



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

Case Reference : LON/00BJ/LAM/2016/0009

Property : 57 Queenstown Road, Battersea,
SW8 3RG

Applicants : 1. Charlotte Walker (flat A)
2. Martijn Brenninkmeijer (flat B)
3. Camilla Trevelyan Daley (flat C)

Representative : Clarke Willmott LLP

Respondent : Mr Bernard McGowan (freeholder)

Representative : None

Type of Application : Appointment of a manager

Tribunal Members : Judge L Rahman
Mr P S Roberts DipArch RIBA

**Date and venue of
determination** : 21/4/16 at 10 Alfred Place, London
WC1E 7LR

Date of Decision : 26/4/16

DECISION

under the lease, he had informed the applicants in a letter dated 17/7/15 that he was retiring, his firm was unable to continue to manage the property as his appointment was in a personal capacity, and in any event the firm stated they were unable to manage the property as the fee was too low.

9. The applicants were concerned that the respondent had previously been found unsuitable to manage the property, the respondent had failed to respond to attempts made to communicate with him by Mr Mortimer, the respondent had failed to take part in the previous proceedings before the tribunal in 2014, and there continued to be a number of disrepair issues concerning the property. In the circumstances, the applicants were seeking an extension of the previous order and for Mr Cleaver to be appointed as the new manager for a period of two years starting 1/5/16.

The issues

10. At the start of the hearing the tribunal identified the relevant issues for determination as follows:
 - (i) the consequences of the applicants failure to serve the relevant notice on the respondent as required under section 22 of the Act;
 - (ii) whether to make an order to appoint a manager and if so, the extent of the property to be managed and the functions to be conferred upon the proposed manager.
11. Having heard evidence and submissions from the applicants and having considered all of the documents provided, the tribunal has determined the issues as follows.

Failure to serve s.22 Notice

12. The Act stipulates that a preliminary notice must be served upon the landlord. By virtue of subsection (3) the tribunal may dispense with the requirement to serve a notice where the tribunal is satisfied that it would not be reasonably practicable to serve such a notice on the landlord and the tribunal may direct that such other notices are served or such other steps are taken as the tribunal thinks fit.
13. Ms Sharkey stated that she had telephoned the tribunal and explained the circumstances and was told that because a management order was already in place and the proposed application was for a variation of that order, it might not be necessary to serve a notice on the respondent but she must check with the existing appointed manager. She further stated

that she spoke with Mr Mortimer and was advised that it was not necessary to serve a notice on the landlord.

14. Mr Robson submitted there was no reasonable or practical benefit to serve a notice therefore a notice was not served. He submitted that it was not reasonably practicable to serve the notice as the notice needed to identify breaches and the respondent was already aware of the previous breaches, the respondent had failed to respond in the previous three years (failed to take part in the 2014 proceedings and failed to respond to communications sent to him by Mr Mortimer) therefore it was unlikely that he would have responded to any notice served upon him, the word "practicable" must be given a wide meaning and the tribunal must take into account that Ms Sharkey had no legal knowledge and made the application on behalf of the applicants in good faith, and the application was made very late therefore it was not practicable to serve the relevant notice.
15. A further point raised by the applicants was a fear that the existing manager may transfer the surplus in the service charge account to the respondent, who may use the money inappropriately, therefore it was imperative that the need to serve notice be dispensed with and the tribunal appoint Mr Cleaver. However, during a short adjournment, Ms Sharkey was able to contact the existing managers firm, who confirmed by email that it was not their intention to release the service charge monies to the freeholder and it was their intention to hold the monies in the client account and to release the monies to the next manager appointed by the tribunal.
16. The tribunal found the applicants argument amounted to no more than an explanation as to why they believed, incorrectly, that it was not necessary to serve the relevant notice. Mr Robson agreed that there were breaches that could and should have been specified, even if they were the previous breaches. The fact that the respondent may not have responded to any notice served upon him is irrelevant. Lack of knowledge on the part of Ms Sharkey is irrelevant. The tribunal did not accept that Ms Sharkey had been informed by the tribunal that there was no need to serve any notice. Ms Sharkey was unable to name the person she claims to have spoken with and there is nothing in writing from the tribunal to say that it was not necessary to serve notice on the respondent. It is more likely than not that Ms Sharkey was advised by the tribunal to discuss the matter with the existing manager. The application was made on 28/2/16 therefore there would have been adequate time to serve notice on the respondent.
17. The tribunal found that the applicants had failed to show that it was not reasonably practicable to serve the relevant notice on the respondent. However, the tribunal has power, by virtue of section 24(6) of the Act to appoint a manager "*subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by*

the tribunal". The applicants were informed at the hearing that if the tribunal determined that it was appropriate to appoint a manager, it would be for a period of three months from 1/5/16 (i.e. to 31/7/16) on condition that the respondent be served with the relevant and appropriate section 22 notice by email and post within 7 days from receipt of the tribunals decision (and for copies to be provided to the tribunal). If the respondent failed to provide any response or raise any objections, the order would continue until 30/4/18.

