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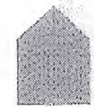


Residential Property TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 24(1) OF THE LANDLORD & TENANT ACT 1987

Case Reference:	LON/00AM/LAM/2011/0022
Premises:	35 Nevill Road, London N16 8SW
Applicants:	Ms A Andriessen and Mr A Deuchars (Flat B)
Respondent:	Ms J Wilson (Flat A)
Date of hearing:	19 April 2012
Appearance for Applicant(s):	Lee Harle, Solicitor, Ringley Legal
Appearance for Respondent(s):	In person, and accompanied by Mr A Knox
Leasehold Valuation Tribunal:	Ms F Dickie, Chairman Mrs H Bowers, MIRCS Ms S Wilby
Date of decision:	1 June 2012

Summary of Determination

1. An order is made under section 24(1) in the terms attached appointing as Manager Ms Mary-Anne Bowring, FBeng, FIRPM, MRICS as manager of the subject premises for a period of 3 years.

Preliminary

2. The subject premises are a Victorian house converted into two flats. The tribunal carried out an inspection on 19 April 2012. The parties are together the landlord under the leases by which the two flats are held. The Applicants applied to the Leasehold Valuation Tribunal on 2 September 2011 for an order against the Respondent appointing Ms Mary-Anne Bowring as manager under section 24 of the Landlord & Tenant Act 1987. The Tribunal issued directions on 18 January 2012 after an oral pre trial review. A notice under section 22 of the Act was said to have been served on the Respondent on 5 August 2011.

3. The Applicants purchased the lease of the ground floor flat (35B) on 29 August 2007, and the Respondent purchased her interest in the first floor flat (35A) on 24 March 2006. She had nominated her partner Mr Alex Knox to act on her behalf in relation to the property.

4. The landlord covenants in the Applicants' lease as follows:

"4(2) Subject to payment of the contribution referred to in Clause 2(4) hereof to carry out such works as may be reasonable and necessary for the proper maintenance repair and decoration of the exterior of the Property and of the roof structure and foundations thereof and of any building erected in connection therewith and the sewers drains watercourses cables pipes wires and other services and things the use of which is common to the Flat and the other flats in the Property"

and the equivalent covenant in the Respondent's lease is identical in all material respects.

Adjournment Request

5. The pre trial review was postponed on 2 occasions at the request of the Respondent and on medical grounds supported by a medical certificate. Ms Wilson had given birth to twins on 26 September 2011 while Mr Knox has a long term disability. An application by the Respondent for

postponement of the pre trial review on 18 January on similar grounds was refused.

6. The Respondent was unrepresented at the hearing of the application on 19 April. Mr Knox, making representations on her behalf, applied for an adjournment of the hearing for 6 weeks on the ground that they were seeking representation from the Bar Pro Bono Unit, a letter being produced from the organisation to that effect. He said he and Ms Wilson had done everything they could to get legal advice, including having taken free advice at Toynbee Hall, but it had been difficult because most advice agencies are extremely busy and they had hospital appointments to attend.

7. Mr Knox emphasised that Ms Wilson had experienced a difficult delivery of twins who had initially been cared for in the special care unit. Furthermore, they had suffered the disruption of 20 days without a gas supply in December 2011 and were still dealing with issues arising from this until the necessary work was complete on 5 January. Mr Knox also said he was registered disabled and had osteo-arthritis, and that he and Ms Wilson had had to prepare for 3 tribunals last week and had been burgled in January. Neither of them is working. Mr Knox produced a timeline of all medical and other appointments from August 2011 to April 2012.

8. Mr Harle objected to the adjournment request on the grounds that this would mean further delay and legal costs for his clients. Ms Bowring, the proposed manager was not charging a fee for her attendance to give evidence, but would do so if she had to return if the hearing was adjourned.

9. The tribunal took time to consider the adjournment request and refused it for the following reasons. Regulation 15(2) of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 provides:

"Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to –

a. The grounds for the request

b. The time at which the request is made; and

c. The convenience of the other parties."

