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

Case Reference : **LON/00AN/LAM/2013/0023**

Property : **10 Askew Road, London W12 9BH**

Applicant : **Laura Catriona Barnett**

Representative : **Accompanied by Mr C Barnett (Applicant's husband) and Mr L Misrahi**

Respondent : **Executors of Iris Shoucair Aikman (Deceased) Represented by Mr J Cato of Askew Property Services**

Representative : **Mr M Jones (Counsel)**

Type of Application : **For the determination of the Appointment of a manager under Section 24 of the Landlord and Tenant Act 1987**

Tribunal Members : **Ms M W Daley LLB (Hons)
Mr S Mason FRICS
Mrs L Walter MA**

Date and venue of Hearing : **8 November 2013 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **04 February 2014**

DECISION

Decisions of the tribunal

- a. The Tribunal determined that in all of the circumstances of this case that grounds existed for the appointment of a manager.
- b. The Mr C Newell be appointed as a manager for the period of 3 years
- c. That at the hearing the Tribunal asked that a draft order be provided. The Tribunal noted that this had not been complied with. **Within 21 days of this determination the tribunal order that the manager provide a revised draft order for the approval of the Tribunal.**

The application

1. The Applicant seeks a determination pursuant to s24 of the Landlord and Tenant Act 1987 ("the 1987 Act).
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. At the hearing the Applicant appeared in person and was assisted by Mr C Barnett, her husband, and Mr C Newell a surveyor (instructed on her behalf) and the Respondent's estate was represented by Mr J Cato of Askew Property Services and counsel, Mr M Jones, instructed on behalf of the estate.
4. Immediately prior to the hearing the parties handed in further documents, namely the witness statement of Mr Joseph Cato and a surveyors report produced by Graham Associates dated 2.11.2013.
5. The witness statement also provided a request for an adjournment on the basis that Mrs Patricia Roberts (representative of the deceased estate) had been unable to obtain time off to come to the UK for the hearing.
6. Mr Jones submitted on the Respondent's behalf; that although the statement was served late, the matters therein needed to be considered by the Tribunal for the fair disposal of the matter. There was an overriding objective on the Tribunal to "*do justice*". Steps had been taken in the past to bring the property "*up to scratch*", although it was accepted that there was still work to be undertaken which would take 2 to 4 weeks to complete.

7. Mr Jones submitted that the hearing ought to be adjourned to enable the work to be completed and a follow up inspection carried out.
8. Laura Barnett (the Applicant) did not object to the late service of the witness statement, or it being considered by the Tribunal, although it was served in non-compliance with the Tribunal directions.
9. The Applicant opposed the application for an adjournment; she accepted that work had been started although she made no admissions to the quality of the work. Mrs Barnett stated that the application was not solely made on the basis of the Brittan Hadley Report, the property had been neglected over the years, and the issue was about proper management of the premises, by way of example the payment of service charges, and the proper insurance of the premises. The disrepair and having the work undertaken had not been the only factor which had motivated her in making the application. If an adjournment was granted it would not facilitate the proper management of the building and this would not take the subject matter of her application any further forward.
10. The Tribunal accepted the submissions made by the Applicant and determined that the matter should proceed and that no adjournment would be granted. The Tribunal noted that the complaints of the Applicant were wider ranging than repairs and were long standing matters, as all the parties who were likely to be in attendance were present an adjournment would lead to delay and an increase in the cost. Although the beneficiary of the deceased estate Ms Roberts was not present the Respondent was represented by Counsel, and Mr Cato the managing agent for the premises was present and was able to give Mr Jones instructions. Given that Ms Roberts lived in America there was no guarantee that if the matter was adjourned this would facilitate her attendance.

The background

- (a) 10 Askew Road, London W12 9BH ("the premises") is a three storey end of terrace, Victorian property which has been converted into three self-contained flats.
- (b) The Applicant holds long leases of the property which requires the respondent to provide services and the Applicant to contribute towards their costs by way of a service charge.
- (c) On 19 June 2013 the Applicant served on the Respondent a preliminary notice under section 22 of the Landlord and

Tenant Act 1987 (“the Act”). The Notice required the Respondent to carry out repairs in accordance with a building survey report dated 14 September 2012.