Should a manager be appointed, and if so, is Mr Cleaver an appropriate person to be appointed manager?

18. The applicants' evidence can be summarised as follows; they all hold long leases. Mr Mortimer had proved to be ineffective in carrying out repairs in accordance with the terms of the lease and had stated in his letter dated 17/7/15 that he intended to retire and no longer wished to continue as manager. His firm indicated that they did not intend to manage the property as the fee was too low and the appointment of Mr Mortimer was in a personal capacity. Items of disrepair continued at the property. There was rising damp in the communal hallway. There was a leak from the respondents roof terrace through the hallway ceiling which had previously been addressed but not fully remedied. There was water penetration into flat B from the rear roofs. The respondent had previously failed to properly manage the property, he had failed to take part in the previous tribunal hearing in 2014 and consequently the tribunal appointed Mr Mortimer manager, he had failed to respond to communications sent to him by Mr Mortimer, and he had failed to respond to the current application or to attend the hearing.
19. Mr Cleaver's evidence can be summarise as follows; he is the director of Urang Property Management Limited. He has worked in the field of property management for 15 years and is currently managing approximately 300 properties. He is a member of ARMA and is registered with the Financial Conduct Authority. He holds professional indemnity insurance with CNA of £3 million. He would comply with the RICS Code of Practice. He has acted as a manager appointed by the tribunal on seven separate occasions since 2006. He would charge a fee of £300 plus vat per unit per annum. He has read each of the relevant leases. He has inspected the property and has prepared a management plan. He believes no works have been carried out to the exterior of the building for at least seven years therefore scaffolding would need to be erected and repairs carried out to the windows and some re-pointing work. The roof is habitable but is leaking and requires some works. He has read the survey report prepared in January 2016 and would get formal specifications and review the report.
20. In view of the ongoing issues concerning the need for significant repairs at the property, the previous appointed manager retiring and his firm

no longer wishing to continue to act as manager, the respondents failure to engage at all with issues concerning the proper management of the property, the previous tribunals finding that monies had been paid to the respondent but works had not been carried out nor the monies refunded to the tenants, the long leaseholders unanimously supporting the application for the appointment of Mr Cleaver as manager, and the tribunal being satisfied that Mr Cleaver has the necessary knowledge and experience to manage the property, the tribunal is satisfied that "*...other circumstances exist which make it just and convenient for the order to be made*" (section 24(2)(b)).

Application for costs

21. The applicants did not make any application for a section 20C order or the reimbursement of any fees paid.

L Rahman
Tribunal Judge

26.4.16

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

FIRST-TIER TRIBUNAL PROPERTY CHAMBER

MANAGEMENT ORDER

CASE REFERENCE: LON/00BJ/LAM/2016/0009

PROPERTY: 57 Queenstown Road, Battersea, London, SW8 3RG

BETWEEN:

APPLICANTS: Ms C Walker, Mr M Brenninkmeijer & Ms C Trevelyan-Daley

RESPONDENT: Mr Bernard McGowan

1 In this Order

1.1 "the Property" means Flats A to C and commercial unit, 57 Queenstown Road, Battersea, London, SW8 3RG

1.2 "the Leases" means the leases demising the 3 residential flats (title numbers TGL46481, TGL304260 and TGL308602 and ground floor commercial unit (title number TGL354291 at the Property

1.3 "the Respondent" includes the landlord and any successors in title to the Respondent

1.4 "the Lessee" means any person holding as a tenant under one of the Leases

1.5 "the Outgoing Manager" means John Mortimer of John Mortimer Property Management Ltd

2 It is ordered that:

In accordance with Section 24(1) of the Landlord and Tenant Act 1997 ("the Act") Mr Paul Cleaver of Urang Property Management Ltd ("the Manager") be appointed Manager of the Property for a period of 3 months from 1 May 2016 (to 31 July 2016) on condition that the Respondent be served with the relevant and appropriate Section 22 notice within 7 days from receipt of the tribunals decision by email and to the address at 239-241 Watling Street, Radlett, Herts WD7 7AL. If there is no response or objections from the Respondent this Order shall continue until 30 April 2018 ("the Period").

3 The Manager shall during the Period manage the Property in accordance with:

3.1 the Directions and Schedule of Functions and Services set out below;

3.2 the rights and obligations of the Respondent under the Leases and in accordance with all relevant statutory requirements and in compliance with the requirements of

the service charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State of England and Wales under Section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

DIRECTIONS

- 1 From the date of appointment, and throughout his appointment, the Manager shall maintain a policy of professional indemnity insurance to cover its obligations and liabilities as Manager in the sum of not less than three million pounds (£3,000,000).
- 2 The Parties to this application and the Outgoing Manager shall, not later than 28 days from the date of this Order, provide all necessary information to the Manager and arrange an orderly transfer of responsibilities. All accounts, books, records, survey reports and funds shall be transferred within 28 days to the Manager.
- 3 The Manager is entitled to such disclosure of documents as held by the Respondent, their advisors or agents as is reasonably required for the proper management of the Property.
- 4 The rights and liabilities of the Respondent or Outgoing Manager arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall in 28 days from the date of this Order become the rights and liabilities of the Manager.
- 5 The Manager and the parties shall be entitled to apply to the Tribunal for further directions if so advised and/or in the event that the circumstances necessitate such an application.
- 6 The Manager shall be entitled to remuneration as set out below.
- 7 The Outgoing Manager shall pay to the Manager all service charge and insurance monies held by him or by John Mortimer Property Management Ltd at the date of this Order and shall not pay any such monies to the Respondent.