10. The tribunal finds there would be cost and inconvenience to the Applicants if the hearing was adjourned. The application for an adjournment was made very late (on 18 April) and costs of attendance at the hearing had been incurred by the Respondents by virtue of its lateness and would increase if the matter was adjourned.

11. This application for appointment of a manager was made on 2 September 2011, and it must be determined within a reasonable time. Notwithstanding Mr Knox's disabilities, in relation to which he has fully appraised the tribunal, and the medical issues affecting both him and his partner the Respondent, including the birth of their twins, in the view of the tribunal they have clearly had more than sufficient opportunity to seek legal representation. In all the circumstances the tribunal considered it was not reasonable to adjourn. It is in the interests of justice that there be a resolution to the impasse in respect of this property, and the issues of law involved are limited. There was no guarantee that representation would be available at the next hearing.

The Hearing

12. The tribunal had full regard to the matters put forward by the Respondent and Mr Knox concerning its duties to ensure a fair hearing in light of their medical and other needs.

13. When the Applicants purchased in September 2007 works on the house had started and were ongoing. Most of these had been carried out by Mr Knox and some had been paid for by the previous owner. Work came to a

halt at the end of 2007 (because Mr Knox fell ill with depression), and no works were carried out for 2 years. Agreement was reached regarding damp proofing which was completed in February 2010, and Ms Wilson reimbursed the Applicants for her share of the total expenditure.

14. Since 2010, however, relations between the parties had deteriorated and no further work had been done to the property. A breakdown in communication has led to the failure of the landlord to keep the property in good repair and condition. In summary, the works of repair required included: repair work to the roof and gutters; repair and decoration work to the main walls, including missing brickwork, repairs to brickwork, pointing and work to the rendered facades; repair work to the windows that required to be fully finished; damp problems to the common parts and some wiring work.

15. The tribunal heard evidence from Ms Andriessen and Ms Wilson. The tribunal was supplied with a number of relevant documents to illustrate the history of relations between the parties, including draft minutes of a meeting between them (and Mr Knox) on 23 October 2010 and copy correspondence.

16. The parties had been on speaking terms at the beginning of the parties' relationship and helped each other out on occasions. Since September 2010 however relations had been characterised by a substantial amount of lengthy correspondence and other communications from Mr Knox which the Applicants found unacceptable in their volume and tone and they considered the situation had had a negative effect on their health and wellbeing. Their experience was that Mr Knox's communication style was chaotic and unpredictable. The Applicants sought the appointment of a manager owing to a fundamental breakdown in communication between the freeholders, resulting in continuous disagreements and deadlock over necessary property renovations, which had been outstanding for over 3 years. The Applicants' allegation that the ground in 24(2)(a)(i) of the Act (a breach in the landlord's repairing obligations) was made out was agreed

by the Respondent. Alleged further grounds relied upon under sections 24(2)(ab)(i) and (ac)(i) of the Act were not agreed.

17. The Applicants believed that the reason for these problems was mainly due to Ms Wilsons' appointment of Mr Knox to deal with all issues concerning the property on her behalf. They considered he was not capable of dealing with these matters in a professional and reasonable manner. The Applicants' statement of case also made various accusations regarding Mr Knox's behaviour towards them, including threats, doctoring documents, and there is reference in the evidence to counter allegations made by him.

18. Attempts to resolve the matter through formal mediation had failed. Ms Andriessen considered further mediation was pointless. She also described efforts to mediate informally made by a neighbour Dave Pearson who is a builder (known to Alex Knox but not to the Applicants at that stage). He sat in on a meeting between the parties in July 2011 but was unable to help them reach a settlement. Ms Andriessen also rejected a suggestion that they should submit to binding arbitration, and considered that any previous reference to such an option within the chaotic and voluminous emails from Mr Knox did not permit a logical response and no proposition had been made as to how such arbitration would go forward.

19. The Respondent in correspondence has acknowledged Mr Knox's frustration with the situation, and that his health has been adversely affected by this property and the stress he has been under because of this and a number of family, personal and business issues. Ms Wilson emphasised that the parties had not experienced difficulties in organising the insurance for the building (currently at a cost of £512 per year), and that arrangements for access to the bin stores and the gas cupboard were also being made. The only issues on which the parties were unable to reach an agreement were about repairs and boundary disputes. The Applicants disputed the Respondent's right to enter their property because of allegations about Mr Knox's behaviour, which he denied. For a short period that access had been prevented but was now being permitted.

