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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/OOBY/LAM/2013/0009**

Property : **Flats 1 to 8 (inclusive) Lyndhurst House, Lyndhurst Road, Liverpool L18 8AU**

Applicants : **Edwin Roy Rubin and Jane Gail Rubin**

Representative : **Mr B. Phillips MRICS**

Respondent : **Lyndhurst Flat Management Company Limited**

Representative : **Mr James Beal, Director**

Type of Application : **Application under Landlord and Tenant Act 1987 Sections 21 and 24**

Tribunal Members : **Mr. G. C. Freeman
Mr I. James MRICS**

Date and venue of Hearing : **3 December 2013
Employment Tribunal, Civil and Family Court, Vernon Street, Liverpool L2 2BX**

Date of Decision : **3 December 2013**

DECISION

Application

1. By their application dated 26th July 2013 the Applicants who are the owners of Flat 2 seek the appointment of Mr B. Phillips MRICS as Manager of the Property.

Preliminary

- 2 In accordance with requirements of section 22 of the Landlord and Tenant Act 1987 ("the Act") the Applicant served Notices on 3 July 2013.

Inspection

3. The Tribunal inspected the property on the morning of the hearing. It consist of a former nursing home which has been converted to 8 self-contained flats in 2004/2005. All the flats except one share a communal entrance hall, stairs and landings which are carpeted. In the basement are storage cupboards for each flat and meter cupboards. There are smoke alarms and motion sensing lights in the communal parts. The Tribunal noted that the smoke alarm in the basement had been removed. There was an amount of rubbish in the basement including items of a flammable nature. Externally there are communal grounds and car parking spaces. Part of the gardens have been allocated to individual flats.

Lease and Management Scheme

4. It was common ground that the leases of all the flats were in the same form. The Applicants produced a copy of their own lease. It is dated 15 August 2005 and is made between M3 Properties (UK) Limited of the first part the Respondent of the second part and the Applicants of the third part. The service charge provisions are contained in the Fourth Schedule. Mr Beale stated that he was the sole director and shareholder in the Respondent.

Hearing

5. The application was heard at the Civil and Family Court, Vernon Street, Liverpool L2 2BX immediately after the inspection. Mr and Mrs Rubin attended and were represented by Mr Phillips, the proposed manager. The Respondent was represented by Mr James Beale, the sole director of the Respondent Company. Both parties had previously submitted statements and bundles of documents which were considered by the Tribunal.

The Law

6. The Law is set out in the Appendix.

The Tribunal's Conclusion

7. From its inspection of the Property the Tribunal concluded that the property appears to be well maintained. However the Tribunal noticed failures in Health and Safety matters alleged by the Applicants and which, it was admitted by Mr Beale, he was aware of.
8. Mr Beale agreed that he had been negotiating with Mr Phillips for him to take over management of the development for approximately two years previously. He had no objection to a manager taking over management of the development but he objected to the appointment of Mr Phillips on the ground that he was not sufficiently "independent". He asked that the Tribunal appoint someone else of sufficient standing. The Tribunal pointed out that it could only rule on the application before it. The Tribunal had no jurisdiction to appoint someone who was a stranger to the case.
9. The Applicants produced emails from the owners of two other flats who supported the application. Mr Phillips also admitted that he had collected some payments from these owners which he was holding on trust for them.
10. When considering the appointment of a Manager, the Tribunal must take into account various factors which will contribute to the success of the appointment. These include the proposed Manager's:-
 - professional qualifications
 - experience in managing residential property
 - plans for the future management of the Property
 - remuneration
 - familiarity with the Residential Management Code
 - existing connection (if any) with the Property
 - consultations with the existing flat owners over future management
 - acceptance by all, or a majority, of the flat owners to his appointmentas well as the condition and needs of the Property.
11. The appointment of a Manager is a remedy "of last resort". Leasehold Valuation Tribunals have repeatedly found that it was not "just and convenient" to make an Order appointing a Manager with whose identity it was not satisfied. Where the proposed Manager is closely connected with the Property, this has rarely found favour with the Tribunal: (*Edwards v Brighton and Hove Securities 2001 LEASE No 67*).

12. The Tribunal considered Mr Phillips qualifications as shown in his statement. They also considered that he was not sufficiently closely connected with the Property as to disqualify him from being appointed. They therefore decided to appoint him as manager subject to the following conditions:
 - 12.1 The appointment takes effect from 3rd December 2013 and ends on 31st March 2015. The Manager is to manage in accordance with the terms of the leases of flats as if he was named as the Management Company.
 - 12.2 The Manager's remuneration shall be at the rate of £1440 inclusive of VAT per annum.
 - 12.3 The Manager is to produce a budget for service charge as soon as practicable, for the period of his appointment. The budget is to include the costs of obtaining a fire risk assessment, an electrical safety assessment and an insurance valuation.
 - 12.4 Service charge is to be paid to the Manager by the owner of each flat at the rate of £120 per month on the first day of each month, save for the month of December 2013 which is to be payable immediately on receipt of a written demand.
 - 12.5 The Manager is to provide an income and expenditure account as at the 31st March 2013 and 31st March 2014 and a statement of the amount of service charge owing by each flat at those dates.
 - 12.6 The Manager holds funds paid by some flat owners on account. The Manager is to write to the owners of those flats offering to repay the sums held on their behalf, or alternatively crediting those sums to the service charge payable under paragraph 12.4 above. In the absence of a written response from those flat owners within one month, the Manager may use the funds held by him to defray the service charge due in respect of that flat for the duration of his management.
 - 12.7 The Manager may apply to the Tribunal for further directions.

Appendix

The Law

Section 21 of the Act states:-

21(1) The Tenant of a flat contained in any premises to which this part applies may subject to the following provisions of this Part, apply to the appropriate Tribunal for an order under section 24 appointing a manager to act in relation to those premises.

21(2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

This Part of the Act applies to the whole or part of a building which contains two or more flats – section 21(2). “Flat” is defined in section 60(1) as meaning a separate set of premises (whether or not on the same floor) which forms part of a building and which is constructed or adapted for use for the purposes of a dwelling and which is divided horizontally from some other part of that building.

The Tribunal determined that the Property consisted of flats within the definition set out in the Act and the application was properly founded.

The circumstances in which a Manager may be appointed are set out in section 24 (2) of the Act and may be summarized as follows:-

- Breach by any “relevant person” of an obligation relating to management (s24(2)(a)); or
- Unreasonable service charge demands (s24(2)(ab)); or
- Unreasonable variable administration charge demands (s24(2)(aba)); or
- Failure by any “relevant person” to comply with a Code of Management Practice S24(2)(ac));

AND

In all cases, that it is further “just and convenient” to appoint a Manager.