10719

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LAM/2014/0021**
Property	:	**47 COMPAYNE GARDENS, LONDON NW6 3DB**
Applicant	:	**MS CHRISTIAN BENZIE**
Representative	:	**SOLOMON TAYLOR SHAW**
Respondent	:	**47 COMPAYNE GARDENS LTD**
Representative	:	**MS KATHERINE HAWORTH**
Proposed Manager	:	**Mr Ben Preko, Salter Rex LLP**
Type of Application	:	**Appointment of a manager and application under s20C Landlord and Tenant Act 1985 in relation to costs**
Tribunal Members	:	**Ms L Smith (Tribunal Judge)** **Mr H Geddes, , JP, RIBA, MRTPI** **Mr J Francis**
Date and venue of Hearing	:	**Friday 30 January 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2 March 2015**

DECISION

Decisions of the tribunal

(1) The Tribunal is satisfied that it is just and equitable to appoint Mr Ben Preko of Salter Rex LLP as manager of 47 Compayne Gardens, London NW6 3DB ("the Property") for a period of three years.

(2) The order made by the Tribunal is appended to this decision at Appendix 2

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge

The application

1. The Applicant is the leaseholder of Flats 1 and 6 of 47 Compayne Gardens, London NW6 3DB ("the Property"). A copy of the leases in relation to Flats 1 and 6 ("the Lease") was provided to the Tribunal. The Tribunal understands that the leases of the other flats in the Property are in the same form. The Property is a house converted into 6 flats. The Applicant seeks an order under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") to appoint a manager of the Property due to failure of the Respondent company which is the freehold owner and lessor of the Property. The Respondent company is a right to manage company ("RTM company") formed of the 6 leaseholders of the Property. The Applicant also seeks an order pursuant to section 20C Landlord and Tenant Act 1985 ("the 1985 Act") limiting the Respondent's ability to pass on its costs of these proceedings to the leaseholders.

2. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

3. At the hearing, the Applicant appeared represented by Ms Gourlay of Counsel. The Respondent was represented by Mr Joshua Zausmer and Ms Katherine Haworth and by Ms Creer of Counsel. The proposed manager, Mr Preko, also attended and gave evidence.

4. In addition to the bundles prepared by the Applicant's solicitors for the hearing, the Tribunal received a skeleton argument from Ms Creer for the Respondent and a witness statement signed by both Mr Zausmer and Ms Haworth to which was appended a proposed agreement for appointment of a managing agent with Roger Samuel Residential Lettings and Property Management. The Respondent also produced a small bundle of additional documents being a disciplinary panel hearing in relation to Salter Rex LLP dated 21 January 2014 and letters

from the other leaseholders of the Property, Dr Shirin Eghtesadi and Mahan Namin.

5. Mr Namin had applied to be joined to the application as an interested party and the Tribunal had indicated on 21 January that he should be so joined. Mr Zausmer and Ms Haworth informed the Tribunal that Mr Namin had wanted to attend but was not able to do so but no adjournment was sought. Mr Namin had not filed any statement of case. Ms Creer confirmed that she was not instructed by Mr Namin.

6. In relation to the witness statement of Mr Zausmer and Ms Haworth, Ms Creer sought permission to adduce that late. This was opposed by Ms Gourlay on the basis that it was irregular as it was signed by 2 persons and also on the basis that it was not served in accordance with the directions. It seemed to the Tribunal that the statement did not really advance matters since it was mainly concerned with a proposal by the Respondent that, as an alternative to the appointment of a manger, a managing agent should be appointed. Whilst this might be a consideration for the Tribunal, the statement did not answer the main issues which the Tribunal had to address. However, since there was no prejudice to the Applicant and Ms Haworth was being tendered to give evidence for the Respondent in any event, the Tribunal permitted the statement to be adduced.

7. Ms Gourlay also objected to the late introduction into evidence of the document relating to the disciplinary panel hearing in relation to Salter Rex LLP noted above. Ms Creer indicated that the document had come to the attention of the Respondent late as it was e mailed to Mr Zausmer by a neighbour. Ms Creer had received confirmation from RICS that it was a genuine document but had been removed from their website as it was over 12 months since publication. Since Mr Preko was present at the hearing and could address that issue in evidence and since it might be highly relevant to the issues, the Tribunal also permitted that document to be adduced.

Main complaints

8. Under section 24 of the 1987 Act, the Tribunal has the power to order the appointment of a manager if the landlord is in default of its obligations and it is just and equitable so to order. The Applicant alleges that the Respondent is in breach of a number of obligations. Those can be grouped into 3 main headings – failure to manage the Property properly including failure to repair/redecorate, failure in particular to repair the roof/apply insurance monies received in that regard to repair the roof and breach of the covenant of quiet enjoyment. There was no issue regarding proper service of the section 22 notice but Ms Creer did take issue with the complaints of the Applicant in her statement of case ranging beyond what was contained in the section 22 notice. However, those are the 3 main headings as comprised in the

section 22 notice even though the statement of case does expand upon them. The section 22 notice also asserts that the Respondent is in breach of the RICS Residential Management Code of Practice ("the Code") by failing to repair and failing to consult but those failures are simply part of the main headings and are addressed within those main headings below.

