

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**S.24 Landlord & Tenant Act 1987 as amended
S.20C Landlord & Tenant Act 1985 as amended**

DECISION AND REASONS

Case Number: CH1/00LC/LAM/2010/0007

In the matter of Katherine Court, Dargets Road,
Walderslade, Chatham, Kent, ME5 8BQ

Applicants (Lessees): Mrs. K Paynter & Others
Moat Homes Limited

Respondent (Landlord): Mr. P Brotherton

Date of Application: 1st June 2010

Tribunal Members: Mr. S Lal LL.M, Barrister (Legal Chairman)
Mr. R. Athow FRICS

Date of Hearing: 20th August 2010

Date of Decision: 20th August 2010

Application

1. The Applicants applied to the Tribunal by way of application dated 1st June 2010 under section 24 of the Landlord & Tenant Act 1987 (as amended) ("the Act") to appoint a manager in respect of Katherine Court, Dargets Road, Walderslade, Chatham, Kent, ME5 8BQ (the "Premises"). There is also an application under Section 20C of the Landlord and Tenant Act 1985 in respect of costs.
2. Directions were issued on 9th May 2010. Both parties to the proceedings were invited to send to the Tribunal written representations which should include a Statement of Case and in the case of the Applicant have in attendance at any hearing the person proposed as a manager. The Applicant has complied with these Directions and has provided the Tribunal and the other side with a correctly paginated and comprehensive trial bundle. No documentary material has been received from the Respondent whatsoever. In fact he has contacted the Tribunal offices in Chichester and informed the Tribunal that he would not attend the hearing.

The Inspection

3. The Tribunal carried out an inspection of the premises on the morning of the hearing. It consists of 12 flats in a purpose built unit with a mixture of private and communal gardens. The Tribunal were able to observe that the communal door entry system as well as the communal lighting was not working. There was some evidence of mouldy growth possibly due to blocked guttering as well as some fencing panels being in a poor state.

The Hearing

4. The Applicants were represented by Mrs Paynter in person; she was accompanied Mrs. Tracy O'Toole the proposed new manager. There were two representatives from Moat home in attendance representing on of the 12 flats but they indicated that they were only here to observe and would be making no submissions at the hearing. There was no attendance by the Respondent or any duly appointed representative. The majority of the Applicants attended the hearing.

The Law

5. The relevant law as contained in the Act says as follows:

"24 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 tribunal] thinks fit.

(2)[A leasehold valuation 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;

[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;

(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.

The Applicant's Case

6. This is clearly set out in the Notice of Application and states in summary form that since 2007, the Respondent has not collected maintenance or service charges or ground rent despite attempts by various lessees to get him to do so. The Applicant's actually wanted to give him money, fearful no doubt of any ever increasing liability or indeed of the need for large emergency works in the future. The sales of two flats have fallen through in the last year because prospective buyers have not been able to establish a service charge liability. Mrs. Paynter pointed out that although the grass was cut and the building insured (the Respondent has never charged for this) the failure to collect service charges under paragraph 1(4) of the Lease means that other provisions under the Lease at paragraph 4:5a (ii), to maintain the lighting and the communal door as well as maintaining the gutters have not been maintained. There is no fund for future repairs either. The Tribunal were able to observe the poor state of the communal door at the inspection.
7. She further introduced Tracy O'Toole at the hearing and the Tribunal were taken to the attempts to find and appoint a manager as well her tender document. The Tribunal heard from Mrs. O'Toole and were able to question her as to her intended role. The Tribunal were referred to her tender document in respect of her compliance with relevant professional Codes of Practice.

The Tribunal's Decision

8. The Tribunal have been impressed with the way that Mrs. Paynter has prepared and presented her case. It finds compelling the evidence it has heard and has before it in the papers as to the non-communication of the Respondent since 2007. It is satisfied that despite the tenants wanting to pay, nothing has in fact been demanded of them or collected since 2007. It is satisfied that important aspects of the Respondent's obligations remain unfulfilled such as repairs to the communal door area which poses a risk to the security of the premises as no money has been collected.
9. The Tribunal finds particularly compelling that the Respondent has chosen not to comply with Directions nor to attend this hearing or make any other representations or observations in respect of the Application or the appointment of Mrs. O'Toole.

10. In the circumstances the Tribunal makes an order under Section 24 of the Act cited above that a manager, namely Mrs. Tracy Marion O'Toole be appointed a manager of the subject premises for a period of three years from the date of the Tribunal's decision.
11. The Tribunal is satisfied that such an appointment should be under Section 1(a) and (b) above, that is as a manager and a receiver as set out in her tender document contained in the Applicant bundle at pages 105-112 of the Applicant bundle. The Tribunal is satisfied that the Respondent is in breach of the provisions of the lease to prepare and charge service charge accounts and that it would be just and convenient to make the order because of the impasse that the Applicant's have found themselves in since 2007. In summary important work has not been done and the Tenants are unable to have the matter resolved other than by recourse to this application to the Tribunal.
12. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicants have succeeded in respect of their submissions and the Tribunal is satisfied that the Respondent has not contested or otherwise challenged this application. The Tribunal directs that no part of the Respondent's relevant costs incurred in the application shall be added to the service charges. The Tribunal further directs that the Respondent does pay the Applicants hearing and application fee in respect of this application.

Chairman.....

Date.....