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

Case reference : LON/00AE/LAM/2017/0019

Property : 244a -258a Church Lane Kingsbury
NW9 8SI

Applicant : Mr H Chavda and others

Representative : N/A

Respondent : Mr J A T Guest

Representative : N/A

Type of applications : s.24(9) Landlord and Tenant Act
1985

Tribunal members : Judge Carr
Mr A.Ring

Date of decision : 4th September 2017

DECISION

Decisions of the tribunal

- (1) The tribunal determines to extend the period of appointment of Mr Christopher Hills of Bridgeford & Co as manager of the property at

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DECISION

Decisions of the tribunal

- (1) The tribunal determines to extend the period of appointment of Mr Christopher Hills of Bridgeford & Co as manager of the property at

244a – 258a Church Lane, Kingsbury Middlesex NW9 8SL for a period of three years.

- (2) The appointment shall be on the basis of the current agreement between the parties other than an increase in the remuneration to £3525 per annum for the first year of the appointment and to make provision for an annual indexed increase for the subsequent two years.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant tenants seek the variation of an order appointing a manager under section 24(9) of the Landlord and Tenant Act 1987 (the 'Act').
2. The relevant legal provisions are set out in the Appendix to this decision.

The determination

3. The tribunal issued directions ordering that the application be determined on the basis of written representations, unless either party sought an oral hearing. No application for an oral hearing having been made the matter is determined on the basis of the written representations and documents provided to it.

The background

4. The application before the tribunal is for the indefinite extension of the term of appointment of the manager, Mr Chris Hills. Mr Chris Hills was first appointed in 2011. That appointment expired on 29th September 2013. By a decision of the tribunal dated 18th September 2014 Mr Hill was reappointed as manager. That appointment expires on 17th September 2017.
5. The tribunal notes that Mr Hills has requested a variation of the terms of the appointment to enable him to increase the management fees at an annual indexed rate.

The issues

6. The issues the tribunal is required to determine are:

- (i) Is it appropriate to extend the management order as requested or for some other period? In particular is it just and convenient to do so?
- (ii) Should order be varied by a term enabling fee levels to be increased?

7. Having read the evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Is it appropriate to extend the period of appointment of the manager?

- 8. The applicants, who are lessees of three of the eight residential flats argue that Mr Hills has managed the property well during the period of the tribunal's appointment.
- 9. Five of the lessees of the eight commercial premises at the property also support the application.
- 10. Mr Hills has indicated that he is content to continue to manage the property. He also provided documentation demonstrating that the property has been appropriately managed and setting out his management plans and a building condition report for the future management of the property.
- 11. No objections have been raised to the application from the remaining lessees, nor from the landlord. It should be noted that the landlord is in effect an absent landlord.

The tribunal's decision

- 12. The tribunal determines to extend the period of appointment and that it is just and convenient to do so.

Reasons for the tribunal's decision

- 13. The property requires management and there is no evidence that the landlord intends to carry out any management functions. No objections have been received to the application. Mr Hills is content to continue with the appointment and has demonstrated that he has in place appropriate management arrangements.

14. It is just and convenient to make the variation requested as without the variation there is no evidence that the property will be appropriately managed.

Should the appointment be made indefinite?

15. The Applicants wish the appointment to be made indefinite. Mr Hills also seeks that the appointment be made indefinite although with the benefit of a termination clause in the agreement which would allow the appointment to be terminated following three months notice from either party and an application to the tribunal.

The tribunal's decision

16. The tribunal determines to extend the appointment for a further three years.

Reasons for the tribunal's decision

17. The tribunal considers that the statutory scheme is intended to provide relatively short term solutions for lessees. It also considers that it should provide some, albeit limited, oversight of the appointment. It also notes that the freehold may change hands and that any new landlord may seek a different solution to the management of the property. A term of three years is a sensible length of appointment allowing the appropriate level of oversight.

Should the terms of the order be varied to enable management charges to be increased in accordance with annual indexation during the course of the appointment?

18. Mr Hills proposes an annual management fee of £3,525 which represents an indexed increase since the last appointment. He also requests a variation of the current order to enable him to increase the fee in accordance with annual indexation during the course of the appointment.
19. There is no opposition from the lessees to this proposal.

The tribunal's decision

20. The tribunal determines to vary the current order to enable management fees to be charged at £3525 per annum and for annual index linked increases in accordance with his standard terms of business.

Reasons for the tribunal's decision

21. The tribunal accepts that the terms of the proposed remuneration and annual increases are reasonable.
22. Otherwise the appointment is on the current terms.

Name: Judge Carr

Date: 4th September 2017

Appendix of relevant legislation

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.] [FN1]
- (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.[...][FN2]

[FN1] added by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 161

[FN2] added by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 161

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--] [FN1]
 - [(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.] [FN2]
- (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] [FN3] 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] [FN4];
 - (c) specify the grounds on which the court 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] [FN5], 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] [FN6] in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the [person] [FN7], but a leasehold valuation 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.[...][FN8]

[FN1] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN2] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN3] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN4] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN5] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN6] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN7] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

[FN8] modified by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 160 (2)

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 court when making the order.

[...][FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para 1

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

- (a) where the court 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) that it is just and convenient to make the order in all the circumstances of the case; or
 - (ab) where the court 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;
 - (ac) where the court 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;
 - (b) where the court 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).
- (2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- (3) The premises in respect of which an order is made under this section may, if the court 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 court thinks fit; and, on any subsequent application made for the purpose by the manager, the court 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 court thinks fit, and in particular its operation may be suspended on terms fixed by the court.
- (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 court 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 2002 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 2002, the court may by order direct that the entry shall be cancelled.
- (9A) The [tribunal] [FN1] 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, improvement or insurance of those premises.[...][FN2]

[FN1] substituted by Commonhold and Leasehold Reform Act (2002 c.15), Sch 13
Para 9

[FN2] substituted by Commonhold and Leasehold Reform Act (2002 c.15), Sch 13
Para 9

S24A

[...] [FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para
1

S24B

[...] [FN1]

[FN1] repealed by Commonhold and Leasehold Reform Act (2002 c.15), Sch 14 Para 1