

11923



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

Case reference : **LON/00AW/LVM/2016/0007**

Property : **3 Royal Crescent, London, W11 4SL**

Applicant : **Mr Roger Spottiswoode**

Representative : **Mr John Graham**

Respondents : **3 Royal Crescent Limited**

Representative : **N/A**

Type of application : **Appointment of a manager**

Tribunal member(s) : **(1) Mr Amran Vance, Tribunal
Judge
(2) Ms Lucy West**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **25 May 2016**

Date of Decision : **22 June 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that it is just and convenient to extend for a further five years the appointment of Mr Nigel Cross of TPS Estates (Management) Limited as manager of 3 Royal Crescent, London, W11 4SL "the Property" pursuant to Sections 24(1) and 24(2)(a) of the Landlord & Tenant Act 1987 ("the 1987 Act") on the terms of the Management Order attached to this decision at Appendix 2. The order shall continue for a period of five years from 1 July 2016 expiring on 30 June 2021.
2. The tribunal makes an order that the respondent company reimburse the applicant for the tribunal fees paid by him in the sum of £570 such sum to be paid within 28 days of notification of this decision.

Introduction and Background

3. This is an application to extend for a further five years the appointment of Mr Nigel Cross as manager of the Property pursuant to Section 24 of the 1987 Act.
4. The Property is a Victorian terraced house which has been converted into four residential flats all of which are let to long lessees. The applicant is the lessee of Flat 2, Ms M A de Cervens is the lessee of Flat 3, Mr H Templeton is the lessee of Flat 1 and Mr M P Harper is the lessee of Flat 4.
5. The respondent company ("the Company") holds the freehold interest in the Property. It was formed in order to acquire the freehold of the Property. The applicant and the other lessees comprise the members of the Company. We are informed that, following enfranchisement, management of the Property was initially carried out by Mr Templeton.
6. There have been a number of disputes between the lessees which led, on 8 March 2006 to the making of a management order under Section 24 of the 1987 Act (**LON/00AW/LAM/2005/012** and **LON/00AW/LSC/2005/127**) appointing Mr Cross for a term of two years from 8 March 2006. His term was extended for a further five years, and the original management order varied, by a tribunal decision dated 16 May 2008 (**LON/00AW/LVM/2008/002**). A further five-year extension was granted following a tribunal determination dated 18 May 2011 (**LON/00AW/LVM/2011/0001**) expiring on 30 June 2016.
7. The applicant now seeks a further extension of Mr Cross' appointment as manager either for an indefinite period or, alternatively, for a period of an additional five years.
8. Directions were issued by the tribunal on 4 May 2016.

9. None of the lessees objected to the previous extension of Mr Cross's appointment in 2011 although Mr Harper and Miss de Cervens suggested that he could be more pro-active and Mr Templeton added that he lacked attention to detail, had breached the RICS code of practice, and had no long-term maintenance plan or budget in place. Mr Templeton's submission in 2011 was that if Mr Cross were to be appointed that it should be on a one-year rolling contract.

The Hearing

10. The hearing on 25 May 2016 was attended by Mr Spottiswoode and Mr Harper. Mr Spottiswoode, the applicant, was represented by Mr Graham. Mr Cross also attended. There was no attendance by Mr Templeton or the respondent Company.
11. We are grateful for the care with which Mr Graham put together the hearing bundle. This included a copy of the policy schedule for Mr Cross's current professional indemnity insurance, the policy booklet, and details of the service charge account for the Property including a summary of income and expenditure for the current service charge year and the most recent year end accounts, ending 30 June 2015.
12. The service charge accounts specified that the total service charge expenditure, excluding major works, was £5,910 in 2014 rising to £6,117.24 in 2016. Major work expenditure in 2014 was £11,016.
13. A bank statement printed on 13 May 2016 indicated that the current balance on the service charge account was £1,471.58. However, a list of tenant balances stated that Mr and Mrs Templeton were in service charge arrears of £2,658.01 whilst Ms de Cervens had current arrears of £721.75.
14. A brief management plan prepared by Mr Cross was also included in the form of a letter dated 13 April 2016.

Inspection

15. Neither party requested an inspection and the tribunal did not consider one to be necessary or proportionate, especially given that neither the respondent nor any of the lessees had notified the tribunal that they opposed the application.

The law

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

The Hearing

17. The applicant's position was that some of the differences amongst the four lessees that led to the original management order still remained. In particular, the Company remained dormant with no shareholders' meetings being held. In light of those differences he considered it appropriate for Mr Cross's appointment to be extended.
18. Neither the Company nor Mr Templeton played any part in the current tribunal proceedings and neither made representations as to whether or not they supported or opposed the proposed extension of Mr Cross's appointment. In written representations the other two lessees supported the application for his re-appointment.
19. Ms de Cervens considered that Mr Cross had been responsive and even handed with lessees and that he was a capable manager. Mr Harper stated that he had dealt with the lessees in a co-operative and impartial manner and that he sought to find consensus before acting. He also considered continuity to be important and that since his appointment the property had been properly maintained.
20. Both Mr Harper and Ms de Cervens expressed the hope that ultimately the lessees would be able to reach a consensus concerning the operation of the Company so as to avoid the need for a Tribunal-appointed manager. However, in Mr Harper's opinion that position had not yet been reached.
21. Mr Cross gave evidence to the tribunal. He explained that in his view the biggest problem he had encountered was the falling out between the lessees. He believes his appointment had brought a degree of decorum to the Property in that the presence of a third party had helped to negate arguments amongst the lessees.
22. He confirmed that since the last variation in the Management Order he had appointed a firm of chartered surveyors to carry out redecoration and repair works to the common parts as well as the installation of a new entry phone system. A section 20 consultation procedure had taken place and all of the lessees had paid the service charges demanded towards the cost of these works. There had been no complaints about the quality of these works except that Mr Templeton raised an issue about the entry phone which was, he said, fixed within a few weeks.
23. Mr Cross stated that an additional s.20 notice had been sent to the lessees in respect of anticipated external repair and redecoration works. A specification of works was close to being finalised and was going out to tender in about four weeks.