9. The Applicant relied also on a decision of the Tribunal dated 4 February 2009 (LON/00AG/LSC/2008/0515) which dealt with a service charge dispute referred to the Tribunal by the County Court following issue of proceedings against the Applicant for failure to pay service charges. The Applicant relied in particular on the findings of the Tribunal that Mr Zausmer and Ms Haworth took a protective approach to management of the Property, had somewhat *"oligarchic tendencies"* and were failing to manage the Property to the benefit of all the lessees.

Failure to properly manage the Property and to repair/redecorate it

10. Clause 5(5) of the Lease requires the Landlord to *"maintain repair redecorate renew amend clean repoint...The structure of the Building and in particular without prejudice to the generality thereof the roofs foundations external and internal walls...The entrance hall staircase landings and passages of the Building and where necessary keep the same suitably carpeted clean and provided with electric lighting..."*

11. Ms Creer pointed to clause 4(i) of the Lease which provided that *"The Landlord shall use its best endeavours to maintain the service charge at the lowest reasonable sum consistent with due performance and observance of its obligation herein..."*. This clause formed a common thread throughout the Respondent's submissions and evidence. It is therefore convenient for the Tribunal to record at this juncture that it did not read this clause as in any way qualifying the Landlord's covenants under the Lease to repair or the manner in which the Landlord should manage the Property. The Tribunal notes in particular the word *"reasonable"* and that the service charge is to be *"consistent with"* the Landlord performing and observing its obligations.

12. The Applicant asserted that the Respondent had not carried out any maintenance or decoration of the Property for approximately 10 years. She asserted that the Property required external and internal repair and redecoration (the roof is dealt with separately below). She also asserted that the Respondent had failed to keep the internal common parts clean and tidy and failed to maintain the garden.

13. In April 2014, the Applicant asserted that the Respondent had sought to recover significant sums of money from the lessees of the Property without proper consultation and had accepted a quote without gauging the lessees' views. The Applicant stated that she had paid sums demanded of her by way of service charges even though she disputed

whether some were due or whether proper procedures had been followed but said that this approach was symptomatic of the general approach to management by the Respondent.

14. The Applicant also pointed to the Respondent's failure to follow proper procedures in relation to the demanding of service charges and failure to follow the procedures set out in the Lease at clause 4 (which requires audited and certified accounts and the supply of accounts to the lessees). It is fair to note at this point that in evidence the Applicant accepted that she had not asked for certificates or that the accounts be brought up to date. She had though asked for accounts and AGMs and she had not received answers. She also accepted in evidence that section 20 notices had now been served by the Respondent but continued to dispute that this amounted to proper consultation given that the quotations supplied were inadequate and were said to be so by Salter Rex (see below). The Tribunal also noted that the quotations did not include the sort of specification that one would expect for works of this nature.

15. Ms Haworth gave evidence that the Respondent did have accounts checked, audited and approved but she did not have those with her and had not to her knowledge produced them to the Applicant as she had not asked for them. In general, Ms Haworth's evidence was that the Property had always been run informally by her and Mr Zausmer (at no charge by them and considerable inconvenience to them). No other lessees had objected apart from the Applicant. She clearly believed that clause 4(i) required the Respondent to, as she put it *"run the house as efficiently as possible and keep the costs down"*. When it was put to her that the clause said nothing about efficiency she replied that she took it for granted that this was what it meant. Ms Haworth admitted in evidence that she and Mr Zausmer had not budgeted for future expenditure in previous years (although she said there was one for 2015). They just hoped that the money they demanded would pay for what they thought needed doing. Although Ms Haworth said that the Respondent had its own bank accounts, she was unsure whether she and Mr Zausmer had any liability insurance as officers of the Respondent.

16. The Respondent accepted that the exterior of the Property required maintenance including redecoration but said that this was planned. In relation to failure to consult, the Respondent pointed out that it had since complied and that others in the Property had been content to deal with the repairs by way of an informal approach rather than insisting on formal consultation. The Respondent's statement of case pointed to repairs which had been carried out – in October 2012 to replace the parapet to a front facing balcony, in February 2013 to the roof, in August 2014 to roof flashings, in June 2014 to drainage, in August 2014 to clear a downpipe, in September 2014 to the roof, in November 2014 to clear guttering. Ms Haworth agreed in evidence that redecoration works were needed from about 2010. The Respondent had wanted to

have it done but for one reason or another didn't. They had then got quotes but those had been very different so it was put off again until last year. Ms Haworth accepted that no survey had been carried out for many years. She thought that the last time this had been done was when the Respondent had acquired the freehold. Ms Gourlay took Ms Haworth through the specification and she accepted that the works which Mr Moore had specified as requiring work were indeed necessary.