20. The position expressed by Mr Knox was that since the mediation the Applicants had refused to consider any reasonable proposal to move the situation forward and had expressed determination to get a manager appointed under section 24 of the Act.

21. Ms Wilson and Mr Knox thought binding arbitration was appropriate, as required in clause 5 of a deed of trust between the freeholders which they produced, but had not investigated this option further. Failing this, they considered that the appointment of a manager under section 24 would be a good solution, though they did not believe it was the most cost effective way of getting this work done. Ms Wilson gave evidence to the tribunal and observed that once the major works are done there would be nothing for the manager to do at the property. She and Mr Knox had previously appointed a structural engineer or surveyor at their own cost on three occasions and once a schedule of works was available they wanted to get the work done as soon as possible or the damp affecting their flat would get worse. A trade or negotiation needed to take place about this. However, every time they tried to get the specification agreed with the Applicants it did not happen, and the works could not go ahead unless there was agreement to the works.

22. Mr Knox felt the problem was with the Applicants failing to cooperate in agreeing the schedule of works. The draft specification is one that he had drawn up, and which had been varied 12 times in 12 months, but never agreed by the Applicants. Ms Wilson emphasised that she had never withheld her contribution for any agreed works carried out to the property. Her preferred solution was to jointly appoint a surveyor to draw up the schedule of work.

The Preliminary Notice

23. The Notice under section 22 of the Act is dated 5 August 2011 and was served by Ringley Legal Service LLP on Ms Wilson. Mr Harle said that he personally sent the notice by ordinary post on 5 August 2011 and he produced a file copy of it. Commenting on the civil disturbance at the time, Mr Knox said that he received by post neither the notice nor the application

to the tribunal for the appointment of a manager. The notice had also been sent by email to Mr Knox's email address on 10 August 2011 at 10:21 and its receipt was acknowledged. He said he had heard of the application through the 'Applicants and had then received a copy of it from the Applicants' solicitors.

24. Ms Wilson said she could not remember if the preliminary notice was received by post shortly after the email of 10 August 2011 to Mr Knox, which she confirmed he had brought to her attention a few days later, when she recalled being stressed because she was due to begin her maternity leave from work on 16 August.

25. The tribunal made directions for the Applicants' solicitors to provide proof of service of the preliminary notice, and a certificate of service dated 25 April 2012 was produced and served on the Respondent and the tribunal. Mr Knox, in his written response to this, said he believed, that this evidence of posting on 5 August 2011 contradicts an assertion made by Mr Harle at the pre trial review that it was posted on 6 or 7 August 2011. However, Mr Harle's evidence to the tribunal at the hearing on 19 April was that the notice was posted on 5 August and an allegation of a contradictory earlier account was not put to him then by Mr Knox.

The Proposed Manager

26. Ms Bowring attended the hearing to give evidence to the tribunal. The tribunal was provided with a statement of the competence and experience of her practice at Ringley Chartered Surveyors, and as a manager appointed under section 24 of the Act. Her professional experience was not in dispute, and it is not necessary to set out a summary it in this decision. Having considered the documentary and oral evidence the tribunal considered Ms Bowring to have ample knowledge and professional experience to discharge the role of appointed manager.

27. The issue raised by the Respondents was the question of Ms Bowring 's independence, since Ringley Legal acted as solicitors for the Applicants. She confirmed however that she had no interest in Ringley Legal, which is

a separate legal entity from Ringley Chartered Surveyors. In evidence she referred at one point to having "coached" the Applicants about their application. By this, she said, she meant that she had signposted them 2 or 3 times as she would normally do for new business, and advised them of the legal procedures under section 24, but that she did not charge unless and until appointed.

28. Ms Bowring spoke to her knowledge of the statutory obligations on landlords, including the necessity to obtain an asbestos report (which would be requested from the parties by the purchaser of either of the flats in any event). She said she had previously been approached by them to act on their behalf and she had refused. The tribunal was satisfied as to Ms Bowring's independence from the parties and her professional objectivity in respect of the management of this property.