- (d) On 19 August 2013 the Applicant applied to the Tribunal for an order under Section 24 of the Landlord and Tenant Act 1987 (“The 1987 Act”).
- (e) In her application the Applicant stated -:

“... The Applicant has owned her flat since 2006. She believes that the freeholder has a managing agent yet despite expressing her concerns no work has been undertaken. The Applicant has had a leak from the roof into her bedroom. On at least three occasions prior to the service of the Section 22 Notice the Applicant wrote to Joseph Cato (the managing agent) asking him to inspect the roof . No response was received...”

The issues

- 11. At the pre- trial review which was held on 4 September 2013 the Tribunal identified the relevant issues for determination as follows:
 - (i) Has the Applicant satisfied the Tribunal of any grounds for the making of an order as specified in section 24(2) of the 1987 Act?
 - (ii) Is it just and convenient to make a management order?
 - (iii) Would the proposed manager be a suitable appointee and, if so, on the terms and for how long should the appointment be made?
- 12. The Applicant stated that she purchased the lease in 2006, the property was her first purchase, and as such she was not surprised that there was no correspondence from the freeholder neither did she feel obliged to query the lack of correspondence with the freeholder. Mrs Barnett stated that she was “... a lot more naïve then than I am now”. As such Mrs Barnett did not investigate why no demands were received from the freeholder for building insurance.

13. The Applicant stated that the property deteriorated over time and as a result of enquiries, the Applicant was informed by neighbours that Mr Cato (who had a shop on Askew Road) was the manager for the property. Mrs Barnett wrote to Mr Cato on 10.10.2012 about the need for the repairs for the property, there was no response. As a result she followed up with further letters on 8.11.2012 and the 03.02.2013.
14. In her witness statement in paragraph 5 Ms Barnett stated as follows:-
"...I became increasingly concerned that the building was not being adequately maintained. In particular since October 2012, prior to instructing solicitors, I wrote to Mr Cato on three separate occasions requesting various works, specifically to the roof over my bedroom as this was, and continues, to leak. I tried to see if I could enter into a constructive dialogue... 6.In December 2012 when Mr Cato called in person to discuss an issue with a squatter who had broken into the basement flat and caused us to call the police on more than one occasion I took the opportunity to show him the bedroom ceiling damage and asked him to arrange for the roof to be repaired. I received no response... In addition requests for confirmation that the building was insured have been ignored..."
15. The Applicant stated that Mr Cato informed her that he would speak to the family of the deceased freeholder about the repairs as a result of concerns about whether the premises was being insured.
16. The Applicant stated that she had then commissioned an independent surveyor's report with regard to the state of the building, a copy of which was included in the hearing bundle.
17. The Report dated 14 September 2012, was prepared by Mr Rickard BSc MRICS of Brittain Hadley following an inspection on 13 September 2012. The inspection report had been annexed to the section 22 notice referred to above.
18. The Report detailed disrepair to the property in particular in paragraph 5.21, the report referred to *"...Poor quality felt flashings, 5.22 evidence of damp penetration to the main flank wall area within the main rear addition bedroom at first floor level, 5.23 asphalt unprotected from solar effects, 5.24 repairs required to the roof such as removing the felt flashing, re coating the roof, and capping the parapet walls."*
19. In paragraph 8.01 of the report, which referred to the Soil, waste pipe and drainage, the report noted as follows:- *... There is obvious evidence of leakage of this waste and vent pipe we suspect principally from the upper ground floor connection but may also be from the first floor connection and the vent section above the main roof is unsecured, Significant repairs of the leakage is required to avoid further damp staining and damage to the main rear elevation of the building to all levels..."*