17. Ms Haworth said that the common parts had been redecorated about 5 years ago although she accepted that she and Mr Zausmer had been dissatisfied with the workmanship but had not taken any action to have the works rectified or recover money from the decorator for poor workmanship.

18. The Applicant said in evidence that she had not been aware of the works set out in the Respondent's statement of case but stood by her assertion that this did not amount to adequate maintenance and repair in the past 10 years.

19. The Respondent also said that they arranged for a handyman to carry out the tidying and clearing of the garden and common areas and minor repairs at a charge of £12 per hour. Ms Haworth also said in evidence that she carried out some of the cleaning – usually early morning so that the Applicant might not be aware – and that Mr Zausmer and others also did some. The Applicant disputed this and said that she herself had carried out cleaning of the common parts until about 6 months ago when she had stopped in an effort to encourage the Respondent to take its own responsibilities seriously. In relation to the state of the common parts, the Applicant gave evidence that the common parts were filthy and asserted that they should be cleaned at least once per month. In relation to the garden, she was not seeking a high standard but just didn't want to live in squalor. She pointed out that the Respondent had produced no invoices to show that work had been done to the common parts or to the garden.

20. In relation to the Respondent's (late) suggestion that a managing agent should be appointed as opposed to a manager, the Applicant gave evidence that she was concerned that the Respondent (and in effect Mr Zausmer and Ms Haworth) would still have control over that person and could sack them just as soon as he were appointed and would in any event control what works the managing agent could have carried out. This was to some extent borne out by Ms Haworth's answers to Ms Gourlay under cross-examination when she admitted that the Respondent would tell the manager not to employ a cleaner.

21. The Tribunal received in evidence a survey report prepared by Mr Moore of Salter Rex LLP. This noted a number of external and internal repair and redecorations works which were required. As noted above, it

was not disputed by Ms Haworth for the Respondent in evidence that the majority if not all of the works specified were needed and had not been done.

Repairs to the roof

22. As noted above, clause 5(5) of the Lease requires the Landlord to repair the roof. The Applicant asserted that the roof of the Property was badly damaged in February 2014 by bad weather. This affected in particular one of her 2 flats – Flat 6. The Applicant had reported this to the Respondent. The Respondent had work carried out to the roof described as "temporary". However, the Applicant's tenant in Flat 6 had reported that the roof was defective. In March 2014, the Respondent had indicated that a permanent solution was being arranged but nothing further had been done. The Applicant's tenant therefore terminated her agreement and moved out. In evidence, the Applicant said that the roof had leaked 3 times in the past year. Her flat had been damaged 3 times as a result and she could not decorate because it was damp. In her view, it was not reasonable for the Respondent to seek to engage a non-specialist roofing contractor to carry out works to the roof (as the Respondent was seeking to do).

23. Part of the Applicant's complaint in relation to the roof was that the Respondent had received monies from its insurer to repair the roof (£2553) but had not applied those monies to carrying out any repairs and had failed to account for the insurance monies received when demanding service charges from the lessees.

24. The Respondent pointed out that a temporary repair had been carried out to the roof on the same day as the damage was discovered and said that the repair was sound and watertight. Further repairs would be carried out in due course when scaffolding was erected for the other external repair works. In relation to the insurance monies, the Respondent indicated that £589 had been applied to settle the invoice for the temporary repairs and the balance would be used when further works were carried out.

25. The Respondent indicated that inspections of the roof since the date of the initial damage had been inconclusive and said that there might be other reasons for a continuing problem with damp coming into the Applicant's flat, such as cracked brickwork, blocked guttering or dampness in the roof space which may be caused by the Applicant herself installing an extractor fan which vented into the roof space (which the Applicant denied was the case).

26. The Salter Rex survey was an internal survey and did not carry out an external survey at roof level. It noted though from the interior of the roof space that there had been a number of repair works and dampness in the roof space.

27. Mr Preko answered questions about the Salter Rex survey in evidence. He pointed out that the survey was carried out at ground level and could not have identified what works were required to the roof until scaffolding were erected and a proper inspection were carried out. The specification attached to the survey related only to the internal condition of the roof. He pointed out though that the normal practice where works are being specified is to include such costs in the budget. If those were not required then that would reduce the final account sum at the end of the works. It would be foolish not to include a figure for that contingency bearing in mind that one did not know what would be found on closer inspection. He did not read clause 4(i) as affecting this view. That clause related to normal maintenance and the way in which competitiveness would be ensured in relation to major works was via consultation. Mr Preko also confirmed in re-examination that if he were appointed, he would prepare a planned maintenance programme and prepare a budget at which stage urgent works could be identified and money raised for those sooner rather than later for interim works with other works being deferred depending on money available.

28. Mr Moore had also inspected the quotations obtained by the Respondent but for reasons given in his report, he did not consider those satisfactory in terms of a specification of work and concluded that they were inadequate. The 2 quotations were substantially lower than the estimate which Salter Rex considered necessary to carry out the works. This does not of course make them unsatisfactory in themselves but a breakdown of the comparable prices suggests that the estimates did not include a number of items which it would be necessary to cover and did not provide for example for independent supervision, guarantees or contingencies.

