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**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL
of the LONDON RENT ASSESSMENT PANEL**

Property	Cambridge House, 11, Montpelier Road, Ealing, London W5 2QP
Applicant	Maxine Morse
Respondent	Bernard Wales
Case Number	LON/00AJ/LVM/2012/0004
Type of Applications	Application under Section 24 of the Landlord and Tenant Act 1987 (the Act) for replacement of a Manager and Application under Section 20C of the Landlord and Tenant Act 1985 for limitation of costs. Also Application by the Respondent for Directions.
Date of Decision	3 rd December 2012
Tribunal	A.J.ENGEL M.A.(Hons.) - Chairman T.JOHNSON F.R.I.C.S. N.MILLER

DECISION

**The Application for replacement of the Respondent as Manager of
the Property is refused**

REASONS

Introduction

1. The Property is a large Edwardian House which has been converted into 5 flats, which are let on long leases.
2. The Freeholder and Landlord is the Cambridge House Residents Association Limited.
3. The Applicant is the Lessee of Flat 2. She resides elsewhere.

Previous Tribunal

4. On 3rd June 2011, a (differently constituted) Leasehold Valuation Tribunal granted an application made by the Applicant (Maxine Morse) for the Respondent (Bernard Wales) to be appointed Manager of the Property – for an initial period of 3 years.
5. The Order of the Previous Tribunal gave permission to the Respondent to apply to a Leasehold Valuation Tribunal for “such further directions as he may require”.

This Application

6. By written application, dated 27th June 2012 (i.e. just over a year after the Respondent had been appointed as Manager at the request of the Applicant), the Applicant applied for a variation of the Order made by the Previous Tribunal. The variation sought was the replacement of the Respondent as Manager by Nick Clarke.

The Respondent’s Request for Directions

7. In August 2012, the Respondent applied to the Tribunal for further directions – pursuant to the Order of the Previous Tribunal (see No.5 above). The directions sought by the Respondent related to the Applicant’s allegation that one of the other Lessees (Peter Sherwen – Flat 1) had breached the terms of his lease.

Pre-Trial Review

8. On 11th September 2012, an oral Pre-Trial Review took place before a (different) Tribunal Chairman who directed that the Applicant's application (to replace the Manager) and the Respondent's application (for directions) should be heard together.

The Hearing

9. The hearing before the Tribunal took place on 22nd November 2012. It was attended by the Applicant and the Respondent who both gave oral evidence.

10. Peter Sherwen (Flat 1) and Christine Steele (Lessee of one of the other flats) also attended and gave oral evidence.

11. Nick Clarke also attended and gave oral evidence.

Evidence

12. In addition to the oral evidence (referred to above), the Tribunal was provided with a large quantity of documentary evidence.

Alleged Breach of Lease by Peter Sherwen

13. During the course of the hearing, it became apparent that the appropriate course of action in respect of this allegation was for the Respondent (Bernard Wales) to make application to the Tribunal for a determination to be made by the Tribunal on the question of whether or not Mr Sherwen had breached the terms of his lease – pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002.

14. Accordingly, the Tribunal directed the Respondent to make such an application.

15. The Respondent, in accordance with our direction, made a written application under Section 168(4) aforesaid, which with the agreement of the Applicant, the Respondent and Peter Sherwen we proceeded to decide.
16. Our decision and reasons on this matter are set out in a separate document, from which it will be seen that we determined that there was a breach (albeit technical) by Peter Sherwen of the terms of his lease.

The Respondent's performance

17. Both Peter Sherwen and Christine Steele informed the Tribunal that they and all the other Lessees (with the exception of the Applicant) were highly satisfied with the Respondent's performance as Manager of the Property.
18. The Applicant, however, despite having instigated the appointment of the Respondent as Manager in June 2011, was dissatisfied with his performance – to such an extent that she sought his replacement by Nick Clarke.
19. The specific matters alleged against the Respondent by the Applicant are set out at (a) to (h) of Paragraph 41 of the Applicant's Statement of Case (on Pages 41/42 of the Applicant's bundle).

Our determinations in respect of these matters are as follows:-

- (a) The Applicant alleged that the Respondent had failed to maintain the common parts of the Property. She complained that no cleaning, gardening or tree surgery had taken place.

