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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AT/LAM/2010/0026

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 24 (1) AND SECTION 22(3) LANDLORD
AND TENANT ACT 1987 AND SECTION 20C LANDLORD AND TENANT
ACT 1985**

Applicants: Mr Anthony Watson & Mrs Elizabeth
McKay (aka Watson) – Flat B
Mr Seven Shali – Flats A, D, E

Respondent: Aorgani Limited

Represented by: Reeves & Co LLP

Proposed Manager: Mr Nigel Cross BSc MRICS

Premises: 65 Chiswick High Road W4 2LT

Date of Application: 21st July 2010

Date of Hearing : 8th October 2010

Appearances for Applicants: The Applicants appeared and represented
themselves

Appearances for Respondent: None

Leasehold Valuation Tribunal: Dr Helen Carr
Mr Jagger
Mrs Walters

Date of Decision:

8th October 2010

Preliminary

1. The Applicants, Mr Anthony Watson & Mrs Elizabeth McKay (aka Watson) of the long lessees of Flat B and Mr Seven Shali the long lessee of Flats A, D and E, seek to appoint a manager of 65 Chiswick High Road W4 2LT(the premises) under section 24 of the Landlord and Tenant Act 1987 (the Act).
2. The Respondent is the freehold owner of the premises and has been since 25th January 1990.
3. The property is a Victorian semi-detached house divided into five flats over three floors. The Respondent retains ownership of one flat which is let to a regulated tenant.
4. There has been a history of applications to the LVT in connection with the premises involving the current Respondent. The Tribunal considered that the applications provided relevant background information for the application before it.
5. Some former lessees made a successful application for the appointment of a manager in 1999. The manager was appointed for three years, during which time it managed to remedy the subsidence to the premises. After the termination of the management order management reverted to the Respondent.
6. In 2006 Mr Watson and Mrs McKay were parties to an application under sections 27A and 20C of the Landlord and Tenant Act 1985 that determined that the management fees and the accounts fees demanded by the Respondent were unreasonable.
7. Directions were issued by the LVT on 11th August 2010 following a pre-trial review. The pre-trial review identified the following questions which require determination by the Tribunal:
 - a. Have the Applicants satisfied the Tribunal of any grounds as specified in section 24(2) of the Act?
 - b. Is it just and convenient to make a management order?
 - c. Would Mr Cross, the proposed manager, be a suitable appointee and if so on what terms and for how long should his appointment be made.
 - d. Should the Tribunal make an order preventing the Respondent landlord from recovering costs incurred in connection with the proceedings via the service charge account
 - e. Should the Tribunal order the Respondent to reimburse any fee paid by the Applicant

The Hearing

8. The Applicants appeared at the hearing and represented themselves. They produced a bundle of documents including previous tribunal decisions and gave oral evidence to the Tribunal.
9. The Respondent did not appear and was unrepresented at the Tribunal. However a letter was placed before the Tribunal from the Respondent's representatives, Reeves and Co Solicitors. This letter contained suggestions that Mr Shali had no grievances against the Respondent and that the statement provided by him to the Tribunal was not genuine. It also made an application for the matter to be adjourned on the basis that the Respondent was prepared to discuss the appointment of Mr Cross as the manager of the premise. It also made an application in the alternative, that the Application be dismissed.
10. The Tribunal put the Respondent's application to the Applicants. Mr Shali indicated that he was fully committed to the application before the Tribunal and each of the Applicants stated that the Respondent had (a) never appeared at the Tribunal in connection with any application in the past, and (b) that it had always made an application to dismiss.
11. The Tribunal determined to reject the Respondent's applications and hear the substantive application.
12. In making its determination the Tribunal draws on salient evidence from the Applicants' bundle and the oral evidence given by the Applicants and by Mr Cross, the proposed manager. The evidence, where relevant, is set out below.

Determination

The grounds

1. There are a number of grounds upon which an LVT may base its decision to appoint a manager which are set out in s.24 of the Act. The Applicants' notice indicated that the grounds upon which they were relying were as follows:
 - a. The landlord is in breach of its obligations owed to the tenants under clauses 5(2), 5(4) 5(5) and 5 (6) of the lease
 - b. The landlord has made unreasonable service charges and is likely to do so in the future.

