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LONDON RENT ASSESSMENT PANEL

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

REF: LON/00/11X/LVM/2012/0010

Property: 17-29 CLAREMONT ROAD, SURBITON, SURREY
KT6 4QR

Applicant: MR DAVID SCEATS

Respondent: DALEDELL PROPERTIES LIMITED

Date of Application: 4 December 2012

Date of Directions: 11 December 2012

Dates of Hearing: 11 February 2013

Date of Determination: 11 February 2013

Members of Tribunal: Mrs S O'Sullivan
Mr L Jarero BSc FRICS
Mr O Miller

DECISION

1. This case involves an application by Mr Sceats ("the Applicant") for Appointment of a Manager in respect of the property at 19-29 Claremont Road, Surbiton, Surrey KT6 4QR ("the Property"). The Applicant is the long leaseholder of Flat 23 at the Property. The Respondent is the freehold owner of which the director and sole shareholder is Mr Anslow.
2. The property is a self contained building comprising two commercial premises on the ground floor, two flats on the first floor and two flats on the second floor.
3. Mr Heald was appointed manager of the Property by the Tribunal on 7 December 2009 for a period of 3 years. This appointment has now lapsed. This application sought an order for or alternatively the variation of an order appointing a manager for the Property.
4. Directions were made dated 11 December 2012. These directed Mr Heald by 11 January 2012 to serve a statement setting out full details of this management, to enclose service charge accounts for the past 3 years and to set out his proposals for future management.
5. A Hearing of the matter took place on 11 February 2013. The Tribunal was informed by Mr Anslow that Mr Heald did not wish to continue as Manager at the Property. It was noted that he had failed to comply with the Tribunal's directions and in particular had failed to provide the documentation set out in paragraph 4 above.
6. The Applicant now wished Mr Bailey to be appointed as Manager. Mr Anslow confirmed that he agreed a manager should be appointed and had no objection to Mr Bailey's appointment. His only reservation is that he did not believe that another manager would succeed where Mr Heald had failed. Although he criticised the actions of the Applicant whom he felt made himself a nuisance to the previous manager, the Tribunal saw no evidence of this and indeed it was accepted by Mr Anslow that Mr Heald's failure to provide any accounts over the period was unacceptable.
7. The Tribunal had the opportunity of hearing evidence from Mr Bailey, the proposed manager and is satisfied that he is an appropriate person to act as Manager. Mr Bailey has over 40 years post qualification experience. He is assisted by 5 property managers, accounts and administration staff. His firm deals with many residential developments, some of which are mixed residential/commercial and has experience of

managing different sized blocks. The Tribunal was satisfied that his office is well equipped to deal with this type of work. In so far as may be necessary, the Tribunal finds that, for the purposes of section 24(2)(b) of the Act "....circumstances exist which make it just and convenient for the order to be made" – these circumstances being the fact that the property is in need of maintenance and management, and all parties are in agreement as to the appointment.

8. Some discussion took place as to the provisions of the commercial leases in relation to the extent of their service charge liability. From the documentation before the Tribunal it appeared that the residential leases were responsible for 50% of any structural repairs with one commercial tenant contributing a "reasonable proportion" and the other a proportion by way of floor area as a percentage of the whole. It is arguable that this may be restricted to the lock up shops rather than the building itself. It may be that the Manager's involvement with the commercial premise would be very limited and any management charges would reflect that. The Tribunal is content to leave the practicalities of this to Mr Bailey. The Order is therefore drafted in the terms attached that the commercial tenants are responsible for up to £900 plus VAT, any sum payable being dependant on the terms of the leases and the work done. Mr Bailey confirmed that this is an issue which he will make a priority to explore and if further directions are required he will make a timely application to the Tribunal.
9. The Tribunal has perused the Draft Order prepared which follows the form of the previous management order, and is content with, and adopts its terms, save for some slight amendments.
10. Accordingly, the Tribunal appoints Mr Kevin Bailey to be Manager of the Property for a term of 3 years from the 11 February 2013, on the terms of the Order attached hereto.

