



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

Case reference : LON/00AP/LAM/2015/0009

Property : 28 Shepherds Hill, Highgate,
London, N6 5AH
(1) Mr A Press- Flat 1
(2) Ms K Cooney & Mr A Holden –
Flat 2

Applicant : (3) Ms J Rances & Mr D Simpson –
Flat 2a
(4) Mr C Balmond & Ms S Balmond
– Flat 3
(5) Mr G Agathangelou – Flat 3a

Representative : Bolt Burdon Solicitors

Respondent : Meadowview Property Limited
("the landlord")

Representative : In Person

Type of application : Appointment of a manager

Tribunal member(s) : (1) Mr Amran Vance, Tribunal
Judge
(2) Mr N Martindale, FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearings : 15 July 2015 and 18 August 2015

DECISION

Decisions of the tribunal

1. The Tribunal determines that that the Respondent is in breach of the management obligations it owes to the Applicants under the terms of their leases. We consider that it is just and convenient to make an Order pursuant to Sections 24(1) and 24(2)(a) of the 1987 Act appointing Mr Paul Cleaver of Urang Property Management Ltd as manager of the Property on the terms of the Management Order attached to this decision at Appendix 2.
2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

Introduction and Background

3. This is an application for the appointment of a manager of 28 Shepherds Hill, Highgate, London, N6 5AH ("the Property") pursuant to Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act").
4. The Property is a Victorian terraced house which has been converted into eight residential flats. Five of the flats are let to long lessees and the remaining three have been retained by the landlord. The Applicants are the long leaseholders of flats 1, 2, 2A, 3 and 3A, in the Property. All five long leaseholders are therefore parties to this Application.
5. Antony Press is the leaseholder of the ground floor flat, Flat 1. His lease is dated 12 January 2007 made between Meadow View Property Limited (1) and Antony Press (2) and registered at HM Land Registry under title number AGL168034.
6. Kate Cooney and Aaron Holden are the leaseholders of Flat 2. Their lease is dated 4 May 2001 made between Meadow View Property Limited (1) and Elmostone Limited (2) and registered at HM Land Registry under title number AGL90780.
7. Julie Rances and Davis Simpson are the leaseholders of Flat 2A. Their lease is dated 4 May 2001 made between Meadow View Property Limited (1) and Elmostone Limited (2) and registered at HM Land Registry under title number AGL90782.

8. Cecil Balmond and Shirley Balmond are the leaseholders of Flat 3. Their lease is dated 4 May 2001 made between Meadow View Property Limited (1) and Elmostone Limited (2) and registered at HM Land Registry under title number AGL90778.
9. George Agathangelou is the leaseholder of Flat 3A. His lease is dated 4 May 2001 made between Meadow View Property Limited (1) and Elmostone Limited (2) and registered at HM Land Registry under title number AGL90776.
10. Each of the five leases contain covenants by the Respondent to repair, maintain and rebuild the roof, foundations and main structure of the Property together with (amongst other matters) the drains, cisterns and gutters servicing the Property.
11. The Applicants served a Notice on the Respondent under Section 22 of the 1987 Act under cover of a letter dated 7 April 2015 (the "Section 22 Notice"), specifying various concerns about the management of the Property and requiring the Respondent to take the steps specified in the Section 22 Notice to address those concerns within 14 days of the date of the Section 22 Notice.
12. On 14 May 2015 the Applicants made this application to the Tribunal for the appointment of a manager.

The Hearing

13. The initial hearing of the application took place on 15 July 2015 but was adjourned to 18 August 2015 as the Tribunal was not satisfied that it was appropriate to make an order without the submission of additional information by the Applicants. Directions were issued on the same day.
14. The hearing on 18 August 2015 was attended by Mr J Norman of counsel on behalf of the Applicants and by Mr Agathangelou, Mr Holden, Mr Simpson and Mr Press. The proposed manager, Mr Paul Cleaver, of Urang Property Management ("Urang") also attended. The Respondent did not attend and nor did it attend the initial hearing on 15 July 2015.
15. At the hearing Mr Cleaver provided a copy of the policy schedule for his current professional indemnity insurance and a copy of the policy booklet. A witness statement was also provided by Mr Coleran, the Applicant's solicitor, and this is referred to below.

Inspection

16. Neither party requested an inspection and the Tribunal did not consider one to be necessary or proportionate, especially given that the Respondent was not opposing the appointment of Mr Cleaver as the manager.