2. The Applicants also argued that the Code of Practice does not apply in this case as there has been no management of the building for 20 years, other than during the last period when a manager was appointed by the Tribunal.
3. They pointed to a failure to allow inspection of service charge accounts since January 1990, and a failure to provide a copy of the insurance policy and last statements since January 1990.
4. In connection with the breach of obligations the Applicants referred to photographs of the premises. These photographs are contained in the bundle of documents. The photographs indicated damaged or missing slates from the roof, damage to brickwork from broken gutters, cracked render, a broken drain pipe, a missing drain pipe, damage to sills and window frames and a torn carpet.
5. Clause 5 of the lease imposes obligations upon the landlord to keep the property in good and substantial repair and condition. The photographs before the Tribunal and the evidence of the Applicants indicated that the obligations had not been carried out. There was no evidence from the Respondent to rebut this evidence.
6. The Tribunal asked if the Applicants were in arrears as the obligations in clause 5 arise only if properly demanded contributions and payments have been paid.
7. The Applicants had not paid service charge demands made during the year 2010. However they argued that these demands were not made in compliance with statutory requirements and therefore they were not properly made.
8. The Tribunal agrees with the argument of the Applicants. The service charge demand made in June 2010 was not compliant with the statute and therefore the Applicants are not in arrears. It therefore determines that the Respondent is in breach of its obligations under the lease as it found the evidence provided by the Applicants, in light of the history of the lack of management of the building to be convincing.

Just and convenient

9. The Applicants claim that it is just and convenient to make the order because the premises have been neglected over a great many years and reasonable requests that they have made, for instance to have sight of insurance documentation have not been complied with.
10. The statutory power which is available to a lessee to apply to the LVT for the appointment of a manager is one which should only be resorted to when there are no other avenues open to a lessee to ensure that the

leasehold property is properly managed. In other words, it is to be used sparingly, and not simply for instance because one lessee disagrees with the decisions of the manager. Moreover the issue of just and convenient is one to which it is important that a Tribunal direct its mind properly.

11. In this case taking into account the unanimity of the lessees (other than the Respondent), the long history of neglect, the need to ensure that there is no further deterioration in the property, and the failure of the Respondent to put any meaningful argument before it, the Tribunal determined that it is just and convenient to make the order.

The suitability of Mr Cross

12. The Tribunal then turned its mind to the calibre of the proposed manager. The statement provided by Mr Cross indicated that he is a chartered surveyor with considerable experience and an expertise and enthusiasm for managing the type of property that is the subject of this application. Mr Cross is familiar with the RICS code. He is a director of TPS estates which has the necessary infrastructure and resources for the management of the premises. TPS estates manages a number of properties in the locality of the premises, and works with a number of local contractors who regularly deliver a good standard of service to TPS's clients.
13. The Tribunal is mindful that the Respondent has not raised any objection to the appointment of Mr Cross, and could be taken to have endorsed his appointment as it indicated a desire to enter into negotiations about him managing the property.
14. The Tribunal is impressed by the evidence given orally by Mr Cross. He demonstrated a familiarity with the premises, and with the terms of the lease, and an understanding of the issues which arise when the Tribunal appoints a manager against the wishes of a freeholder who is also a lessee.
15. The Tribunal therefore determined that Mr Cross was a suitable appointment as manager of the premises.

The terms of his appointment and its duration

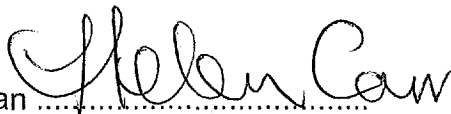
16. The Tribunal discussed with the Applicants and with Mr Cross the potential terms and conditions of his appointment.
17. Mr Cross indicated that he would want to be appointed for a five year period to give him ample opportunity to improve the condition of the premises without creating too much of a burden on the lessees in the short term.

18. He also indicated that his fee would be £200 per unit plus VAT for the first two years of his appointment rising to £220 per unit plus VAT for the final three years. The Applicants indicated that they were happy with these charges and the Tribunal considered that the amounts were appropriate and reasonable for the level of service that Mr Cross was intending to provide.
19. Mr Cross was particularly concerned that the Respondent provide im with the relevant documentation including the accounting information, and the insurance paperwork. The tribunal agreed that such terms would be appropriate in the management order.
20. Following Mr Cross's evidence the Tribunal determined to make an order on the terms set out in the Schedule to this decision.