20. Repairs were also identified as being necessary to the entrance portico 9.18, the main flank wall paragraph 9.22, rear addition walls 9.32.
21. The internal and external decorations were also considered to be in poor condition (paras 13.01 and 13.02)
22. The Report also noted that both the front and rear garden was in need of maintenance. In general the report concluded -: *Our inspection has confirmed that the premises was generally found to be in poor order and significant repairs are required...* The report then listed the repairs needed to bring the property up to standard.
23. Mrs Barnett stated she had also maintained her own contents and building insurance for the flat and had most recently purchased insurance in March 2013.
24. Mrs Barnett was asked about whether work had commenced at the premises, she stated that she was aware that some work had taken place however she was not aware that there was a connection between the work and the survey provided. The Applicant also noted that no section 20 Notice had been served, and the only information with which she had been provided was the back pages of the tender document.
25. Mrs Barnett also stated that according to the tender document the cheapest contractor had not been used, the Tribunal were referred to a letter dated 2.10.2013 from Pain Smith Solicitors, which had been sent on the Applicant's behalf. The third paragraph of the letter noted that-: *"...Please note that our client takes issue with the fact that you have failed to comply with the requirements under statute to consult over any and all major works..."* The solicitor then listed a number of issues which detailed the fact that those acting on the Respondent's behalf had not complied with Section 20, including the fact that *"It was unclear why the Respondent had not adopted the cheapest estimate recommended by Graham Associates."*
26. In his cross examination of the Applicant, Mr Jones noted on behalf of the Respondent that the Applicant had not sent a copy of the surveyors report to Mr Cato at the earliest opportunity.
27. Mr Jones also referred to the letter from Graham Associates dated 29 July 2013 which he stated had been a reply to the Section 22 notice. He pointed out that the letter from Graham Associates referred to the notice. Given this, he submitted that the section 22 notice had been effective and that repairs had now been carried out, and that accordingly there was no need for an order to be made.
28. The Applicant did not accept that the Respondent's representative had complied with the notice. In particular she referred to the insurance of

the property. Mrs Barnett also noted that there had been no tenant in the ground floor flat for four years and that there was no electricity in the hallway. There was also no key to enable her to read her gas meter. Given this her application was to cover the long term proper management of the premises. Mrs Barnett was also concerned that the work had been undertaken without an adequate level of surveying and she was not in a position to judge the efficacy of the roof work.

29. Mr Jones did not accept that the issue of insurance had been raised prior to the hearing.
30. In reply to the issues raised by the Applicant, Mr Jones relied on the evidence of Mr Cato. In reply to questions raised by Mr Jones, Mr Cato stated that he was first appointed after Mrs Iris Shoucair Aikman died. Her daughter Ms Roberts came into the shop on the basis that she wished to let out the basement flat as he ran a property letting business from his shop. Mr Cato had been managing the flat for the last ten years.
31. Mr Cato in his witness statement stated that the Applicant's premises were the only part of the building which was subject to a lease, the rest of the premises were owned by the Representatives of the Respondent's estate. He stated that the Applicant had telephoned his client Ms Roberts who lived in New York in the United States of America. Although Mrs Barnett asked for confirmation of his client's name, no information was provided about the purpose of the telephone call, and no details of any disrepair or any other management issues were raised during the brief conversation.
32. Mr Cato stated in answer to questions from Mr Jones that he had not received a number of the letters purportedly sent by the Applicant, or on the Applicant's behalf. Given this he did not accept that he had been notified on more than one occasion about the disrepair and had taken no action.
33. Mr Cato stated that he was rarely paid for the services he carried out at the premises although he visited the premises regularly. His remuneration was based on revenue received from the renting of the premises. Mr Cato denied that he had not been proactive in managing the building as he had been responsible for ensuring that the squatters were removed from the basement.
34. Mr Cato stated that service charges had not been collected at the premises. In paragraph 7 of the witness statement Mr Cato stated: *"Unfortunately, unknown to me a former staff member of my office in charge of 10 Askew Road had not issued service charges. Consequently, none have been raised or demanded from the Applicant. I believe the proprietor of the property is entitled to six years ground rent together with payment of other services. I was quite upset to*

learn that the proprietor did not receive payments for the services rendered to the Applicant's part of the premises. The whole of the property was now insured with Allianz Insurance Plc." In his statement he confirmed that the sum assured was £625,000, he confirmed the policy number. Mr Cato stated that the insurance had been obtained up to that amount as this sum assured was offered at a special rate by the insurance company.