The law

17. The relevant parts of Section 24 of the 1987 Act are set out in Appendix 1 to this decision.

The Applicants Case

18. The Applicants assert that the Respondent is in breach of its management obligations under the terms of their respective leases and that the Property is in a considerable state of disrepair. In the Section 22 Notice they assert, amongst other matters, that damp is affecting several of the flats; a brick pillar is collapsing; roof tiles have blown off; the septic tank requires drainage; and that a rodent infestation problem is present in the Property.
19. Mr Cleaver has provided a proposed maintenance plan for the Property together with photographic evidence of its condition. He confirms that EON intended to cut off the electricity supply to the communal areas of the Property but that they have agreed to delay doing so until after the hearing of this application. He intends opening a new account with them if he is appointed manager.
20. In his maintenance plan he proposes remedying problems relating blocked drains and a septic tank in need of maintenance. He also proposes carrying out repair works to a brick column and wall; investigative works as to why areas of the driveway have subsided or sunk resulting in water ponding in winter months; replacing the meter cabinet as the wood is rotten and the doors have fallen away from their hinges; remedying defective lighting outside the Property; maintenance works to the front and rear gardens; installing smoke alarms in the communal area; responding to the rodent infestation affecting the ground floor flats and investigating and repairing the causes of damp to Flat 1 (ground floor, front facing) and Flat 2a (1st floor, rear facing). He also refers to the need to carry out re-pointing to external brick work and the need to treat and paint the external windows including the

wooden frames. The total sum for indicative costings referred to in his schedule is £55,500.

21. In oral evidence he confirmed that the first steps that he would take if he was appointed manager would be to appoint one of his members of staff at Urang to manage the Property with him stepping into the shoes of the freeholder. He then intended to issue a service charge demand in order to secure insurance for the Building and then call a meeting of lessees to agree an action plan. He considered that the immediate health and safety concerns needed to be tackled first of all, such as the collapsing pillar, followed by a specification of works for major works which would need to go out to tender and which would be the subject of a consultation in accordance with s.20 of the 1985 Act.
22. Mr Agathangelou provided a witness statement in which he states that the condition of the Property has deteriorated at an alarming pace since he purchased his flat in September 2013. He asserts that his attempts to engage the Respondents in a constructive discussion as to the future of the Property have been unsuccessful and that the current managing agents, Northgate Sales and Lettings ("Northgate"), have been unresponsive. He states that he has spent over £200 in remedying defects that he believes the Respondent should have dealt with. He provided oral evidence at the hearing on 18 August 2015 during which he verified the contents of his statement and also that that the maintenance plan drawn up by Mr Cleaver accurately identified the disrepair affecting the Property.
23. In his statement Mr Agathangelou refers to an earlier survey of the Property carried out on behalf of the landlord by Golden Square Property Group ("Golden Square Property") who he believes manages the landlord's property portfolio although not the day to day management or maintenance of properties. He confirmed, however, that since he purchased his flat in September 2013 no works have been carried out to the Property and no ground rent or service charge has been demanded from him.
24. Mr Agathangelou informed us that he was concerned that the Property may be uninsured at present. When he purchased his flat he was provided by the vendor with details of a buildings insurance policy that expired in April 2014. However, despite requests to the landlord's former managing agents, Tide End Property Management and also to Northgate he has not been supplied with details of a current insurance policy in place for the Property.

25. Along with the other Applicants he provided an 'impact statement'. In these statements all of the Applicants confirm that the Property is in a state of disrepair. Their various complaints include damp affecting the Property; vermin infestation, tiles having previously fallen away from the roof of the building and a damaged pillar being on the verge of collapsing. Several of them refer to the electricity supplier, EON, threatening to cut off the electrical supply to the Property.

The Respondent's Case

26. The Respondent has played no part in these proceedings. In a letter dated 13 July 2015, attached to an email sent to the Tribunal by Golden Square Group on the same date, it confirmed that it accepted the proposal to appoint Urang as managing property agent of the Property in the place of Northgate.
27. The Respondent was sent a copy of the proposed draft order appointing Mr Clever on 5 August 2015 but has made no comments the terms set out in the draft order.
28. At the hearing the tribunal was provided with a copy of a witness statement from Mr Darren Coleran, solicitor for the Applicant, attached to which was a copy of an email from Golden Square Property dated 17 August 2015 acknowledging receipt of the revised hearing bundle on behalf of the Respondent and in which it was stated that the Respondent's position was unchanged and that they awaited confirmation of Urang's appointment.