Legal Chairman: S O'Sullivan



Dated: 11 February 2013

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ACT 1987**

REF: LON/00AM/LVM/2012/0010

Property: 17-29 CLAREMONT ROAD, SURBITON, SURREY KT6
4QR

Applicant: MR DAVID SCEATS

Respondent: DALEDELL PROPERTIES LIMITED

**ORDER FOR THE APPOINTMENT OF MR KEITH JOHN BAILEY OF
NIGHTENGALE PAGE HICKMAN & BISHOP AS MANAGER AND
RECEIVER**

1. Mr Keith John Bailey of Messrs Nightingale Page Hickman & Bishop ("the Manager") is appointed Manager and Receiver of the property known as 17-29 Claremont Road, Surbiton, Surrey KT6 4QR (the "Property") pursuant to the provisions of section 24 of the Landlord and Tenant Act 1987 for a period of three years with effect from 11 February 2013.
2. The former manager, Mr Robert Heald, shall by 4pm on 15 February 2013;

- i. Serve on all parties a statements with full details of the management of the Property since his appointment together with service charge accounts for the same period;
- ii. Pass all relevant papers to the Manager; and
- iii. Remit the funds he is holding together with a statement of account to the Manager.

3. The Manager shall manage the property in accordance with:

- (i) The Manager shall have the powers and duties of the lessor as specified below and as provided for in the leases of which the Respondent is the lessor and as shown in the Office Copy Entries to title number SY0084 in connection with all matters relevant to the management and repair of the premises, including without limitation thereto, insurance, repair, decoration, cleansing, accounting including provision by way of contingent expenditure in a reserve account where the leases so permit and , if necessary, enforcement of such powers and duties.
- (ii) For the avoidance of doubt this appointment is made in respect of both the residential leases governing the four flats on the first and second floors of the premises and the leases of the two commercial premises on the ground floor. However the Manager has no powers in respect of the collection of commercial rents. Those rents shall remain payable to the Respondent and be recoverable by it as appropriate. and
- (iii) 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 from time to time).

4. He shall receive all sums whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said leases.
5. In exercising his duties the Manager shall first consult and use his best endeavours to comply with the wishes of the lessees of both the commercial and residential premises.
6. By way of further illustration (but not limitation) of his powers and duties the Manager shall amongst other matters:
 - i. Prepare after consultation with all leaseholders and the Respondent an annual budget including a reserve fund is applicable
 - ii. Prepare a maintenance plan for the repair of the roof, the exterior and the common parts and the decoration thereof.
 - iii. Take any steps he considers appropriate in respect of regular cleaning or maintenance.
 - iv. Deal with enquiries as to service charge costs from vendors or purchasers solicitors
 - v. Enforce the mutuality of covenants between the Respondent and/or leaseholders and take such steps as he considers appropriate to achieve compliance by both leaseholders and the Respondent with their respective covenants.

- vi. Maintain a client account and a deposit account for any sinking fund
 - vii. Comply with all statutory requirements and the duties of the manager as set out in the second edition (and any further edition thereof) of the Service Charge Residential Management Code published by the Royal Institute of Chartered Surveyors.
7. The Manager 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:
- (i) A basic annual fee of £1800 plus VAT. The fee is limited to £225 plus VAT per residential flat and up to £900 plus VAT shall be recoverable at a rate referable to such services as may have been recovered, are relevant to and are recoverable pursuant to the leases of the two remaining commercial leases.
 - (ii) A percentage of 12% of supervision of works or innovation costing more than £1,000.
8. Value added tax will be payable, for the avoidance of doubt, in addition to the remuneration mentioned above.
9. The Manager shall have liberty to apply to the Tribunal for further Directions, and any interested party is entitled to apply for further Directions during the course of the appointment if so required. On any application being made notice must be given to all parties.

Dated: 11 February 2013

Chairman: S. O'Sullivan

A handwritten signature in black ink, appearing to be 'S. O'Sullivan', with a long horizontal flourish extending to the right.