35. Mr Cato did not have any of the previous policy certificates, to submit to the Tribunal for the premises at the hearing, and no copies of the previous insurance were in the bundle.
36. Mr Cato in his statement did not accept that repairs had not been carried out to the premises. He stated that repairs had been carried out in 1999 and again in 2005. He stated that *"...The roof had been properly repaired and up to recently the Basement Flat was completely refurbished. In 2005 the building was repainted..."*
37. Mr Cato stated that the Applicant had not indicated a willingness to contribute towards the cost of the repairs.
38. Mr Cato stated in paragraph 12-: *"... I would say that the application was premature. The Applicant indicated that she wished the building to be insured and for the roof to be repaired. Both matters have been dealt with. In future, I have now taken this matter personally in hand so that all the repairs could be carried out in time and payments demanded and paid for by the tenants of the premises..."*
39. Mr Cato was asked additional questions both by the Applicant, and the Tribunal. He was asked about whether he had any qualifications for property management, he accepted that although he had experience, he did not have any formal qualifications. Mr Cato stated that he was a member of a regulated body, although he was not able to say which body. He also did not have information about the amount of public liability insurance held by him. Or details of the last fire safety assessment undertaken at the premises or whether other surveys had been carried out.
40. Mr Cato was also asked whether the works undertaken at the premises had been undertaken following the service of a section 20 notice in compliance with the Landlord and Tenant Act 1985, and whether demands for service charges had been served on the Applicant.
41. Mr Cato was not able to confirm that a section 20 notice had been served, in respect of the demands for service charges this had been the responsibility of his colleague. Mr Cato was asked how the work was being funded. He stated that he was currently holding funds from the client which enabled him to carry out the works.

42. He was asked about why he had commissioned Graham associates. He stated that he had got in touch with Graham Associates and had asked him to look at the report. He was aware of Graham Associates from work that they had undertaken in the area which he considered to have been dealt with well.
43. The Tribunal referred to the letter dated 29.07.2013 together with a schedule of work. The schedule was a summary of the report prepared by Mr Rickard BSc MRICS of Brittain Hadley relied on by the Applicant.
44. In relation to why the cheapest tender had not been chosen and the issues set out in the letter from the Applicant's solicitors dated 2.10.2013, Mr Cato stated that these issues had been referred to the Respondent's solicitor for their response and he was unable to add any detail as to the reason why the specific tender had been chosen.
45. Mr Cato stated that he would check the records in relation to the public liability insurance and would confirm the management organisation that he was a member of. He stated that he inspected and would continue to inspect the property on a regular basis to make sure that everything was ok if his appointment was maintained.

The tribunal's decision on whether grounds exist for the appointment of a manager

46. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made a determination that on the evidence provided there may be a prime facie case that grounds exist for the appointment of a manager as specified in section 24(2) of the 1987 Act. The Tribunal determined that in order to make a final decision about the application as a whole it would need to further consider, whether circumstances existed that made it (i) just and convenient to make a management order. And (ii) to determine whether the proposed manager was a suitable appointee and, if so, on what terms and for how long should the appointment be made? Once the Tribunal had considered these issues it could consider whether the circumstances justified the appointment of a manager.
47. In order to satisfy itself that it is just and convenient to make an order, the Tribunal needed to satisfy itself that the circumstances which exist at the premises; and the proposed arrangements for the appointment of a manager were so efficacious that this justifies disturbing the status quo.