29. In evidence, Ms Haworth for the Respondent said that there had been a specification given to the 2 contractors who had quoted for the Respondent. One had done a good job on another house in the street and had prepared the quotation based on an inspection. However, on closer questioning by the Tribunal Ms Haworth was forced to accept that she did not recall if there was a specification and that there may have been but if there was then it was one done by she and Mr Zausmer and that there was in any event no need for a specification. She admitted that she had no knowledge of requirements for a proper contract such as the need for CDM Regulations compliance and insurance. It was clear from Ms Haworth's answers under cross-examination that there had been no formal specification and that a lot of what would normally be expected from contractors carrying out major works such as guarantees of quality of works and insurance had been left to assumption. Ms Haworth indicated that a surveyor had not been appointed to specify the works or liaise with the tenderers as she had thought that they could manage without but it was clear that if the works were substandard the Respondent would have no avenue of redress.

30. The general tenor of Ms Haworth's evidence in relation to the roof was that the Respondent was unable to form a view about what was needed by way of repair until scaffolding was up and it was not sensible for that to be erected until the other repair and redecoration work was going ahead. She considered that the temporary repair was holding up well and thought it reasonable to leave it.

Breach of covenant of quiet enjoyment

31. Clause 5(1) of the Lease contains the usual covenant for quiet enjoyment. The Applicant's main complaint in this regard is that she has been harassed by Mr Zausmer who has directed *"threatening behaviour and verbal abuse"* towards her. She also complained of the Respondent's officers ie Mr Zausmer and Ms Haworth, refusing to respond to her or meet with her and effectively excluding her from decisions relating to the management of the Property.

32. The Tribunal was referred to various e mails from Mr Zausmer to the Applicant, the content of which can only be described as unnecessarily offensive. The Respondent's grounds responding to the application regretted any offence caused by the correspondence and described this as a *"forthright approach"* but in the view of the Tribunal the tone went way beyond anything which could be described as forthright. It was said in the Respondent's grounds that the approach *"was not intended to be hostile to the Applicant, but was in the interest of the good management of the building"*. The Tribunal fails to see how this correspondence could be described as other than intentionally hostile nor how it could be said that a tone which was so offensive could assist in the management of a building which is clearly suffering from the worsening relations between the Applicant and Respondent.

33. Ms Creer sought to suggest to the Applicant that this correspondence was in Mr Zausmer's capacity as a neighbour and not as an officer of the Respondent company. As the Applicant said in evidence and as the Tribunal finds based on the correspondence before it, that distinction is not the reality of the situation and nor could the Applicant be expected to distinguish in that way. Even Ms Haworth was constrained to accept in evidence that she would not have written to the Applicant in the terms which Mr Zausmer adopted.

34. The Tribunal also notes that some of this correspondence refers to a refusal of the Respondent's officers to even meet with the Applicant or involve her in decisions relating to the management of the Property which is equally disturbing. On one occasion when Ms Haworth did agree to a meeting with the Applicant (for her to inspect the quotations for the planned works), this was arranged at a coffee shop for a period of half an hour and when the Applicant sought to arrange this she was told by Ms Haworth that she was not available. Ms Haworth indicated

in evidence that she did not find it helpful to have meetings with the Applicant and that there was *"no point"*.

35. Ms Creer also put to the Applicant that the acrimony between her and Mr Zausmer arose from a dispute dating back to 2008 when he had sought to extend his flat and the Applicant had objected. Whilst it was clear from the Applicant's evidence that this had caused a rift between her and Mr Zausmer, the Tribunal accepts that this was just one issue and in any event does not excuse Mr Zausmer's attitude to the Applicant since. Nor does it excuse Mr Zausmer's and Ms Haworth's behaviour in seeking to effectively exclude the Applicant from decisions relating to management of the Property.

36. Another issue which had arisen was the installation by Mr Zausmer and Ms Haworth of a padlock on the access to the loftspace from the common parts. Ms Haworth indicated that this had been done to stop unauthorised access by other workers (although it was not clear who this might have been). The only keys were held by her and Mr Zausmer and if they were away she considered that it was sufficient that they would arrange for someone else to have them.

37. In closing, Ms Creer submitted that the Respondent had remedied the breaches complained of in the section 22 notice eg in relation to section 20 compliance. The period for compliance in relation to roof repairs (7 days) was unreasonable and in any event, the Respondent was planning works. The conduct complained of in relation to correspondence from Mr Zausmer to the Applicant was not capable of amounting to a breach of the covenant of quiet enjoyment.