Costs

21. The Respondent does not appear to the Tribunal to have disbursed any costs in connection with the application before it, but for the avoidance of doubt the Tribunal determined that it is not to place the costs of the application on the service charge account.
22. The Tribunal also heard arguments in connection with the reimbursement of the application and hearing fees for this matter. In light of the long history of neglect and the failure to resolve relatively straightforward property management matters, even subsequent to the service of the notice, the Tribunal determined that the Respondent should reimburse the hearing and application fees of the Applicant.

Tribunal:

Chairman 
Date 8-10-10

Schedule

LON/00AT/LAM/2010/0026

**IN THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**BETWEEN Mr Anthony Watson & Mrs Elizabeth McKay and Mr Seven
Shali**

Applicants

and

**Aorangi Ltd
Respondent**

MANAGEMENT ORDER

1. That Mr Nigel Cross of TPS Estates, Erico House, 93-99 Upper Richmond Road London SW15 2TG ("the Manager") be appointed Manager of the land and premises at and known as 65 Chiswick High Road London W4 2LT in the place of the Landlord, Aorangi Ltd and its successors in title, to exercise in that capacity all the rights of the Landlord and to carry out in that capacity all the responsibilities of the Landlord.
2. In particular the Manager shall:
 - (i) Account to the Landlord for the payment of the ground rents it receives; and
 - (ii) Comply with all applicable statutory provisions, including the Landlord and Tenant Acts 1985 and 1987, as though the /Manager was the Landlord of 65 Chiswick High Road London W4 2LT, and act in accordance with the duties of a Manager as set out in the Service Charges Residential Management Code ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

3. That the Manager be so appointed on 8th October 2010 for a period of five years ("the Management Period").
4. That the rights and liabilities of Aorangi Ltd under contracts entered into by Aorangi Ltd in respect of its management of 65 Chiswick High Road W4 2LT shall become the rights and liabilities of the Manager if and to the extent that the Manager deems them necessary for its proper management of 65 Chiswick Road and:
 - (i) Aorangi Ltd is to forthwith instruct FW Stephens to supply to the Manager details of all such contracts.
 - (ii) Within 14 days of receipt of details of a contract, the Manager must write to Aorangi Ltd and to the other party to the contract stating whether the Manager does wish to take over the rights and liabilities under the contract.
5. That as to arrears of rents, service charges and other money payable by the tenants of any flat within 65 Chiswick High Road:
 - (i) The service charges which have been claimed as being due and owing on behalf of Aorangi Ltd in respect of the period prior to 8th October 2010 are referred to below as "the Alleged Arrears".
 - (ii) The interim service charges which have been demanded by FW Stephens on account of the service charges payable for the year ending on 31 December 2010
 - (iii) The tenants under Residential Leases are referred to below as "the Residential Tenants" and the Residential Tenants who are not Applicants in this Application are referred to below as the "Non-Participating Tenants".
 - (iv) Subject to paragraph (v) below, all the Residential Tenants, including the Non-Participating Tenants, will forthwith following service of a demand on them pay to the Manager:
 - i. the Alleged Arrears; and
 - ii. such of the 2010 Service Charges as have not yet been paid.
 - (v) The Manager is to serve a copy of this order on each of the Non-Participating Tenants. Service will be treated as duly effected if a copy of this order is left at the flat held by a Non-Participating Tenant or sent to that flat by ordinary first class post addressed to the Non-Participating Tenant.
 - (vi) The payment by a Residential Tenant to the Manager of a sum forming part of the Alleged Arrears is without prejudice to the question of whether that sum is due and owing from the Residential Tenant to the Respondent, and if it is finally determined by any Court or Tribunal of competent jurisdiction:
 - i. that any sum so paid was not due and owing then the Manager will repay that amount to the Residential Tenant;