48. The Tribunal determined that this could not be decided without hearing from the proposed manager on the plans that he would implement if he was appointed.
49. The Tribunal heard from Mr Craig Newell the proposed manager. Mrs Barnett explained that there was no business or personal relationship between the Applicant and the manager. The Applicant had asked their solicitor to arrange for a suitable manager. The solicitor had approached the Royal Institute of Chartered Surveyors for a list of surveyors who were willing to act as Lands Tribunal appointed managers and had selected Mr Newell from the list. Mr Newell confirmed that he did not know either the Applicant or her solicitor prior to his agreeing to being put forward as the proposed manager of the building.
50. Mr Newell provided a statement in his statement of intention he set out that he was a member of the Royal Institution of Chartered Surveyors having qualified as a chartered surveyor in 1989, he qualified as a chartered arbitrator in 1991. He was the partner responsible for block management of approximately 75 blocks ranging in size from three units to 177 units. In his statement Mr Newell set out that many of the blocks were managed on behalf of RTM or RTB companies.
51. Mr Newell set out that he was also an LVT appointed manager of 82 Maida Vale W9.
52. In his statement, Mr Newell set out that the day to day management would be carried out by Craig Sheehan, once he was satisfied that the most urgent issues had been dealt with. The priorities for management would be that he would ask his firm's accountant to carry out a review of the company's records and report back on the state of the accounts, and the actions that need to be taken.
53. He would arrange for a building surveyor to assess the property and report with a full schedule of dilapidations and a timed priority of work for immediate action, medium term priorities and long term over 18 month priorities.
54. Mr Newell was asked about whether he had visited the premises and if so whether he had a view on the work undertaken. Mr Newell considered that there was no follow through from the original report, and that from what he had seen he was not satisfied that the work had been carried out to the appropriate standard.
55. He stated that he would arrange for a re-inspection of the property by the original surveyor, who had prepared the report from Brittain Hadley to establish the extent to which the work complied with/ addressed the issues raised in the report.

56. Mr Newell would arrange for a review of the health and safety documentation including any risk assessments and fire plans and plans for the control of asbestos. If there were no surveys he would arrange for the surveys to be carried out.
57. Mr Newell confirmed that he had appropriate public liability insurance up to thirty five million pounds.
58. He stated that he understood the duty of a court/ tribunal appointed manager, as a result of his experience as a manager appointed by the Tribunal. He stated that initially he would manage the issues at the property and that one of his first priorities would be to put the property on a proper financial footing, for example he was aware that the lease required the Applicant to contribute 33% of the cost. He would ensure that legally compliant demands were served. In respect of the freeholder's contribution towards the management of the premises, he would collect the rents from the letting of the premises where necessary, to go to the cost of managing the premises.
59. His proposed management fee would be £2000 per year, and there would be additional charges for other works such as serving section 20 notices. Additional work such as serving notices and attending court/tribunal would be carried out at an hourly rate.
60. Mr Newell stated that the proposed management period would be three years this was on the basis that Mr Newell considered that it would need at least this time to implement the changes, having seen the information. There was also the fact that there was an absentee landlord who needed to be consulted, he also needed to establish whether an asbestos survey existed or had been carried out before any further work was implemented. Mr Newell considered that it would take some months before all of the information could be established.
61. Both parties briefly addressed the Tribunal by way of closing submissions. Mr Jones on the applicant's behalf submitted that the Applicant had not sent out the survey report although it had been obtained in September 2012, she had in fact waited to serve it with the section 22 notice. The Tribunal should note that work had been undertaken within a month of the section 22 notice. The report had been referred to Graham Associates who had reasonably tendered the work.
62. The cost of the work had been considerable, further the family could not afford to pay for a manager, and the appointment would lead to an order for sale of the property because of the hardship caused. Mr Jones

submitted that the disrepair was not excessive at the property. Mr Jones submitted that there was temporary disconformity however any “snagging” would be addressed before the end of the contract.

63. The Applicant submitted that when Mr Newell visited the property three days prior to the hearing, he had not been satisfied with the work and that the issue was not the cost of the work, it was what was in the long term interest of the property. There were considerable management issues at the premises and what was referred to by counsel as “temporary disconformity” had lasted for over six years. The Respondent had received the first letter in October 2012 and had had one year to get things right.
64. The circumstances of the leaseholders needed to be taken into account as well as those of the landlord, and the issues such as whether the property had been insured and the fact that disrepair had affected the comfort of the leaseholders who had had to put up with a leaking roof and water coming into the premises for over a year, this ought to be taken into account by the Tribunal.

