FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/00KA/LAM/2019/0004**
Property	:	Collingdon Court, Collingdon Street, Luton, Beds LU1 1ST
Applicant	:	Cynthia Baugh-Bell (in person)
Respondent	:	Mr B P K Shah & Mrs D Shah (Mr Shah in person)
Type of Application	:	for the appointment of a manager [LTA 1987, Part II]
	:	for an order that the landlord's costs are not to be included in the amount of any service charge payable by the tenants [LTA 1985, s.20C]
Tribunal Members	:	G K Sinclair, M Wilcox BSc MRICS & C Gowman BSc MCIEH MCMI
Date and venue of Hearing	:	Wednesday 4th December 2019 at Luton Magistrates Court
Date of decision	:	6th December 2019

DECISION

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1. For the reasons which follow the applicant's principal application, seeking the appointment of a manager under Part II of the Landlord and Tenant Act 1987, is dismissed.

2. On that basis the tribunal makes no order on her other application, under section 20C of the Landlord and Tenant Act 1985.

Background

3. The applicant has for about three years been the lessee of a flat at Collingdon Court, a block said to have been built in 1987 for occupation by lessees who were predominantly retired, and all over the age of 55. It therefore has a significant amount of communal space in which residents may meet and enjoy communal activities, and a warden – originally a resident warden until the holder of that office died several years ago.

4. Elected in 2017 to be the leaseholders' representative in dealings with Collingdon Court Ltd, the management company named in the lease, Ms Baugh-Bell sought unsuccessfully to raise various issues with it concerning management of the block. With others, in mid-2018 she instructed Machins solicitors to write to the company. The firm's letter dated 22nd August 2018 is in the hearing bundle, as is the company's reply dated 17th September. It is not clear whether references to charges for administration are really "administration charges" within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 or are in fact aspects of the service charge.

5. On 9th July 2019 Ms Baugh-Bell applied to this tribunal for the appointment of Mr Francis Musau as manager. His qualifications were described in the form as "Property management, Services & Development." The grounds for seeking his appointment comprise three points :
   a. That the management is in breach of obligation owed to the leaseholders, particularly in regards to maintenance and safety (a reference to the CCTV system on site)
   b. No annual budget meetings as prescribed
   c. The lack of a residential manager, as mentioned in the lease.

6. The application form confirms, and the applicant admits, that no notice under section 22 of the 1987 Act was served in advance of making the application.

Material statutory provisions

7. A notice under section 22 serves much the same role as a notice under section 146 of the Law of Property Act 1925 : it is intended as a warning shot across the bows. The recipient is informed of specific alleged breaches and given a reasonable time within which to rectify them, failing which the sender reserves the right to apply to the tribunal for an order appointing someone else over the landlord's (or in this case the management company's) head as manager of the block.

8. Section 22(2) prescribes what should be included in the notice, but subsection (3) then goes on to deal with the situation where no such notice has been served. It states that :

> The appropriate 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 **in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person**, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit. *[emphasis added]*

9. Section 24(2) sets out the circumstances in which a tribunal may make an order

appointing a manager. They are :

(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) where the tribunal is satisfied –
  (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
  (ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal 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;

or

(b) where the tribunal 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.

Directions

10. On 12th August 2019 the tribunal issued directions for the further conduct of this application. Paragraph 1, listing the issues identified, referred to the tribunal dealing with dispensation with the requirement to serve a section 22 notice as a preliminary issue at the hearing.

11. Paragraph 2 set out what the applicant was required to do to further her case. These included sending to the respondent :

a. A written statement detailing reasons why the tribunal should dispense with the requirement for the section 22 notice
b. A written statement of the residential management experience of the proposed manager, together with the management plan and proposed remuneration and details of any professional indemnity insurance
c. A draft management order or terms that the applicant wishes the tribunal to include in any order it may make
d. Confirmation that the manager will accept appointment
e. Confirmation whether the manager will comply with the current edition of the Code of Practice published by the Royal Institution of Chartered Surveyors
f. Any amplification of the applicant's case for asking for the appointment of a manager.

12. Paragraph 8 listed the required contents of the hearing bundle to be prepared by the applicant. In addition to the above points a specimen lease was required.

13. Paragraph 3 required the respondent to submit a statement in response to the matters disclosed by the applicant under paragraph 2 of the directions.

14. The applicant failed to comply with any of the above directions, save that in a brief email Mr Musau confirmed to her that he was willing to accept appointment as manager and that he would attend the hearing (which he did). Despite this Mr Shah, for the respondent, filed a witness statement to which various documents were exhibited, and a witness statement/report was later filed by Peter Hill FRICS on his behalf.

Discussion

15. At the hearing the tribunal explained to the applicant the constraints imposed by the statute on making a management order under Part II. Firstly, she had to provide some reason why the tribunal should dispense with the requirement to serve a notice under section 22, the reasons being limited to why it would not be reasonably practicable for her to serve such a notice on the person concerned.

16. She had filed no evidence, and as her solicitors had been able to communicate with the respondent company by post in August 2018 this was not a case where the address of the intended recipient was unknown, or he/it was deliberately evading service. No explanation was offered, other than that the points to be made had been included in Machins' letter in August 2018 but had not satisfactorily been answered. That is not the point. The respondent has to be given a final chance to put things right, under threat of an application under section 24. It had not been given that chance.

17. The tribunal therefore has no proper grounds for dispensing with service of such a notice, and the condition precedent for an application in section 24(1) does not apply. The application must therefore fail.

18. Were the tribunal wrong not to dispense with service of a notice, the applicant has still failed to provide either the evidence supporting one of the required grounds or evidence that her proposed manager is sufficiently experienced, what his terms would be, whether in managing the property he would comply with the provisions of the RICS "Blue Book" (being the Code approved by the Secretary of State), and what he would charge.

19. As she failed to include a sample lease in the hearing bundle the tribunal is not even aware who is responsible for what, and whether the provision of a resident warden is a binding obligation on the landlord/management company or merely one which it may in its discretion withdraw if deemed appropriate.

20. The parties are urged to settle their differences, co-operate and ensure that the block is managed in accordance with the lease and the law and in the interests of the community meant to enjoy the building and its facilities.

21. However the application, and the subsidiary one under section 20C, must fail.

Dated 6th December 2019

Graham Sinclair
First-tier Tribunal Judge