges for acting as the receiver and manager will be borne by the lessees of the subject property in the same proportion as their contributions to the service charges. Those charges are in addition to the managing agent's charges which will be

payable as part of the service charges. For the sake of clarity, the ground rent will still be payable to Mr. D.R. Green (“the Respondent”).

3. An order is made under Section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”) that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Ms S. Fox (“the Applicant”).

Background

4. The Applicant is the lessee of Flat A at the subject property and made an application under Section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”) for the appointment of Mr. John Hunter as manager of the subject property.

5. The Respondent is the freeholder of the subject property and retains one of the three flats at the subject property.

Inspection

6. On 12th December 2011, in the presence of the Applicant and Mr. A. Maltby BSc FRICS, the managing agent of the Respondent, the Tribunal inspected the exterior and the internal common parts of the subject property.

7. The subject property is an end of terrace house on four floors which has been converted into three flats. The internal common parts comprise the entrance and stairs to Flats B and C.

Hearing 12th December 2011

8. The hearing on 12th December 2011 was attended by the Applicant, Mr. Hunter, Mr. Fox, the Respondent and Mr. Maltby who was representing the Respondent.

9. The Tribunal heard evidence from the Applicant who took the Tribunal through her statement. She was then cross-examined by Mr. Maltby.

10. The Applicant pointed out that she had complied with the directions issued as to the provision of a statement of case and supporting documents but that the Respondent and Maltbys, his managing agent on his behalf, had not responded within the time limit imposed by the directions. She submitted that the Respondent and Maltbys had not taken her application seriously and had concentrated on a dispute about guttering work rather than dealing with the application for appointment of a manager. Also that no effort had been made to address the matters complained of by the Applicant.

11. The Applicant gave evidence of the difficulties she had experienced in dealing with Maltbys, the Respondent’s managing agent. These included the following:

- (a) A lack of timely responses to questions raised by the Applicant and often a response being received only after prompting by her.
- (b) Accounting errors, which in some cases were corrected but only after a long delay.
- (c) The failure to properly carry out the consultation procedure under Section 20 of the 1985 Act.
- (d) The losing of an estimate for works required.
- (e) The request for additional funds when adequate funds were available.
- (f) The failure to make proper arrangements for contractors to visit the subject property.
- (g) The lack of a complaints procedure.

12. The documents produced by the Applicant with her statement of case contained examples of correspondence which she had had with Maltbys where timely responses had not been provided and where responses had only been made after further prompting by the Applicant.

13. As an example of accounting errors, a letter dated 24th February 2010 was written to all the lessees at the subject property requesting additional funds. The Applicant queried this by telephone and by email and received a letter dated 2nd March 2010 from Maltbys in which it was stated that "... we now no longer require this extra payment. Upon checking your account, we found an error that an insurance policy was paid inadvertently from your account, that therefore we are in the process of having these funds transferred back to your account, and therefore we have sufficient funds in your account to cover the costs of the guttering works."

14. In the course of the Applicant being cross-examined by Mr. Maltby she produced a notice which she had received as part of the Section 20 consultation procedure. Two lines were missing from the notice and it was not signed. Mr. Maltby could not explain how that had happened and accepted that if words were omitted from the notice and it was unsigned then it was invalid. However, as money had not been paid by the Applicant in respect of the major works and the works had not been undertaken it would be possible to serve the notices again.

15. Mr. Maltby confirmed that the Applicant was completely up to date with her ground rent and service charge payments except for a sum of £142 which had been demanded in connection with the major works and was disputed. As the Section 20 consultation procedure had not been properly carried out that sum was not payable.

16. It was not possible to complete the hearing and the case had to be adjourned. Mr. Maltby indicated that two further days would be required to hear all the evidence. Accordingly it was arranged that the hearing would continue on 14th and 15th February 2012.

17. A letter dated 9th February 2012 from Maltbys was received at the Tribunal Office referring to the hearing scheduled for 14th and 15th February 2012 and informing the Tribunal that "The costs of the hearing already conducted, together with the anticipated costs of the future hearing cannot be met by the Freeholder and are not chargeable to the

service charge fund. It is therefore with regret that we are forced to withdraw from the hearing on these financial grounds. We shall not therefore be attending and no doubt the application will have to take place in our absence.”

18. On 13th February 2012 the Tribunal Office received an undated letter from the Respondent in which he stated that “I have received a copy of a letter dated the 9th February 2012 from my managing agent of the above property advising me that they are withdrawing from the hearing on financial grounds. As the main issue were (*sic*) to do with mistakes made in the management of the premises by Maltbys and as they are not prepared to explain their action in person I have no objection for the management to be transferred to another agency with immediate effect.”.

Hearing 14th February 2012

19. The hearing on 14th February 2012 was attended by the Applicant, Mr. Hunter and Mr. Fox. There was no appearance by the Respondent or by anybody on his behalf.

20. Section 24 of the 1987 Act provides a number of circumstances in which the Tribunal may appoint a manager to carry out in relation to the subject property such functions in connection with the management of the subject property or such functions of a receiver or both as the Tribunal thinks fit. The Tribunal considered the evidence which had been presented and under Section 24 (2)(ac) was satisfied that Maltbys had failed to comply with relevant provisions of a code of practice approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

21. The Tribunal found that there was failure to comply with the following duties:

- (a) To respond promptly and suitably to reasonable requests from tenants for information or observations relevant to the management of property.
- (b) When communicating with tenants, to be accurate and clear.
- (c) To despatch communications, by whatever means are appropriate, so that they reach the intended recipients promptly and in compliance with any legislative requirements and to be aware of the need to prove to the satisfaction of a court the service of certain documentation (Section 20 notices).
- (d) To maintain efficient records relating to the building.
- (e) That demands for money should be clear and be easily understandable by tenants and contain information required by statute.

22. The Tribunal was also satisfied that, as provided by Section 24, it was just and convenient to make the order in all the circumstances of the case. The Respondent, in his letter received 13th February 2012 stated clearly that he had no objection to the management being transferred to another agency but it is not clear whether he understood that the appointment of a manager involved more than just a change of managing agents. Had he written to the Tribunal earlier or attended the hearing on 14th February 2012 this could have been explained to him. One of the factors which the Tribunal considered was that the Respondent had retained one of the flats at the subject property and the Tribunal

considered that in those circumstances it would be preferable that an independent manager and receiver be appointed rather than an agent appointed by the Respondent.

23. Mr. Hunter had provided a written response to directions issued on 11th August 2011 which required information from him concerning the proposed management of the subject property. Mr. Hunter confirmed the contents of that response and answered questions from the Tribunal.

24. The Tribunal was satisfied that Mr. Hunter should be appointed as manager and receiver in respect of the subject property for three years and announced that decision.

25. It is unlikely that the Respondent would be able to claim the costs of these proceedings through the service charge. However, there is before the Tribunal an application for an order under Section 20C of the 1985 Act. For the avoidance of doubt and because the Applicant was justified in bringing these proceedings to clarify the position, the Tribunal finds that it is just and equitable in the circumstances to make such an order.



R. Norman
Chairman