38. Ms Gourlay submitted that it was evident that the Property was in disrepair. The Tribunal had the surveyor's report in evidence. Even Ms Haworth had in evidence admitted that repairs were long overdue. There had been no survey for a considerable period. This had occurred because the arrangements were so informal and were being driven by a concern about keeping costs down. Although there had been responses to one-off incidents in relation to the roof, there had been 3 such instances in 2014 and it was clear that this needed intention. If the Respondent waited until the scaffolding was up before deciding what work was required, there would be further delay due to the need for consultation. This was not an excuse for doing nothing. In relation to quiet enjoyment, Ms Gourlay submitted that the Respondent through its directors had interfered with the Applicant's quiet enjoyment not just by writing abusive correspondence but also by failing to repair the Property such that the Applicant had lost the tenant of Flat 6 and could not re-let that flat until the roof was repaired. In relation to consultation, there was nothing which gave the appearance of proper consultation. The quotations were insufficient and the Applicant had been offered 30 minutes to inspect them in a coffee shop.

Just and Equitable

39. Ms Gourlay submitted that there was a general failure by Mr Zausmer and Ms Haworth to manage the Property properly. There were breaches of the mechanism of the Lease in relation to service charge demands and accounting. The correspondence engaged in by in particular Mr Zausmer was something which the Applicant should not have to endure. Mr Zausmer and Ms Haworth were trying to manage the Property for the lowest possible cost which may arise from their reading of clause 4(i) of the Lease but that requires the Landlord to manage for the lowest reasonable cost not the lowest possible cost and does not include doing nothing. There was a failure of Mr Zausmer and Ms Haworth to respond to the Applicant's requests or to meet her and use of abusive language. The relationship between the Respondent and the Applicant had broken down. All of that showed a need for a manager to be appointed. The appointment of a manager would ensure that things were got back on track. Even Ms Haworth and Mr Zausmer now accepted the need for someone other than the lessees to manage the Property. However, the concern about the alternative of a managing agent was that Mr Zausmer and Ms Haworth would continue to be the ones to instruct him and the parties would end up back in the Tribunal. That might be an option once the covenants of the Lease were being complied with and the Property was back up to scratch.

40. Ms Creer submitted that it was not just to appoint a manager rather than allowing the Respondent to engage a managing agent as it now proposed. She also submitted that the Tribunal should not accept Salter Rex as an appropriate firm given the disciplinary proceedings. She submitted that there had been 2 previous findings in 2009 and even if matters were now back in order, the Tribunal could not be satisfied that this would not happen again.

41. The Tribunal received a number of letters from the other lessees in the Property. One was from Dr Eghtesadi who indicated that he was satisfied with the current management set up and had difficulties with the Applicant. He did not support the application. The Tribunal also notes from a follow up letter that Dr Eghtesadi that he does not live in the Property although as he rightly points out that this does not mean that he is not concerned to have the Property properly managed. Mr Nahim indicated that he supports the engagement of a managing agent and supports current management remaining in place. The other letter is unsigned but indicates that the lessee has only been in the Property since September 2014 and therefore only has limited experience of the management but does commend the prompt attention to a water leak into his/her flat. It is noted that the letters do express a concern about the increased cost of the proposal to appoint a manager rather than indicating that the Property is in good repair and does not require such action.

Proposed Manager

42. The Applicant proposed Mr Ben Preko of Salter Rex LLP as the manager. A written statement was produced from Mr Preko setting out the residential management experience of Salter Rex LLP, a structure of the organisation, verification of professional indemnity insurance and management plan for the Property. A proposed order was also produced by the Applicant on which the Tribunal received submissions. The only changes proposed were for there to be a 6 monthly report to both Tribunal and lessees (paras 14 and 8(r)) and that paragraph 13 should be amended to provide for fee recovery by the manager to be in accordance with the terms of the Lease. Both amendments were agreed by both parties. It was proposed that if the Tribunal were minded to make the order, it should commence from 31 March 2015.

43. Mr Preko gave oral evidence and was questioned by Ms Creer for the Respondents and by the Tribunal itself.

44. Salter Rex has been operating for over 150 years. It manages over 3000 units nationwide. It is owned and run by 2 partners supported by 4 associates. Mr Preko is the associate in charge of the Residential and Commercial Department. Mr Preko has 20 years' property management experience and has been Head of the Property Management Department for 8 years. He has been personally appointed by the Tribunal as manager once which is still current and where he is 1 year in to a 5 year appointment.

45. Mr Preko dealt in evidence with the difference between a manager appointed by the Tribunal and the Respondent's suggestion of the appointment of a managing agent where the landlord would remain responsible for decisions in relation to the Property and where the manager would report to the landlord. He understood that his obligations as a Tribunal appointed manager were to the Tribunal although he would of course be liaising with the lessees and performing the management role in accordance with the terms of the Lease. He would also operate in accordance with the Code.

46. In relation to the disciplinary proceedings which the Respondent sought to adduce in evidence, he noted that he had not been personally involved but it was a matter involving allocation of clients' funds. It had involved a particular item of client monies sitting in a suspense account which had not been allocated. Salter Rex had been fined in relation to this incident but RICS had visited Salter Rex within the past couple of weeks and had written saying everything was now in order. The Tribunal gave the Applicant time to produce a copy of this letter which has since been produced. That letter dated 22 January 2015 describes Salter Rex's compliance as "Good".