The Proposed Manager

29. Mr Cleaver provided a witness statement in which he stated that he had worked in the field of property management for approximately 14 years and at Urang since 2001. He is a Director of Urang and is a member of the Institute of Residential Property Management. He states that Urang manages approximately 300 properties and is a full member of the Association of Residential Managing Agents and that it is also registered with the Financial Conduct Authority. He has, he says, been appointed by this tribunal on six previous occasions.

Decision and Reasons

30. The Tribunal considers that that the Respondent is in breach of the management obligations it owes to the Applicants under the terms of their leases. We consider that it is just and convenient to make an

Order appointing Mr Cleaver as a manager to carry out the management functions identified in the Order attached to this decision at Appendix 2.

31. The Tribunal's power to appoint a manager is subject (unless the requirement is dispensed with under Section 22(3)) to an applicant first serving a Section 22 Notice on the person alleged to be in breach. No issues have been raised by the Respondent relating to the validity of the Section 22 Notice served by the Applicants.
32. The Tribunal is satisfied, from the evidence before it, that there have been serious breaches of the Respondent's management obligations within the meaning of Section 24(2)(a) of the 1987 Act.
33. It is clear to us from Mr Cleaver's photographic schedule, Mr Agathangelou's witness evidence and from the oral evidence provided by Mr Agathangelou at the hearing that the disrepair referred to in Mr Cleaver's management plan is present and that there has been a significant delay in the Respondent taking any steps at all to remedy these defects. We considered the Applicants' written and oral evidence in this respect to be credible and conclude that there has been a failure to properly manage the Property for some considerable time.
34. Having had the benefit of hearing from Mr Cleaver and questioning him in some detail the Tribunal is satisfied that he is a suitable and competent person to take on the role of manager of the Property. He possesses appropriate qualifications and his responses to our questions indicated that he has considerable practical experience in the field of property management.
35. The Respondent did not raise any objections to the form of draft order proposed by the Applicants. The Tribunal considers the terms of the draft order to be reasonable subject some amendments and additional provisions indicated in the version attached to this order. In the Tribunal's view the appointment should be for an initial length of 2 years as that should be sufficient time for the manager has to progress the required works.

S.20C Application

36. In their application form the Applicants applied for an order under section 20C of the 1985 Act. 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.

Amran Vance
18 August 2015

APPENDIX 1

Landlord and Tenant Act 1987

Section 24 Appointment of manager by [a . . . tribunal]

- (1) The appropriate 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) The appropriate 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;

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration 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;

(abb) [...]

(ac) [...]

or

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

[...]

(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.

APPENDIX 2

MANAGEMENT ORDER

1. In accordance with section 24(1) Landlord and Tenant Act 1987 (“the Act”), Mr Paul Anthony Cleaver, of Urang Property Management Limited, 196 New Kings Road, London SW6 4NF, (‘the manager’) is appointed manager of the property at 28 Shepherds Hill, Highgate, London N6 5AH (‘the Property’).

2. The order shall continue for a period of 2 years from 19 August 2015.

3. The manager shall manage the Property in accordance with:
 - a. The directions and schedule of functions and services attached to this order;

 - b. The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and, in particular, with regard to repair, decoration, provision of services to and insurance of the Property; and

 - c. The duties of a manager set out in the Service Charge Residential Management Code (‘the Code’) or such other replacement code 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.

4. The manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act in accordance with s. 24(8) of the Act .
5. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Applicant's costs before the Tribunal shall not be added to the service charges.

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £2,000,000 and shall provide copies of the current cover note upon request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 19 August 2015 become rights and liabilities of the Manager.

4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt be recoverable as part of the service charges of the leases of the Property) in accordance with the Schedule of Functions and Services attached.
6. By no later than 6 months the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the Property up to that date.
7. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property
- (ii) Ensure that the Manager's interest is noted on the insurance policy

Service Charge

- (iii) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (iv) Demand and collect ground rents service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.

- (v) Set, demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (vi) Instruct solicitors to recover unpaid rents and service charges and other monies due to and/or from the Respondent.
- (vii) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the manager.
- (ii) Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into which the ground rent, service charge contributions and all other monies arising under the leases and/or from the Respondent shall be paid.

- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the leases.
- (iii) The setting up of a planned maintenance programme to allow the periodic re-decoration and repair of the exterior and interior of common parts of the Property.

Fees

- (i) Fees for the above mentioned management services will be a basic fee of £300 per annum per flat. Those services to include the services set out in the Service Charge residential Management Code published by the RICS.
- (ii) The manager's additional fees for Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost. This does not apply in respect of the professional fees of an architect, surveyor, or other appropriate person if they are appointed to administer the contract for such works instead of the manager.

- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessees.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for on a time basis.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.