SCHEDULE OF FUNCTIONS AND SERVICES

Service Charge

- 8 Prepare an annual service charge budget, administer the service charge and prepare appropriate accounts in accordance with the Leases and any relevant Code or Practice.
- 9 Demand and collect service charges, insurance premiums and any other payments arising under the Leases as appropriate.
- 10 Hold all monies received pursuant to this Order and/or pursuant to the Leases as a trustee, in an interest bearing account (if appropriate), pending such monies being defrayed.

- 11 The Manager shall promptly take such action as may be necessary (including Court or Tribunals proceedings) to collect all service charges due under the Leases from the Lessees or any of their predecessors and this obligation shall extend to pursuing all historic debts not currently barred by limitation.

Accounts

- 12 Produce for inspection by the Lessees, receipt or other evidence of expenditure.
- 13 All monies collected on the Lessee's behalf will be accounted for in accordance with any relevant RICS Code of Practice.

Maintenance and Management

- 14 Arrange, manage and where appropriate supervise all repair and maintenance, building work and service contracts application to the Property and instruct contractors to attend to the same, as appropriate.
- 15 If applicable, the Manager is to obtain quotations from an RICS surveyor within a period of six weeks from the 1 August 2016 to carry out the following:-
 - 15.1 Review survey of the Property
 - 15.2 Prepare a specification of works
 - 15.3 Prioritise the repairs with a view to spreading the costs over a period of time
 - 15.4 Prepare an estimate of costs for the works to be prioritised.
- 16 Based on the information supplied by the RICS surveyor, the Manager is to prepare a report for discussion with the Lessees.
- 17 The Manager will instruct the surveyor to obtain quotations for the works as set out in the specification of works and time frame and the Manager will, as appropriate, prepare and enter into the Section 20 consultation process.
- 18 Notwithstanding the terms of the Leases which concern timings for demand and payment of service charge monies, the Manager will, and as a condition precedent to carrying out the works to the Property, be entitled to demand from the Lessees and the Respondent the necessary funds in order to carry out the works including professional and supervision fees plus VAT and the Lessees and the Respondent will place the Manager in funds within 28 days of the demand.

Fees

- 19 The Manager shall be entitled to charge the following management fees:
 - 19.1 A fee not exceeding £300 per annum plus VAT per unit in the first year of the appointment increasing in line with the Retail Price Index in the second year of the appointment (the "Basic Management Fee"), to include the commercial premises on the ground floor of the property, for the basic management duties listed (19.1.1) to (19.1.12) below:

- 19.1.1 Collection of service charges
- 19.1.2 Payment of all invoices
- 19.1.3 Maintain service charge accounts up to Trial Balance and handover to an accountant for review and producing year end accounts
- 19.1.4 Managing day to day repair issues including:
 - (a) Arranging for a contractor to carry out repairs
 - (b) Costs of repairs to be paid for from service charges
- 19.1.5 Provide a telephone number for emergency out of hours calls of a maintenance nature
- 19.1.6 Regular on site inspections
- 19.1.7 Communicate with Lessees and Respondent
- 19.1.8 Provide point of contact for maintenance issues
- 19.1.9 Provide a point of contact for accounts issues
- 19.1.10 Website with a dedicated client area
- 19.1.11 Annual report to Lessees and Respondent
- 19.1.12 Oversight of Health and Safety compliance by in house Compliance Manager
- 19.2 Reasonable fees for the following work outside of basic management duties at an hourly rate not exceeding £125 plus VAT:-
 - 19.2.1 Attending court cases;
 - 19.2.2 Meetings outside business hours.

Travel time is not chargeable for any work done under this clause 19.2.
- 19.3 A supervision fee of 10% of the contract price in respect of any large scale works that may be required in the future being those costing in excess of £2,000 plus VAT for which Section 20 notices are served. For the avoidance of doubt, the manager's role in respect of any large scale works includes but is not limited to procuring the works, the Section 20 Consultation process and supervising the works to completion. The following works shall not attract any supervision fee:
 - 19.3.1 Hacking off damp in front of entrance hall and apply sika render and re-plastering/painting;
 - 19.3.2 Plastering hole in entrance hall; and
 - 19.3.3 Dealing with damp incursion from front and rear flat roof.

20 For the avoidance of doubt the Manager shall not be entitled to charge an incoming or outgoing handover fee.