- ii. that any sum so paid was due and owing, then the Manager will pay that amount to the Respondent.
 - (vii) The Manager is entitled to bring and prosecute such proceedings as are reasonably required to recover any arrears of rents, service charges and other money payable by the tenants of any flat within 65 Chiswick High Road whether the sums fell due for payment before or after the appointment of the Manager.
 - (viii) If in doubt whether to bring proceedings against any person who fails to make a payment demanded of him, the Manager may seek the direction of this Tribunal.
 - (ix) Any such claim shall be brought by the Manager in its own name and the Manager shall be entitled to an indemnity for both its own costs reasonably incurred and for any adverse costs order out of the Service Charge Account.
 - (x) For the avoidance of doubt it is stated that for the sums that fell due for payment before the appointment of the Manager the Manager's entitlement to recover the same shall not be subject to any right of set off or counter-claim that the tenant may have against the Respondent.
6. That Aorangi Ltd will itself deliver, and will instruct FW Stephens to deliver forthwith to the Manager, free of charge, all books, papers, records and correspondence or copies in the control of Aorangi Ltd or FW Stephens relating to 65 Chiswick High Road on terms that:
- (i) The Manager will make such copies of that material as it considers necessary for its own use.
 - (ii) The Manager will then return the originals of that material to FW Stephens.
 - (iii) The Manager will treat that material as confidential and not disclose any of it to any Residential Tenant or anyone else except
 - i. pursuant to a statutory obligation to do so; or
 - ii. with the consent of the Respondent; or
 - iii. with the permission of this Tribunal.
7. That to the extent that FW Stephens holds any money in any account used or held in connection with the management of 65 Chiswick High Road, Aorangi Ltd will forthwith procure, free of charge, the transfer to the Manager of all such money, less a reasonable provision for any amounts which are properly due to be paid out of those sums at the date of this Order, such sums to thereafter be held by the Manager pursuant to the terms of its appointment.
8. The Manager is not to be treated as a person claiming under or in trust for Aorangi Ltd for the purposes of Aorangi Ltd covenants for quiet enjoyment

9. That the Manager shall have permission to apply to the Tribunal for such further directions as he may require in order to give effect to this Order and the Applicants, Aorangi Ltd and the Manager (as an interested party) shall have permission to apply to the Tribunal to vary this Order.
10. The Manager will prepare a report on the progress of its management plan as soon as reasonably practicable after its meeting with the leaseholders
11. That the Manager be otherwise appointed upon the terms set out in the schedule attached hereto.

Chairman: Dr H. Carr

Dated: 8th October 2010

SCHEDULE

1. General Duty

During the Management Period:

1.1 Aorangi Ltd does not have the right to carry out any works to 65 Chiswick High Road and is not liable to the tenants under the leases for any breach of the landlord's covenants under those leases.

1.2 The Manager will manage 65 Chiswick High Road in a proper and businesslike manner.

1.3 The Manager shall be responsible for carrying out the Landlords obligations as to the repair, maintenance, decoration, insurance, management and supervision of the flats at 65 Chiswick High Road and for the provision of services and upkeep of the amenities thereof and for enforcing against the tenants under the leases their obligations under and in accordance with the terms of the leases

1.4 Specifically, the Manager shall scrutinise all invoices issued in respect of goods and services supplied to 65 Chiswick High Road to ensure that the property is managed in an economic manner.

1.5 The Manager owes a duty to Aorangi Ltd and to the lessees under the Leases to use reasonable skill and care in carrying out the Manager's duties and in exercising the Manager's powers under this Order.

2. Specific Responsibilities

Without prejudice to the generality of the foregoing, it shall be the duty of the Manager during the Management Period to do the following:

- (i) To deal in a reasonable fashion with all items of repair and maintenance for which the Landlord is responsible provided that in respect of major works of repair and maintenance as defined hereafter, the Manager shall be entitled to reasonable additional remuneration payable out of the Service Charge Account and Maintenance Account (together the "Service Charge Account"), which remuneration shall not exceed 7.75% of the cost of the works (before VAT) involved. For the purposes of this Order "major works" are defined as any works requiring the service of a notice or notices under Section 20 of the Landlord and Tenant Act 1985 (as amended).
- (ii) To purchase all such items as may be necessary to effect such aforesaid repair, maintenance, services and amenities.

Notwithstanding this responsibility, the Manager will not be required to make purchases thereunder if this would result in the Service Charge Account for 65 Chiswick High Road going into deficit.

- (iii) To enter into contracts for the maintenance and supply of goods and services.