47. In relation to the work of his Department, he indicated that there were 5 property managers responsible for the 3000 units (which made up about 350 buildings). Each was supported by assistants and administrative back up. Mr Preko himself runs the out of hours' service. Salter Rex also has the capacity to carry out structural surveys. As noted above, the Tribunal had received a survey report from Salter Rex in relation to this application.

48. Mr Preko confirmed that he had visited the Property and that he was content to take on management of it. He considered that it was important to hold meetings with all the lessees and to maintain a relationship with those residing in the Property. He indicated that he would discuss a budget figure with the lessees and how the service charge should be spent. His management fee would be £350 + VAT per unit.

49. Under cross-examination, Mr Preko indicated that he would not be managing the Property personally as he was responsible for oversight of the other property managers. However, he would supervise and be responsible for the property manager with the day to day management responsibility and he would personally be responsible to the Tribunal. He confirmed that the management plan was in standard form but indicated his view that this was because the Lease in relation to the Property was itself in standard form. Ms Creer pointed out clause 4(i) to him and pointed out that this was not a standard form. Mr Preko accepted that this was not standard but said it was not a clause that he had not come across before. In any event, he did not read that clause as meaning that the service charge should be kept at the lowest sum since it was qualified by the word "reasonable" which was in any event consistent with what he considered to be his obligation to the Tribunal and no different to other properties. The need was to carry out management at the most competitive level being in mind the works which have to be carried out.

Decision and Order

50. There was no serious dispute that the breaches asserted in the section 22 notice as to disrepair had occurred. Whilst the Respondent had sought to remedy some of the breaches asserted such as in relation to consultation, the Tribunal is of the view that the remedy was playing lip service to the consultation requirements and did not properly engage with that process. It is also clear that there has been substantial non-compliance with the accounting provisions under the Lease in relation to service charge demands. Whilst the Tribunal does note the views expressed by the other lessees of the Property, 2 of those are the officers of the Respondent whose conduct is complained of by the Applicant, and one other is new to the Property. The Applicant owns 2 flats in the Property and has the right to have a say in the management of the Property. The conduct complained of against Mr Zausmer and Ms

Haworth (to a lesser extent) means that the Applicant is currently effectively excluded from any say into how the Property is managed. The Tribunal is not satisfied that this position would change if a managing agent were appointed as is clear from the evidence given by Ms Haworth. The Tribunal has taken note of what was said about Salter Rex but Mr Preko has been appointed as a manager in relation to one other Tribunal matter. Furthermore, the Tribunal is satisfied from Mr Preko's evidence that the irregularity which was the subject of the disciplinary proceedings (against Salter Rex and not concerning him) has now been sorted out to the satisfaction of the RICS.

51. The Tribunal is therefore satisfied that the circumstances are such that it is just and equitable to appoint Mr Preko as the manager of the Property on the terms set out in Appendix 2 to this decision. Under section 105(4) of the Commonhold and Leasehold Reform Act 2002, the right to manage ceases to be exercisable by the Respondent when the order takes effect.

Application under s.20C and refund of fees

52. The Applicant sought an order under s20C of the 1985 Act on the basis that if a manager were appointed, she would have been successful but even if not, she had still shown that the breaches asserted were made out and the Respondent had recognised the need for a managing agent. Ms Creer submitted that it was not just and equitable given that the Respondent was made up of the 6 lessees and that to prevent it from passing on the costs was oppressive. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Ms L Smith **Date:** 2 March 2015

APPENDIX 1 – RELEVANT LEGISLATION
LANDLORD AND TENANT ACT 1987

PART II
APPOINTMENT OF MANAGERS BY THE COURT

S21 Tenant's right to apply to court for appointment of manager.

(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 a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.

(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.

(3)This Part does not apply to any such premises at a time when—

(a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or

(b) the premises are included within the functional land of any charity.

(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.

(4) An application for an order under section 24 may be made—

(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b) in respect of two or more premises to which this Part applies;

and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

(5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.

(6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7) References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

S22 Preliminary notice by tenant.

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—

(i) the landlord, and

(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with ;

(c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) A leasehold valuation tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4)In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage,

the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

S23 Application to court for appointment of manager.

(1) No application for an order under section 24 shall be made to a leasehold valuation tribunal unless—

(a) in a case where a notice has been served under section 22, either—

(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or

(ii) that paragraph was not applicable in the circumstances of the case; or

(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or

(ii) no direction was given by the tribunal when making the order.

(2) Procedure regulations shall make provision—

(a) for requiring notice of an application for an order under section 24 in respect of any premises to be served on such descriptions of persons as may be specified in the regulations; and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

S24 Appointment of manager by the court.

(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part 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.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii).....

(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied—

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case; or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA)In this section "relevant person" means a person—

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, the tribunal may by order direct that the entry shall be cancelled.

(9A) the court shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance or insurance of those premises.

