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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/00KF/LAM/2013/0003**
Property	:	**Flats 1, 2 & 3, 11/12 Eastern Esplanade, Southend-on-Sea, Essex SS1 2ER**
Applicants	:	**(1) Neil Howe (2) Ajay Pamneja (3) Christopher Clarke**
Respondent	:	**Mohiuddin Mahamood**
Date of Application	:	**13th May 2013**
Type of Application	:	**To appoint a manager for the property (Section 24 Landlord and Tenant Act 1987 ("the 1987 Act")).**
The Tribunal	:	**Bruce Edgington (lawyer chair) Stephen Moll FRICS David Cox**
Date and venue of hearing	:	**19th August 2013, Southend Magistrates' Court, Victoria Avenue, Southend-on-Sea, Essex SS2 6EU.**

DECISION

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1. The Tribunal refuses the application to appoint a manager.

2. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondent from recovering its costs of representation before this Tribunal from the Applicants as part of any future service charge demand.

Reasons

Introduction

3. This application to appoint a manager for the property is apparently made by the 3 residential long lessees in the property known at 11/12 Eastern Esplanade,

Southend-on-Sea which is situated on the Southend front close to the tourists amusements. The residential part of this semi-detached building covers the first and second floors. There are one or more commercial units on the ground floor. The person leading the application is the first Applicant who has said repeatedly that he spends long periods abroad. He acknowledged that these periods of absence should not delay the application. However, it must be said that his absence has not helped in the preparation of the Applicants' case.

4. After the application was received, the Tribunal chair noted that a number of pieces of information were missing and a directions order was made on the 4th June 2013 including that the Applicants file by 21st June "*evidence that they are the respective lessees and that the Respondent is the freehold owner of the property; the experience of property management and terms of business of the proposed manager; whether the proposed manager has seen the residential leases; whether anyone has made an approach to the commercial tenant to see whether he is agreeing to instruct the proposed manager as well (this Tribunal having no jurisdiction to determine that issue) and whether any response has been received to the Section 22 Notice*". The Respondent was then ordered to file and serve a statement setting out his response to the application. The case was then timetabled to a final hearing.

5. On 1st July 2013, the Leasehold Valuation Tribunal was subsumed into the new First-tier Tribunal, Property Chamber, which has all the jurisdiction and powers of the Leasehold Valuation Tribunal.

6. The hearing date was set for the 19th August 2013. A hearing bundle was received by the Tribunal chair but it did not have a copy of the lease or any of the evidence which the Applicants had been ordered to provide. The Tribunal chair therefore caused a letter to be written to the Applicants on the 8th August pointing out the omissions and warning that if the evidence was as in the bundle, then it was likely that the Tribunal would have to dismiss the application. This letter was obviously written to assist the Applicants and to avoid wasting public funds on what had the potential of being an abortive hearing.

7. A further bundle then arrived which included a copy of the lease to flat 2 from which it was clear that this lessee was only responsible for one sixth of the service charges. Unfortunately the bundle still did not include the evidence requested in the Directions Order. There then followed a series of letters and e-mails with the first Applicant and his proposed managing agents when it was pointed out, once again, that the bundles were defective. The last e-mail from the first Applicant was dated 13th August in which he says, amongst other things, "*I am EXTREMELY disappointed with the lack of sympathy and support from the tribunal*" and "*Surely the very existence of the LVT is to assist non professionals against unscrupulous landlords?*".

8. Despite the fact that the Respondent's managing agents clearly received the notice of hearing and informed the Tribunal who would be attending on behalf of the Respondent, they wrote on the 15th August i.e. 1 working day before the hearing, advising that neither they nor the Respondent had received the Directions Order or a bundle of documents and would be unable to deal with the

issues at the hearing.

The Inspection

9. The members of the Tribunal inspected the property in the presence of the second and third Applicants, Karen Maw from Sorrells, the Respondent and Qalab Ali from the Respondent's managing agents, Hexagon Estates ("Hexagon"). Sorrells are a well known firm of local surveyors and managing agents and presumably include the 'manager' whom the Applicants wish to appoint.

10. The basic building is as described above. It is of solid brick construction under a combination of pitched and flat roofs. It is semi-detached although the other part of the building has been added at a later date. The ground floor is completely of commercial use and the entrance to the flats is in Beech Road in the return frontage. There is a very small entrance and narrow stairs up to the first floor where flats 2 and 3 come off a small landing. They consist of a lounge/kitchen, 2 bedrooms and a bathroom/WC. There is then a further stair case to the second floor which consists of only flat 3. This is a much larger flat with a very large lounge/diner with kitchen area off. There are 2 double bedrooms and, potentially a small third bedroom or dressing room. Finally there is a shower room/WC.