29. Ms Bowring produced a management plan, upon which she was questioned on behalf of the Respondent and by the tribunal. Ms Bowring was of the opinion that she would have a duty to obtain a fire risk assessment for the building, even though there were no common parts, but she could not direct the tribunal to statutory authority or binding case law on the point. The tribunal's decision regarding her suitability for appointment does not amount to a determination that all sums expended in execution of the tasks in the management plan are reasonable and reasonably incurred.

30. Ms Bowring 's fees for management if appointed would be £1500 plus VAT per annum, which she said was the minimum base fee charged by her firm and less than that of most Central London agents. She set out a schedule of the work covered by that fee, and a list of services excluded from the fixed rate block management fee, and the rates chargeable thereon. She would seek the agreement of the parties not to get the accounts audited, since the cost was excessive. Based on the history of the dispute, Ms Bowring foresaw a lot of consultation and postponements in dealing with the property, and considered the work could be done during two service charge years. She would refuse to accept the appointment for

less than 3 years and suggested she personally, not her company, was appointed. Ms Bowring confirmed that she was happy for the tenants to continue placing their own insurance and would not insure the property under a block policy unless there was a financial benefit to them in doing so.

31. In Ms Bowring's experience of arbitration she considered it could be more expensive than the appointment of a manager, and there was a risk of non compliance with any award.

32. Ms Wilson had consulted with Alan Porter of Fifth Street Management who would be willing to take on the appointment for two years, but no management plan or further information concerning this proposal was produced, and Mr Porter did not attend to give evidence.

Tribunal's Determination

33. Section 22(1) requires the service of such a notice before an application for an order under section 24 is made. Under subsection (2)(c) the notice must specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing them. Subsection (d) requires the notice to specify the reasonable period for specified remedial steps to be taken. Under section 23(1)(a) no application to the tribunal under section 24 may be made until this period has expired. An order dispensing with the notice is only available where it would not be reasonably practicable to serve such a notice, though by virtue of section 24(7)(a) the tribunal may still order the appointment of a manager notwithstanding that this period was not a reasonable one. The saving provision in section 24(7)(b) gives the tribunal power to appoint a manager notwithstanding a failure in the notice to comply with the requirements of section 22(2) or applicable regulations.

34. The preliminary notice required the appointment of a property management company by 26 August 2011and for Ms Wilson to get more centrally involved in discussions or appoint a property agent. The tribunal is satisfied on the evidence that there has been good service of the

preliminary notice under section 22 of the Act, which was sent by post on 5 August 2011 and was on the balance of probabilities served on the Respondents in the ordinary course of the post. It was furthermore served on Ms Wilson's partner and appointed representative by email and brought to her attention prior to the expiry of the deadline for remedial action. The application was issued after 26 August and therefore is not defeated by virtue of section 23(1)(a).

35. The Applicants alleged a ground under section 24(2)(a)(i) of the Act, namely in respect of a breach of an obligation owed to the tenants. This ground is admitted by the Respondents. The tribunal considered it unnecessary to make findings as to the other grounds in section 24 which were alleged by the Applicants. The tribunal must determine (pursuant to section 24(2)(a)(ii) of the Act), whether it is "just and convenient" to order the appointment of a manager. It was common ground that there had been a breakdown in communication between the parties. Each party blames the other for this.

36. Having considered the evidence the tribunal is clear that the mistrust between the parties is deeply rooted. Some work has been done on the house, and it is not the wish of the tribunal to apportion blame for the current situation, but relations having broken down and progress on the works cannot be made without a new approach. The tribunal has noted the counteraccusations of improper behaviour and treated them as evidence of the deterioration in the relationship of the parties, but has not considered it necessary to hear evidence in substantiation of those allegations and to make findings as to their truth.

37. In determining this matter, and in light of the agreement as to the ground in section 24(2)(a)(i), the tribunal has carefully considered what alternative options are available to the parties to resolve the impasse between them. In particular, the tribunal considered whether arbitration would be an option.

