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HM COURT AND TRIBUNAL SERVICE

File Ref No. MAN/00BN/LAM/2012/0005

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 24 LANDLORD AND TENANT ACT 1987.

in relation to

Wakefield House, 7-9a, Wakefield Street, Manchester M1 5NP

<u>Applicant:</u>	Ian Hollins
<u>Respondent:</u>	Express Networks
<u>Inspection/Date Order Made:</u>	16 July 2012
<u>Members of the Leasehold Valuation Tribunal (the Tribunal):</u>	Mr. P. W. J. Millward LLB (Chairman) Mrs A Franks FRICS

The Application

1. By an application (the Application) dated 4 April 2012 the Applicant seeks to the appointment of a Manager to manage the above mentioned property (the Property). The Application was made by the Applicant on behalf of Wakefield House Residents' Association (the Association) and all but one of the other members of the Association confirmed their agreement thereto. An Order for Directions (the Directions) was made by a Chairman of the Leasehold Valuation Tribunal on 25 May 2012 and sent to the parties on 25 May 2012. The Applicant prepared and filed his bundle of documents pursuant to the Directions and the parties were notified on 19 June 2012 that the matter had been set down for hearing on 16 July 2012.

Applications under Section 24 of the Landlord and Tenant Act 1987 (as amended)

2. Section 24 of the Landlord and Tenant Act 1987 (the Act) provides grounds for the appointment of a manager, and in each case it is necessary for the Tribunal to be satisfied not only that the ground exists, but also that it is just and convenient to make the order in all the circumstances of the case.
3. By Section 24(2)(a) of the Act a manager may be appointed if the Tribunal is satisfied that the landlord is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises or part of them.
4. By Section 24(2)(ab)(i) of the Act an order appointing a manager may also be made where the Tribunal is satisfied that unreasonable service charges have been made or are proposed or likely to be made. By Section 24(2)(a)(ac) of the Act an order may be made where the landlord has failed to comply with any relevant provisions of the RICS Residential Management Code.

The Inspection

5. The Tribunal inspected the common areas of the Property and its surroundings and also the interior of Flat 16 in the presence of the Applicant and Mr Lee Burkitt representing the Revolution Property Management Limited (Revolution) on the morning of 14 July 2012. The Respondent did not attend. The Property is a former industrial works converted in or about 2000 into 16 flats (2nd floor and above), a 1st floor office area and a ground floor bar. The Property is situated in Manchester city centre, close to Oxford Road railway station.
6. The communal areas are in poorly maintained condition and re-decoration is required both internally and externally. Many light bulbs were not working and were in need of replacement. As a result the corridors were very dark in places due to lack of natural light. The dividing wall between the bar cellar and the entrance to the flats is incomplete and represents a fire hazard. There are exposed wires in the electricity control box.

The Lease

7. The Applicant is the lessee of flat 16 being part of the Property under a lease (the Lease) dated 31st March 2000 and made between Artisan H Limited (1) Carol Ann Ainscow (2) for a term of 999 years less 3 days from 16 December 1999.
8. The lessees of the remaining 15 flats in the Property hold under similar leases (together called "the Leases")
9. Under the Leases management of the Property is assigned to the landlord. By various clauses of the Leases the lessees covenant to contribute a proportion of the Service Charge as is set out in the 4th Schedule to the Leases.

The Submissions of the Parties

10. The Applicant's bundle of documents includes (inter alia) the following:-
 - 10.1 A copy of the Head Lease dated 16th December 1999 and a sample copy of a flat lease.
 - 10.2 A copy of Revolution's initial tender document dated 14th February 2012.
 - 10.3 Details of feedback from the residents of various flats in the Property relating to management of the Property.
 - 10.4 A copy of building report and plan of action (including budget) prepared by Revolution and details of Revolution's indemnity insurance policy.
 - 10.5 A copy of the agreement entered into between the Residents' Association and Revolution.
 - 10.6 Details of the Respondent's failure to manage the Property properly or as required by the Leases.
11. The bundle of documents had been provided to the Respondent.
12. The Respondent made no written submissions.