APPENDIX 2

MANAGEMENT ORDER

In the First-tier Tribunal (Property Chamber) Case Ref: LON/00AG/LAM2014/0021

BETWEEN

MS CHRISTIAN BENZIE — Applicant

-and-

47 COMPAYNE GARDENS LIMITED — Respondent

PROPOSED ORDER FOR THE APPOINTMENT OF A MANAGER

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1. **Ben Preko** of **Salter Rex, Crown House, 265-267 Kentish Town Road, London NW5 2TP** shall in accordance with section 24(1) of the Landlord and Tenant Act 1987 be appointed as manager of the whole of the freehold property of the Landlord situate at and known as 47 Compayne Gardens, London NW6 3DB ("47 Compayne Gardens") (including for the avoidance of doubt the garages, amenity land and other appurtenant property) in place of the Landlord and its successors in title. The said freehold property of the Landlord is registered at HM Land Registry under title number NGL604451 and the title plans registered under this title number are attached to this order for the purpose of identification. The appointment shall be for a minimum term of [three] years commencing on the date of this order.

2. The manager shall exercise in that capacity all the rights of the Landlord and the manager shall carry out in that capacity all the responsibilities of the Landlord in respect of the leases made between the Landlord and the lessees of the various flats at 47 Compayne Gardens in accordance with the terms of this order, save as otherwise limited by this order and save that the manager has no power ability or standing howsoever arising to waive any rights of forfeiture expressly reserved to the Landlord in this order and no acts by him in accordance with this order or otherwise shall be capable of waiving any right of forfeiture presently vested or in the future vesting in the Landlord.

3. The manager shall comply with all statutory requirements and the provisions of the Service Charge Residential Management Code, Second Edition (published by the Royal Institution of Chartered Surveyors and

approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993), including the duties of a manager set out therein.

4. There shall be a transfer of the management responsibilities from the Landlord to the manager pursuant to this order. The date of such transfer shall be such date as is mutually agreed between the (1) manager and (2) the Landlord ("the transfer date") provided that the transfer date shall be no later than **31 March 2015**.

5. For the purposes of facilitating the transfer of management responsibilities and, generally, to assist the manager in the discharge of his functions and duties under this order, the Landlord shall:

   a) no later than one week after the date of this order, transfer to the manager all of the accounts, books, records, bank statements (including, without limitation, those relating to the service charge reserve funds) for 47 Compayne Gardens together with the addresses for service of documents on each of the lessees and a list specifying the individual proportionate contributions of the service charge that is payable by each of the lessees;

   b) no later than three weeks after the date of this order provide all reasonably necessary information (that has not already been provided under sub~ paragraph (a) above) required by the manager in order to take over the management responsibilities of 47 Compayne Gardens, including, without limitation, all documentation relating to the insurance of the estate and of any insurance claims, including in relation to subsidence remedial works and any surveyor's certificates of completion of the same;

   c) by the transfer date, or later upon request from the manager, provide the manager with all necessary authorities and mandates that the manager may require to enable him to deal directly with existing suppliers, contractors, insurers, bankers and other persons:

   d) without limitation to the foregoing, co-operate with the manager in the transfer of management responsibilities and disclose to the manager all such keys and documents as the manager may reasonably require and answer all such questions as the manager may reasonably pose; for the avoidance of doubt, the manager may request documents and pose questions both before and after the transfer date;

6. Between the date of this order and the transfer date, the Landlord shall continue to undertake the day to day management of 47 Compayne Gardens, but shall not enter into any new contracts or obligations (including, without limitation, authorising any works) without the prior consent of the manager (such consent not to be unreasonably withheld), save for any urgent matters requiring action in less than 24 hours.

7. On or before the transfer date the Landlord shall transfer all undisbursed service charge monies held (including, without limitation, service charge reserve funds) to the manager.

8. The manager shall be authorised to carry out the following functions and duties:

a) To receive any ground rents, service charges and any other monies payable by any of the lessees of 47 Compayne Gardens;

b) To account on a quarterly basis to the Landlord for the payment of the ground rent he receives;

c) To administer the service charge account and, as a trustee pursuant to the statutory trust established by section 42 of the 1987 Act, any reserve fund account for 47 Compayne Gardens;

d) To open and operate bank accounts in his own name in relation to the management of the subject premises and to hold or invest any sums received in respect of service, administration charges or other sums provided for in the lease in accordance with the terms of the lease or pursuant to all relevant legislation;

e) To borrow all sums reasonably required by the Manager for the performance of his functions and duties and the exercise of his powers under the terms of this Management Order in the event of their being arrears of, or a shortfall in the service charge contributions, and to keep the Landlord and the Leaseholders fully informed of any such borrowing;

f) To carry out the Landlord's obligations under the leases of each flat at 47 Compayne Gardens, including the obligation to arrange insurance with a reputable insurer;

g) To require the freeholder, its servants or agents to grant him access to all parts of the subject premises controlled by the freeholder as may be

reasonably required including but not limited to store rooms, roof areas, gardens and grounds and any other retained parts of the subject premises;

h) To receive, consider, grant or otherwise deal with all applications for consents of whatever nature arising as to dealings, alterations or any other matters requiring the consent of the Landlord as far as such consents relate to the lessees or their flats;