- (iv) To estimate in advance the anticipated cost of services for each year and the cost of each item of expenditure which is other than annual in nature. Such items will include (but will not be limited to) external or internal decoration and replacement of plant and equipment. The total cost of the services to be provided to 65 Chiswick High Road will then be apportioned by the Manager among the tenants thereof in the following manner:
 - (a) Tenants to contribute according to the percentage stated in their leases.
 - (b) Where a flat is owned directly by the Landlord the Landlord will contribute a percentage similar to that which would have applied had the flat been let on a long lease.

- (viii) To arrange and vary from time to time and keep in force the insurance of 65 Chiswick High Road and the contents of the common parts of Chiswick High Road against such risks as the Manager reasonably sees fit. The Manager will also effect and keep in force insurance against public liability. The Manager will agree the terms of such insurance and will pursue claims arising there from expeditiously. The Manager shall endeavour to make payment directly to the insurance company or broker concerned and shall obtain a receipt from such company or broker confirming that such insurance is paid up to date. The Manager shall declare to all interested parties any commission that he may receive upon and in respect of the placing of any insurance.

- (ix) To maintain efficient records and books of account which will be open to inspection together with relevant vouchers by appointment at all reasonable times by all interested parties and to maintain on trust an interest-bearing client account with a bank or building society into which Service Charge and Maintenance Charge moneys will be paid when they fall due (the 'Service Charge Account') together with such other accounts as the Manager may think necessary and appropriate.

- (x) To deal with all enquiries reports complaints and other correspondence with the Landlord, individual lessees, solicitors, accountants and other professional persons in connection with

matters arising from the day- to- day management of 65 Chiswick High Road. The Manager shall, however, be entitled to a reasonable fee additional to the remuneration set out in paragraph 5 of this schedule for the provision whenever so required of a "solicitors' pack" supplied to the solicitor acting for a tenant of a Lease who wishes to assign the lease. Such fee will be chargeable to the person requiring such "pack".

- (xi) To advise all interested parties in respect of:
 - a. essential major repairs, redecoration and maintenance; and
 - b. improvements or alterations which may be considered desirable.
- (xii) To perform such duties as are consistent with the best principles of estate management and as are necessary in order to procure and maintain all services at the most reasonable cost, including the procurement of a minimum of three quotes for all major services supplied, such quotes to be available for inspection by all or any interested parties.
- (xiii) To collect all service charges and, where this Order applies to other moneys, such other moneys as may be payable under the lessees' leases within one month of their falling due.
- (xiv) To take any legal action that the Manager reasonably required to make good such arrears.
- (xv) To pay and discharge out of the moneys collected (subject to the availability of adequate funds in the Service Charge Account) of all rates, taxes, insurance premiums, rents, wages, water, gas and electricity bills, costs of cleaning materials and other outgoings including payment of the Management Fee for which the Manager is responsible pursuant to its appointment. The Manager will take all reasonable steps to ensure that no liabilities accrue which cannot be financed from the Service Charge Account.
- (xvi) To manage the common parts, of the building, including the arrangement and supervision of maintenance. The Manager will prepare a quarterly statement showing all receipts and payments. Such statement shall be submitted to all interested parties within a reasonable period of the end of the relevant period to which it refers
- (xvii) To require any residential leaseholder who sub-lets his flat to provide the Manager with a written undertaking that any sub-letting will be for a period of not less than 90 days, and to lodge with the Manager a copy of the letting agreement or other relevant document along with the names and principal addresses of all the sub-tenants.

3. Power to Contract

Subject to the foregoing obligations, during the Management Period the Manager is empowered to enter into contracts for supplies and services, including with solicitors, accountants, building surveyors and other professional persons and where necessary to terminate the same. The Manager is further empowered to purchase individual items of a non-recurring nature.

4. Authority to negotiate adjustments to service charge payments

The Manager is empowered, to make and agree reasonable adjustments and other reasonable compromises with Tenants at 65 Chiswick High Road, in respect of the Service Charges and Interim Charges, and also in respect of any outgoings payable.

5. Remuneration

As remuneration for its services during the Management Period, the Manager will be paid a fee of £200 per annum for each of the units under management, plus VAT (or any other tax the Receiver/Manager may be required to pay upon such services by law). This fee will be payable quarterly in advance, the first payment to be made on or about 1st January 2011. The Manager will deduct the fee for each quarter from the Service Charge Account as it falls due. The above fee will increase to £220 after 2 years