Decision and Reasons

24. The tribunal is satisfied, from the evidence before it, that it is appropriate for the management order made on 18 May 2011 to be varied so as to extend it for a further five years. We are satisfied that this variation will not result in a recurrence of the circumstances which led to the order being made and that it will, in fact, assist in preventing a possible reoccurrence of those circumstances. We also consider that it is just and convenient in all the circumstances of the case to vary the order.
25. There is no evidence before us that the Company wishes to carry out the management function for the Property or that it is in a position to do so in place of Mr Cross. We accept the applicant's evidence that the Company is dormant with no shareholders' meetings being held. We also accept his evidence that Mr Cross has been a stabilising influence.
26. In the circumstances, it seems appropriate for Mr Cross's appointment to be extended for a further five years so that the management function is carried out. Having had the benefit of hearing from Mr Cross and questioning him in some detail the tribunal is satisfied that he is a suitable and competent person to continue in the role of manager of the Property. He appears to have properly discharged his functions since the last variation of the management order. Both Ms de Cervens and Mr Harper are satisfied with his performance and Mr Templeton has said nothing to the contrary.
27. However, tribunal appointments of managers are not intended to be extended indefinitely. The tribunal encourages all parties to seek to resolve the impasse that has arisen concerning the operation of the Company.
28. The tribunal was concerned to hear that Mr Templeton was in arrears of service charges in the sum of £2,658. Mr Cross stated that his plan of action would be to chase for payment of these arrears and, if necessary, to take action to recover the sums as a debt. The tribunal would expect Mr Cross to prioritise such enforcement action given that his evidence was that without payment of these sums the planned external works could not proceed.

Costs

29. The tribunal considers it reasonable to order that the respondent Company reimburse the applicant for the tribunal fees paid by him in the sum of £570, such sum to be paid within 28 days of notification of this decision. In the tribunal's view this application has been made for the benefit of all lessees and in order to ensure that the Property is properly

managed. It is therefore appropriate for the tribunal fees incurred to be refunded by the Respondent company.

RIGHTS OF APPEAL

30. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
31. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
32. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
33. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Amran Vance

22 June 2016

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.

[7 – 8]

- (9) The appropriate 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 2002, the tribunal may by order direct that the entry shall be cancelled.

- (9A) The tribunal 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.

APPENDIX 2

AMENDED MANAGEMENT ORDER

1. Mr Nigel Cross of TPS Estates (Management) Limited is hereby appointed the Manager (“the Manager”) of 3 Royal Crescent, London W11 4SL (“the Property”) for a period of five years with effect from 1 July 2016.
2. During the period of his appointment the Manager shall collect all the various sums reserved and made payable by the Lessees (“the Lessees”) under the respective Leases (“the Leases”) of the Flats (“the Flats”) in the property, including, but not limited to:
 - (a) service charges, and
 - (b) any arrears of service charges.
3. The service charges are to be paid to the Manager without deduction.
4. During the period of his appointment, the Manager shall carry out the management obligations of the Respondent in accordance with the provisions of the Leases. In particular, and without prejudice to the generality of the foregoing:
 - (a) he shall consult all the Lessees and draw up a plan as to the action to be taken during his period of appointment. The plan, which shall be put into writing and sent to all Lessees, shall include a planned maintenance programme and specify what action he intends to take regarding any existing problems;
 - (b) he shall observe the Respondent’s covenants under the Leases (all four of which are drawn up in similar terms) with regards to insurance, repairs, services and alterations to the Property;
 - (c) he shall enforce the Lessees’ covenants;
 - (d) he shall comply with all statutory requirements, including those set out in the Landlord and Tenant Acts 1985 and 1987, as amended, and with the requirements of the current edition of the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors (“the RICS Code”) and approved by the Secretary of State from time to time under Section 87

of the Leasehold Reform, Housing and Urban Development Act 1993; and

- (e) he shall establish a structure for consulting and liaising with the Lessees on any budgetary proposals, and shall give appropriate weight to the views expressed.
5. The service charges shall be applied by the Manager in respect of insurance, repairs and other services set out in the Leases.
 6. The Manager shall be entitled to remuneration in accordance with Clauses 3.3 (Fees and charges), 3.4 (Annual fee) and 3.5 ("Menu" of charges) of the Third Edition of the RICS Code.
 - (a) The Annual Fee shall be set at £250 plus VAT per flat per annum. After 12 months it will rise each year in line with inflation as measured by the Retail Price Index.
 - (b) Fees may also be charged for duties other than dealing with day-to-day matters. Examples of such duties are given in Clause 3.5 of the Code. The Manager shall be entitled to charge 10% plus VAT of the cost of major works for duties undertaken in accordance with Clause 3.5. All such remuneration is to be paid to the Manager by the Lessees of the Property along with the service charge.
 7. If he thinks fit, the Manager may, in accordance with the provisions of Clause 4(1)(iii) of the Leases, engage any surveyor, architect, engineer, accountant, lawyer and other appropriate person to assist him in carrying out any duties in connection with the management of the building, including the enforcement of any Lessee's covenants, and will be entitled to recover the costs thereof from the Lessees through the service charge, provided always that such costs are reasonably incurred and that the services provided are of a reasonable standard.
 8. The Manager shall have permission to apply to the Tribunal for further directions, and the Manager and any party shall have permission to apply to the Tribunal to vary or extend this Order.