The Hearing

13. The Applicant and Mr Burkitt (representing Revolution) attended the hearing.
14. The Respondent did not attend, nor was it represented.
15. The Applicant confirmed and repeated its written submissions, save that the lift was now working after a period of approximately 12 months. This work was carried out as the present manager had been funded by the tenants to enable it to do so.
16. No service charge has been collected from the landlord, who owns and sublets 7 of the 16 flats.
17. Mr Burkitt confirmed that Revolution manages approximately 1600 flats, all within about 15 minutes travel from its offices. It was established 6 years ago. Although he is not a surveyor or engineer, he complies with the RICS Management Code.
18. The Applicant confirmed his application for an order under Section 20(C) of the 1985 Act

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The Tribunal's Determination

19. The Applicant had nominated Revolution to be appointed as managers and there was no objection from either the Respondent or the present management company. The Tribunal had met Mr Burkitt of Revolution and he had also attended the hearing.
20. The Tribunal was satisfied that Revolution had sufficient experience and was capable of managing the Property. Mr Burkitt was fully aware of the requirements of the RICS Management Code. They also found that it would be just and convenient in all the circumstances to make an order to appoint Revolution as manager. The order is attached.

Costs

21. The Tribunal thereafter considered the Applicant's application for an order under s20C of the 1985 Act to restrict the Respondent from adding its costs to the service charge.
22. Whilst considering the application generally the Tribunal did feel that it would be grossly unfair to allow the Respondent to add its costs to the service charge.
23. The Tribunal therefore determined that it would make the order asked for.

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P W J Millward – Chairman

27th July 2012

HM COURT AND TRIBUNAL SERVICE

File Ref No. MAN/00BN/LAM/2012/0005

MANAGEMENT ORDER in relation to Wakefield House, 7-9a, Wakefield Street, Manchester M1 5NP

Applicant: Ian Hollins

Respondent: Express Networks

ORDER for the Appointment of Revolution Property Management Limited of 121, Princess Street, Manchester M1 7AG as Manager of Wakefield House, 7/9a, Wakefield Street, Manchester, M1 5NP

1. Revolution Property Management Limited shall be appointed as Manager of the property known as Wakefield House, 7-9a, Wakefield Street, Manchester, M1 5NP from 1st July 2012.
2. The Manager shall carry out all the management functions in accordance with the terms of the various residential leases of the property (the Leases).
3. The Manager shall manager in accordance with the RICS Service Residential Management Code.
4. The Manager shall not collect the ground rents payable under the Leases.
5. The financial year shall run from 1st July to 30th June.
6. The Manager shall, from expiry of the current policy, insure the property according to the requirements of the Leases, noting the Landlord's interest on any policy and supplying the Landlord with a copy of the policy, if required.
7. The Manager shall carry out the functions of the Landlord with regard to approvals and permissions for subletting, assignments, alterations, improvements and any other matters arising from the Leases, and be entitled to the fees set out in paragraph 11 of this Order.
8. The Landlord's agent shall hand over all books, records, counterpart leases, balance of service charge moneys held and draw up final accounts to the date of 30th June 2012 within 30 days of the date of service of this Order upon it.
9. The Manager shall have authority to prosecute claims on matters arising on or after 1st July 2012 and after the appointment.
10. The Manager shall receive all service charge monies including arrears (if any) from 1st July 2010 onwards and expend those monies in the management of the property except for the fees hereby specified.
11. The Manager shall be entitled to the following remunerations:-
 - 11.1 An annual fee of £180.00 plus vat per apartment/leaseholder or such other sum as may be agreed from time to time for performing the duties set out in paragraph 2.5 of the RICS code payable monthly in advance, and renewable each anniversary of the date of this appointment by the increase in the latest RPI figure published for the previous 12 month period.
 - 11.2 15% of the net cost of any major works as defined as qualifying works by the Landlord and Tenant Act 1985
12. The Manager shall also be entitled to the additional fees set out in the schedule hereto for the duties as set out in paragraph 2.6 of the RICS code. The charges are reviewable as set out in paragraph 11.1 hereof.
13. VAT shall be payable in addition to the fees mentioned in paragraphs 11 and 12 hereof at the

prevailing rate.

14. This Order shall have no end date. The Manager understands that bringing the agreement to an end would require an order of a Leasehold Valuation Tribunal. Due to the floor space allocation right to manage is not an option for this development and no other form of management appears viable.
15. The Manager shall have liberty to apply to the Tribunal for further directions.