11. The inspection was undertaken on a bright summer's morning and there had not been much rainfall in the weeks before. However there were obvious signs of long term water ingress through the walls in the staircase and in the flats themselves. Flat 3 was undergoing complete refurbishment but the Tribunal saw into one cupboard where there was mould all up the wall. It was pointed out that there had been more evidence of damp penetration from above before the refurbishment work had been started. All the window frames except one small one to the rear of flat 3 (which was a modern double glazed unit) were wooden and most were showing signs of age with some evidence of rotting, particularly in the staircase area.

12. Of relevance to the problems at the property, the structure at the rear in particular was very awkward in terms of access and any scaffolding would be complex. The front and side were adjoining fairly narrow public pavements which would require scaffolding with the usual health and safety protection for the public who would have to have access under it.

The Lease

13. The Tribunal was shown a copy of what seems to be the lease of flat 2. It is dated 19th September 1986 and is for a term of 199 years from that date with a ground rent of £1 per annum. This is extremely low, even for 1986. It presumably reflects the commercial nature of the ground floor where the freeholder was anticipating making his profit.

14. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it and the Respondent is liable to pay one sixth of the total charges i.e. for flat 2 only.

The Law

15. Part II of the 1987 Act makes provision for a tenant or tenants of premises to which that part of the Act applies to apply to this Tribunal for the appointment of a manager. 'Premises' consist of the whole or part of a building if the building or part contains 2 of more flats, as this one does. The Applicants say that they are the tenants although the Tribunal has no evidence of this save that the Respondent did not seem to be contesting the fact that the 3 Applicants are the tenants.

16. Section 22 of the 1987 Act says that before making this application, the Applicant must serve a notice on the landlord explaining that it is proposed to make an application to this Tribunal for the appointment of a manager and stating the grounds upon which it proposes to rely. Specifically, the notice must "*specify the grounds on which the tribunal would be asked to make such an order*" and "*where those matters are capable of being remedied...within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified*". It is possible for a Tribunal to waive this requirement in circumstances which do not apply to this application.

17. Section 24 of the 1987 Act says, of relevance to this application, that before making such an order, a Tribunal must be satisfied that there has been a breach of covenant on the part of the landlord and that it is "*just and convenient to make the order in all the circumstances of the case*". There is also a 'catch all' provision in subsection 24(2)(b) which provides that an order can be made "*where the tribunal is satisfied that other circumstances exist which makes it just and convenient for the order to be made*".

18. Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") enables a Tribunal to make an order that the landlord's costs of representation before a Tribunal cannot be recovered from a tenant as part of a future service charge. This power must be exercised so as to make the decision 'just and equitable'.

The Hearing

19. The hearing was attended by those who attended the inspection. The first part of the hearing was spent discussing the failures to provide the evidence which had been ordered. Unfortunately, no-one could assist the Tribunal with any of this information save to say that they were sure such evidence could be obtained.

20. The Respondent could not explain why, when he or his agents had received a copy of the application and the notice of hearing some weeks before it was due to take place, they had taken no steps to obtain information about the case even if they did not receive the directions order. It was accepted that a copy of the bundle had in fact been received at the last minute. The reason given was that the agent was expecting the hearing to be just to inspect the property and then issue directions. However, the notice of hearing does not mention directions being given. It said that the 19th August was for the hearing of the case. For example, it clearly says that if no-one turns up, the Tribunal can make a final decision.

21. The 3rd Applicant, Mr. Clarke then said that he had bought his flat relatively recently at auction. He had been in touch with Hexagon because he had

received a consultation letter under Section 20 of the 1985 Act which he said was totally unreasonable because it sought a contribution from him of £20,000. He is liable to pay one third of the service charges and, thus, the total cost of remedial work was around £60,000. There were only 2 quotations supplied and these were from companies local to the agents in London and one had only been formed in 2012.

22. Mr. Clarke had therefore sought a meeting with Hexagon which had taken place. As a result, the consultation process had been started again and Mr. Clarke said that he had nominated a local contractor. He said that he had seen the specification and this covered repairs to the roofs including a new flat roof, new windows, exterior painting, rendering, new joists where needed, a pigeon defender and soffits and weatherboards. He said that it covered all the things he thought were essential and more.