38. The Respondent has appointed Mr Knox to act on her behalf in relation to the property repairs, and he has assumed responsibility for the project,

including preparation of the schedule of works. He has been unable to deliver on this project, and having had the opportunity to consider the documentary evidence and hear from Ms Andriessen in person the tribunal is not persuaded that this failure is the result of a lack of willingness on the Applicants' part to agree and action the works.

39. In correspondence Mr Knox had expressed himself in excessive detail and excessive length to make a constructive contribution to progressing agreement as to the necessary works. For example, he dealt at length with scheduling availability of the parties and access and meeting arrangements. Correspondence from October 2010 has been difficult to follow. There has been much talk of process, opinions, legal and personal comment. With respect to Mr Knox and his intentions in communicating with the Applicants, the matter has become too personal for him to maintain an objective position and separate building and planning issues from other matters. The tribunal senses from the correspondence that the excessive detail has served to make agreement as to the works, whether by mediation or otherwise, practically impossible, and that further attempts at mediation would be fruitless.

40. The tribunal was not persuaded that arbitration was an appropriate alternative. The Applicants had not previously been aware of the document produced by the Respondent, which Mr Harle demonstrated by reference to the Land Registry Office copy entries was not shown on the freehold title or that for the Applicant's leasehold. It was recorded on Ms Wilson's title only, and did not therefore bind the Applicants. Even if the arbitration clause did bind the Applicants, the tribunal accepted the argument of Mr Harle that it would be likely to be a more costly process, involving the parties in yet more delays.

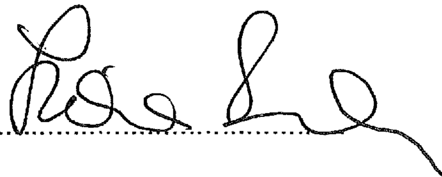
41. The tribunal has given particular care to its decision, not least because an application to appoint a manager in respect of a block of two flats is unusual. The cost of such an appointment is considerable, and under the service charge apportionment under the lease the majority of that cost would fall on the Respondent and Mr Knox, whose financial circumstances

are strained. However, the tribunal is satisfied that the circumstances of this application are sufficient to justify this unusual step. What this property requires is a decision maker. The joint appointment of a surveyor is not likely to produce a solution, since that person will not have the power to make a decision or force the parties to agree. The inability of the parties to reach a decision is not likely to be addressed by mediation or any other means, and arbitration is likely to be more expensive and still require the parties to implement the arbitration award. The best, surest and most efficient way of ensuring that the works of repair are completed in a reasonable time is the appointment of a manager. The tribunal is satisfied that it is just and convenient to make an order in the terms attached (and to order the apportionment of the cost of the manager according to the service charge apportionment in the lease), and that Ms Ringley is a fit and proper person for such an appointment. It is satisfied as to her evidence regarding her independence and her ability to perform the functions of appointed manager with objectivity.

42. The parties are reminded that, notwithstanding the order appointing a manager for 3 years, by virtue of section 24(9) any interested person may apply for the variation or discharge of the order within that time. The present tribunal on the current evidence would not consider such an application had reasonable prospects of success until the major works are complete, and cannot bind a future tribunal considering such an application.

43. The Applicants agreed to the Respondent's application for an order under section 20C of the Landlord and Tenant Act 1985 preventing the landlord's costs of these proceedings from being added to the service charge. Accordingly the tribunal makes the order requested.

Signed.......................................



Ms F Dickie

1 June 2012

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Residential Property
TRIBUNAL SERVICE

ORDER OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 24(1) OF THE LANDLORD & TENANT ACT 1987

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Respondent:	Ms J Wilson (Flat A)
Date of hearing:	19 April 2012
Appearance for Applicant(s):	Lee Harle, Solicitor, Ringley Legal
Appearance for Respondent(s):	In person, and accompanied by Mr A Knox
Leasehold Valuation Tribunal:	Ms F Dickie, Barrister Ms Bowers
Date of decision:	1 June 2012

ORDER APPOINTING A MANAGER

UPON the Applicant's application under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act")

