

12300



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

**Case reference** : **LON/00AH/LAM/2017/0008**

**Property** : **1 Vermont Road, London SE19 3SR**

**Applicant** : **Ms Charlotte Mason**

**Representative** : **In person**

**Respondent** : **1 Vermont Road (Freehold) Limited**

**Representative** : **Not present and not represented**

**Also present** : **Mr Simon Williams of Hindwoods  
Hunter Payne, the proposed  
substitute manager**

**Type of application** : **Variation of Appointment of  
Manager**

**Tribunal members** : **Judge P Korn  
Mr H Geddes**

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

**Date of hearing** : **28<sup>th</sup> June 2017**

**Date of decision** : **28<sup>th</sup> June 2017**

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**DECISION**

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## **Decision**

1. In accordance with section 24(9) of the Landlord and Tenant Act 1987 (“**the Act**”) the Management Order dated 10<sup>th</sup> July 2011 currently in place in respect of the Property is hereby varied by the replacement of the existing manager – Mr Colin Aylott of Hindwoods Hunter Payne (Chartered Surveyors) – with Mr Simon Williams also of Hindwoods Hunter Payne.
2. The Management Order as varied by paragraph 1 above shall continue in full force and effect.
3. No cost order is made.

## **Background**

4. The Applicant has applied for a variation of the existing Management Order relating to the Property dated 10<sup>th</sup> July 2011. The existing manager wishes to retire and the Applicant is proposing that he be replaced by Mr Simon Williams from the same firm of chartered surveyors.
5. The Tribunal has seen a copy of a letter dated 27<sup>th</sup> February 2017 signed by all bar one of the shareholders of the Respondent company agreeing to the appointment of Mr Williams by the Tribunal as manager in place of Mr Aylott. The shareholder who has not signed the letter is stated to be abroad.

## **Hearing**

6. At the hearing the Applicant confirmed that she was seeking a variation of the existing Management Order so as to substitute Mr Aylott with Mr Williams. She felt, and seemingly the Respondent agreed, that it was necessary for the smooth running of the Property for it to continue to be managed by a Tribunal-appointed manager rather than by managing agents.
7. The Applicant and Mr Williams confirmed that they were not seeking any other variation to the Management Order, and Mr Williams confirmed that he was happy with the charging rates and other terms of the existing Management Order.
8. Under section 24(9) of the Act “*A tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ...*”. Under section 24(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*”.

9. The Tribunal put a series of questions to Mr Williams to establish his suitability or otherwise as a manager. Mr Williams said that he had not previously been appointed as a manager, but he appreciated in broad terms the differences between a manager and a managing agent. The discussion covered, amongst other issues, his level of experience, his strategy for planned maintenance and for dealing with leaseholders who refuse to pay their service charges and his familiarity with the current RICS Code.
10. Having read Mr Williams' written submissions and noted his answers to the questions put to him at the hearing, we consider that Mr Williams would make a suitable manager.
11. We note that Mr Aylott in fact retired in March and that therefore there has been no manager in place since then, albeit that Mr Aylott's firm has been informally providing some input since then. In the circumstances, whilst the application should have been made sooner, the reality is that there is currently a vacuum in management of the Property and it is important to have someone in place to carry out the role previously being carried out by Mr Aylott.
12. As we are satisfied that Mr Williams would make a suitable manager we can now turn to the specifics of section 24(9A) of the Act. Regarding limb (a) of that sub-section, we are satisfied that the substitution of Mr Aylott by Mr Williams will not result in a recurrence of the circumstances which led to the order being made, as the order will remain in place with the only change being the fact that Mr Williams will be the manager. The evidence before the Tribunal suggests that he will be at least as effective as Mr Aylott.
13. Regarding limb (b) of section 24(9A), we are satisfied that it is just and convenient in all the circumstances of the case to vary the order in the manner sought by the Applicant. Without the appointment of a replacement manager there would be a vacuum, with the person who is theoretically still the manager having already retired. The Property needs a manager, in the absence of an application to discharge the order and an agreement to appoint a managing agent, and we consider Mr Williams to be a suitable manager.

### **Costs**

14. At the end of the hearing, the Applicant asked for reimbursement of the application and hearing fees. This request is presumed to be pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However, as explained at the hearing, the Applicant has not made an application in writing and the Respondent was not present or represented at the hearing. In our judgment it would be unfair for the Tribunal to order the Respondent to reimburse these costs in circumstances where the Respondent is not even aware of the cost application and therefore is unable to respond to it. Therefore the Applicant's cost application is dismissed.

**Name:** Judge P Korn

**Date:** 28<sup>th</sup> June 2017

### **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).