23. The 2nd Applicant, Mr. Pamneja explained that the reason for this application was that there had been no management at all at the property for some years. Hexagon were appointed as agents in the last couple of years and they had just demanded money without doing anything.

24. It was clear that the Respondent opposed the application. The hearing ended with the Tribunal chair advising the parties that a decision would be made either to reject the application or adjourn to another date to give the Respondent a chance to consider the directions and the documents filed.

Conclusions

25. The Tribunal members were satisfied that the residential parts of this building had not been managed effectively for some years. This must have been perfectly obvious to any purchaser of a leasehold interest and it was noted that Mr. Clarke had bought his leasehold interest at auction which usually indicates a difficulty in selling on the open market such as lack of repair or maintenance. He had undertaken considerable work at the property to bring it up to a condition for letting.

26. Ms. Maw, from Sorrells, was critical that all the repair work was being proposed at the same time which would mean a great deal of expense at one time for the tenants. The problem with that argument is that it must have been very obvious to the tenants that substantial work has been necessary for some years. They have not paid any substantial service charges and any prudent tenant in this position would surely have realised that there was going to be a large bill. If the lack of maintenance has caused a larger than necessary cost for repairs, then this Tribunal will, on application, have the ability to determine whether such repair costs are reasonable, taking these matters into account.

27. Cutting the service charge demands into smaller amounts is probably not going to be be cost effective in view of the fact that much of the work will be needed to the first and second floors. It is expensive to hire scaffolding partly because of the cost of erection and dismantling. It is thus much more cost effective to optimise that cost by doing as much work as possible whilst the scaffolding is there.

28. In essence, the reasons why the Tribunal is dismissing this application are as follows. They are in no particular order and some are more important than others. However, taken as a whole, the Tribunal is simply not prepared to make the order requested:-

- The notice to the landlord under Section 22 sets out the fact that there has been inadequate management but fails to say what the landlord should do to rectify the situation. It simply says that a new managing agent should be appointed. It should have set out what works needed to be undertaken to put the property in reasonable repair and a time limit for such works. That information seems to have been supplied by Hexagon in the latest amended Section 20 consultation.
- It seems clear from Mr. Clarke's evidence that the managing agent is now starting to progress the works needed. He accepted that the specification in the new Section 20 consultation deals with all the work which needs to be done. He was participating in the consultation process by nominating a local contractor. If there is still time, he may want to consider nominating an additional contractor to offer a greater choice.
- The evidence from the Applicants is simply inadequate. The Tribunal has done all it can to help the Applicants by specifying what evidence was required at the time of the Directions Order. None of that has been provided, save for a copy of just one of the leases. It took the highly unusual step of sending a warning before the hearing that the evidence was inadequate to give the Applicants a chance to rectify the situation.
- It seems to be clear from the lease of flat 2 and Mr. Clarke's evidence that the split of the service charges is one third for the landlord (or commercial tenants if there are any) and two thirds for these applicants. Thus it is imperative that the Tribunal knows whether the proposed managing agent knows of the contractual liabilities of the various parties and is willing to take on management of the commercial premises. A manager would have to take on management of the whole building.
- The Tribunal has no evidence of the knowledge and experience of the proposed manager and therefore cannot make a decision as to his or her suitability.
- The Tribunal has no evidence of the terms of business of the manager, e.g. charging rates, so that the appropriate order for appointment cannot be prepared.

29. For all of these reasons, the Tribunal does not consider it to be just and convenient to make the order requested.

30. It is unfortunate that Mr. Howe, in particular, seems to have a misconception of the role of this Tribunal. It is not, as he suggests, a regime for "protecting non professionals against unscrupulous landlords", whatever that may mean. Such a role would involve some advisory capacity such as that provided by organisations such as LEASE. This Tribunal is an entirely independent adjudication process to determine, amongst other things, disputes between landlords and tenants. It interprets the law and applies such law to the facts it has. If a party, be it landlord or tenant, makes an incorrect application or does not give the Tribunal

the information it needs and has ordered, then it suffers the consequences.

Costs

31. As the Respondent has not acted appropriately in seeking to make adequate preparations for the hearing and as there is clear evidence of past mismanagement of the property, the Tribunal considers that it is just and equitable to make an order preventing the Applicant from recovering its costs of representation before this Tribunal from the Respondent.

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Bruce Edgington
Regional Judge
22nd August 2013