AND UPON hearing the solicitor for the Applicants and the Respondent in person

AND UPON the LVT being satisfied that it is just and convenient in all the circumstances of this case to make an order pursuant to section 24 of the 1987 Act

IT IS ORDERED THAT:

1. Ms Mary-Anne Bowring, FBeng, FIRPM, MRICS of Ringley Chartered Surveyors, Ringley House, 349 Royal College Street, London NW1 9QS shall in accordance with section 24(1) of the 1987 Act be appointed as manager and receiver ("the Manager") of the whole of the freehold property of which the parties jointly own the freehold situate at and known as 35 Nevill Road, London N16 8SW ("the Property"). The said freehold property of the Landlord is registered at the Land Registry under title number LN244010. The appointment shall be for a period of 3 years commencing 30 days after the date of this order, unless varied or revoked by further order.

2. The Manager shall with immediate effect exercise in that capacity all the rights of the Landlord and the Manager shall carry out in that capacity all the responsibilities covenants and duties of the Landlord in respect of the leases made between the Landlord and the lessees of the two flats comprised in the Property.

3. The Manager shall comply with all statutory requirements and the provisions of the Service Charge Residential Management Code, Second Edition (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), including the duties of a manager set out therein.

4. Without prejudice to the generality of the foregoing, the Manager shall:
    a. Be authorised to carry out the following functions and duties:
        i. To collect and receive any ground rents and to hold them to the Landlord's order.

ii. Collect and receive any insurance premiums payable by the lessees of the Property.
iii. To arrange and keep in force an insurance policy in accordance with the terms of the lease.

b. Carry out the following functions and duties:
   i. To collect and receive service charges and any other monies payable by any of the lessees of the Property save as aforesaid.
   ii. To administer the service charge account as a trustee pursuant to the statutory trust established by section 42 of the 1987 Act.
   iii. To carry out the Landlord's obligations under the leases of each of the flats comprised in the Property; including arranging for the remedying of any disrepair which requires attention;
   iv. To receive, consider, grant or otherwise deal with all applications for consents of whatever nature arising as to dealings, alterations or any other matters requiring the consent of the Landlord as far as such consents relate to the lessees or their flats;
   v. To produce service charge accounts not less frequently than once a year and to serve the same on the lessees of each of the flats in the Property.
   vi. enforce Lessees' covenants; and
   vii. comply with all statutory requirement including those set out in the Landlord and Tenant Acts 1985 and 1987 as amended, including those relating to the statutory consultation for major works.
   viii. Ensure that an insurance policy in accordance with the terms of the lease is arranged and kept in force, either by the lessees or by the Manager, and that the Manager's interest is noted upon it.

5. The Manager's remuneration shall be paid to her by the lessees of the Property in the following shares: 37% by the lessees of the basement flat (flat B) , and 63% by the lessee of the ground and first floor flat (flat A) provided that the standard charge shall be fixed at £1500 plus VAT per annum for the

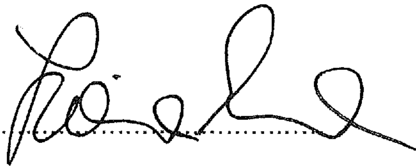
Property to be increased annually in line with changes to the Retail Price Index or by 5% for the duration of the appointment and provided that there shall be no separate set-up charge. Additional charges shall be paid to her according to the Manager's Menu of Services and Charges set out in the Schedule to this Order.

6. The Manager's appointment shall include the fulfilling of the landlord's obligations to ensure leaseholders comply with the terms of their respective leases and the costs of any action to enforce the same being rechargeable as administration charges subject to the rights and remedies for leaseholders as set out in Section 166 of the 2002 Act. The Manager shall be able to recover from the landlord her costs on account of such action whilst it is ongoing.

7. The Manager shall ensure that a policy of professional indemnity insurance and public liability insurance is maintained to cover her obligations and liabilities as manager and receiver.

8. The Manager shall register this order against the landlord's freehold title in accordance with section 24(8) of the 1987 Act.

9. The Manager, and any party to the proceedings, shall have permission to apply for further directions to give effect to this Order or for its variation.

Signed ....

Ms F Dickie, Chairman

1 June 2012