i) Within 28 days of the transfer date, to send out to all lessees of 47 Compayne Gardens an up to date service charge statement;

j) To send a copy of this order to all the lessees of 47 Compayne Gardens within 28 days of the date of this order;

k) To prosecute such proceedings as are reasonably required to recover any arrears of rents, service charges and other money payable by any lessee of 47 Compayne Gardens whether the sums fell due for payment before or after the date of this order;

l) To bring in his own name and to defend on behalf of the freeholder any action or other legal proceedings in connection with the leases of the subject premises, and to make any arrangement or compromise on behalf of the freeholder and to recover and to retain for his own benefit any such legal costs or fees properly recoverable, in any event subject to the newly appointed Manager informing the Leaseholder of his intention to bring or defend any such legal proceedings and to keep the Leaseholder regularly and fully informed of the progress of such legal proceedings;

m) To appoint solicitors, accountants architects, surveyors and other such professionally qualified persons as may be reasonable be required to assist in the performance of the functions as Manager, and to appoint an agent if necessary to carry out such functions as the Manager is unable to carry out or reasonably believes can be done more conveniently by another or by an agent;

n) To pay all invoices outstanding at the date hereof that are properly due and payable and represent expenditure that is re-chargeable to the service charge accounts under the terms of the leases with the funds provided by the Landlord, and promptly upon receipt of those funds;

o) Any claim shall be brought in the manager's own name and the manager shall be entitled to an indemnity for both his own costs reasonably

incurred and for any adverse costs order out of the service charge account;

p) For the avoidance of doubt, it is stated that for the sums that fell due for payment before the appointment of the manager, the manager's entitlement to recover the same shall not be subject to any right of set off or counter-claim the lessee may have against the Landlord;

q) To produce financial accounts and reports not less frequently than once a year setting out all details of the financial position of 47 Compayne Gardens, including, without limitation, details of the service charge reserve funds;

r) To produce reports on the progress of his/her management and the state of 47 Compayne Gardens every six months, the first such report to be sent out six months from the transfer date, and copies of all such reports are to be sent to each lessee of 47 Compayne Gardens, the Landlord, and the FTT;

s) From the date of this order and throughout the period of his appointment, to ensure that he has appropriate professional indemnity insurance cover in the sum of at least £2,000,000.00 and shall provide copies of the cover note upon a request being made by any lessee, the Landlord or the FTT;

t) To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any lessees owing monies due under the terms of their lease.

9. By the transfer date, the Landlord shall give to the manager copies of all subsisting contracts entered into by the Landlord in relation to 47 Compayne Gardens to which the manager is not a party and shall give them to the manager, whereupon any rights and liabilities arising under any such subsisting contracts given to the manager shall become the rights and liabilities of the manager, save that the manager shall be at liberty to apply to the FTT within 21 days of the transfer date to show cause as to why he should not be bound by anyone or more of those contracts. For the avoidance of doubt, the manager shall not become liable under any contracts entered into by the Landlord in relation to 47 Compayne Gardens which are not given to him by the Landlord.

10. The manager shall be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment in relation to 47 Compayne Gardens, save that

any right to forfeit any lease of any flat at 47 Compayne Gardens, whether presently subsisting or arising in the future is expressly reserved to the Landlord.

11. The manager's remuneration shall be paid to him by the lessees of 47 Compayne Gardens and shall be governed by the standard terms of the management contract as to remuneration provided by **Salter Rex**, a copy of which is annexed hereto, provided that the standard charge shall be fixed at approximately **£350 plus VAT per flat per annum** to be increased annually in line with changes to the Retail Price Index for the duration of the appointment and provided that there shall be no separate set-up charge.

12. The manager shall be entitled to appoint any suitable surveyor, engineer, contract supervisor and other suitable persons in connection with any major works as may be required and be entitled to recover the fees of such persons including VAT including the fees of the Manager for any works carried outside of the normal duties of the Manager. The Manager shall be paid £175 per hour plus VAT for any work carried out outside of the normal duties of the Manager necessary for the management of the Premises or the performance of her duties and/or functions. All such fees are without prejudice to the rights of individual leaseholders and/or the freeholder to challenge the reasonableness or need for any such works.

13. The manager shall have the power to recover from the service charge fund his management fees and other properly and reasonably incurred fees in accordance with the terms of the lease including fees incurred outside of the normal daily management duties.

14. The manager shall report to the Board of Directors of the freehold company in writing the progress made in the Management of the subject property company at least every 6 months.

15. The Landlord and the manager shall each have liberty to apply to the FTT for subsequent directions or for the discharge of this order in accordance with the provisions of sections 24 of the 1987 Act.

16. For the avoidance of doubt, it is declared that the manager has standing to apply under section 24(9) of the 1987 Act (variation or discharge of order).

17. The manager shall forthwith apply to the Land Registry for the registration of this order pursuant to section 24(8) of the 1987 Act and the

applicable provisions of the Land Registration Act 2002 in relation to title number NGL604451.