Reasons for the tribunal’s decision

65. The Tribunal in reaching its determination considered whether in accordance with section 24(2) the Respondent was in breach of any obligation to the tenant under his tenancy and relating to the management of the premises in question.
66. The Tribunal in determining this issue referred to the lease. Clause 5. Of the lease provided that-: *Subject to and conditional upon payment being made by the Tenant of the Interim Service Charge in the manner hereinbefore provided (a) To maintain and keep in good and substantial repair and condition: (1) the main structure of the Property including the roofs and foundation the principal internal timbers and the timber joists and beams of the floors...(b) To maintain insurance in accordance with part 1X (c) As and when the landlord shall deem necessary but at least once in every five years from the commencement of the term to decorate the exterior for the property and the common parts.*
67. The Tribunal noted the evidence of the leaseholder that the premises had been in disrepair from the outset of her occupancy and that she had not been informed, as to who the landlord’s managing agent was. The landlord’s agent also took no steps to put the landlord in funds so as to enable the landlord to be able to carry out the obligations of the

tenancy. This was a very serious matter given the extent of the disrepair set out in the *Brittain Hadley Report*.

68. The Tribunal carefully listened to the evidence of Mr Cato, and it appeared to the Tribunal that Mr Cato had been engaged to manage the rented part of the property, this was apparent from the fact that no proper arrangement were put in place to remunerate him. As such it appeared to the Tribunal that the leased part of the property together with the fabric of the building had not been the subject of proper management for a sustained period of time.
69. The Tribunal also noted that Mr Cato did not appear to understand the Residential Property Management Code issued by RICS for the management of leasehold residential property, and this was evident from his failure to serve demands and to comply with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985.
70. Accordingly the Tribunal are satisfied that grounds exist for the making of an order under Section 24 of the Landlord and Tenant Act 1987. The Tribunal consider that the Landlord has not complied with the section 22 notice. Although it is accepted that they have undertaken some work at the premises. Accordingly the Tribunal consider that the circumstances at the premises are such that there has been a breach of the lease on the landlord's behalf and that it is just and convenient for an order to be made.
71. The Tribunal having heard evidence from Mr Newell are satisfied that Mr Newell should be appointed as a manager at the premises. The Tribunal however are mindful of the size of the property and the potential financial burden on both the Applicant and the leaseholder of the fee proposed by the manager.
72. The Tribunal also in its knowledge and experience consider that the fee proposed is somewhat higher than that seen by the Tribunal for properties of comparable size, notwithstanding the management issues. Whilst the proposed manager justifies this on the basis of the work needed at the premises, the Tribunal consider that a reasonable fee, which reflects the management issues, is £1500.00 per annum. The Tribunal determines that the fee for the first 18 months should be £2000.00 per annum and thereafter the fee should be reduced to £1500.00
73. Should the manager consider that this fee is not reflective of the work needed at the premises then the managing agent may apply for a variation of the management order. The order should be amended to reflect the fee determined by the Tribunal, and the availability of the provision to apply under section 24 (9) of the Landlord and Tenant Act 1987.

74. The duration of the order shall be three years, should the party wish to extend the order then prior to the expiry of the order then the Applicant must apply.
75. The order shall be effective from **8 November 2013 until 7 November 2016**. Being the date upon which the Tribunal announced its determination.

Application under s.20C and refund of fees

76. At the end of the hearing, No application was made for a refund of the fees that she had paid in respect of the application/ hearing¹. The Tribunal make no order.

Ms M.W.Daley

04/02/2014

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Section 24 of The Landlord and Tenant Act 1987

A leasehold valuation tribunal may, on an application for an order under section 24 of the Act, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which Part II of the Act applies:

- (a) such functions in connection with the management of the premises, or
- (b) such functions of a receiver,
or both, as the tribunal thinks fit.

Such an order may be made only where the tribunal is satisfied that one or more of the circumstances set out in section 24(2) of the Act exist and only, in each case, where the tribunal is satisfied that it is just and convenient to make the order in all the circumstances of the case.