With regard to cleaning, we accept the Respondent's evidence that (in order to save costs) this was undertaken by the residents. The Applicant agrees that the cleaning was undertaken by the residents (Page 13 of the Applicant's bundle). The Applicant regards this arrangement as unsatisfactory. However, there is no evidence that the cleaning of the common parts fell below an acceptable standard and we reject this complaint.

With regard to gardening, again this was mostly carried out by the residents – although there is evidence of £80 paid to contractors in August 2011 (Page 60 of the Respondent’s bundle). Again, there is no evidence that the gardening fell below an acceptable standard and we reject the Applicant’s complaint on this matter.

With regard to tree surgery, we accept the Respondent’s explanation that delay was caused by reason of tardiness on the part of the Local Authority whose consent was required before the necessary surgery could be commenced – as the Property is within a conservation area. Thus, we reject the Applicant’s complaint on this matter.

- (b) The Applicant complains that the Respondent failed to produce quarterly accounts on time. However, we accept the Respondent’s explanation that the accounting history of the Property needed unravelling before accounts could be drawn up and we are satisfied that the Respondent produced accounts as soon as practicable. Thus, we reject this complaint.

- (c) The Applicant complains about the accounts in relation to repairs, maintenance and improvements and about the carrying out thereof. However, we accept that the Respondent’s evidence that he arranged for all necessary repairs and ensured that the Property was properly maintained. We are also satisfied that all the Lessees were provided with adequate information about proposed improvements and that the Respondent’s actions in relation to improvements were appropriate. We are further satisfied that any accounting deficiencies were minimal and caused no loss to any of the Lessees.

- (d) The Applicant complains about the Respondent’s actions concerning the (outside) fire escape. However, we accept the Respondent’s evidence that he inspected the fire escape soon after his appointment (in June 2011) and found it to be rusted and dangerous. He, therefore, caused it to be “wired off” and for warning signs to be fixed to it. Thereafter, he has entered into negotiations with the Local Authority as to how this matter should

be resolved. We consider the Respondent's actions to be entirely justified and appropriate and we reject this complaint.

The Applicant also complains that residents were permitted to clean common parts and carry out gardening without "health and safety" training. However, on the evidence, we find as a fact that the cleaning and gardening carried out by the residents was of the ordinary domestic variety and "health and safety" training was not required or appropriate. Thus, we reject this complaint.

- (e) The Applicant complains that the Respondent's action in respect of the alleged breach of the terms of his lease by Mr Sherwell were partisan and misguided. However, it is clear that the Respondent was put in a very difficult position by reason of the Applicant's insistence that the Respondent take action in respect of what was, on any view, a minor breach and we are satisfied that this complaint is misconceived.
- (f) The Applicant complains that the Respondent has failed to act impartially. However, it is clear to the Tribunal that, despite being subjected to undue pressure by the Applicant, the Respondent has acted properly and fairly and we so find as a fact.
- (g) The Applicant complains that the Respondent has failed to respond to e-mails and telephone calls and has acted in a belligerent and aggressive manner. We have had the advantage of seeing and hearing the parties over a number of hours and we are satisfied that the Respondent's actions and attitude have been appropriate and restrained in the face of frequent unwarranted demands made by the Applicant.
- (h) The Applicant complains that the Respondent has accepted the position of Company Secretary of the Freeholder and alleges that he has filed misleading accounts. However, we are satisfied that the Respondent's acceptance of the position of Company Secretary of the Freeholder was perfectly proper and that the accounts he has filed were not misleading.

20. Thus we reject all the complaints made against the Respondent by the Applicant and we would add that having heard evidence from the Respondent and observed him for several hours whilst he was under considerable pressure, we have every confidence that he will continue to act properly and effectively as Manager of the Property.

Conclusion

21. We reject the application to remove the Respondent as Manager of the Property.

Nick Clarke

22. In these circumstances, it is neither appropriate nor desirable for us to make any finding or comment on Nick Clarke's suitability to be Manager of the Property.

Section 20C

23. The Applicant has failed (comprehensively) in her application to remove the Respondent as Manager. In these circumstances it would be neither just nor equitable to make an order for limitation of costs.

Reimbursement of Fees

24. Likewise an order for reimbursement of fees is not appropriate.

Costs

25. The Respondent has applied for an order for the Applicant to pay the Respondent's costs.

26. Our jurisdiction to award costs is limited to the sum of £500. We are satisfied that the costs of the Respondent far exceed this sum.

27. Our jurisdiction is further limited to cases where the Applicant has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

28. We have carefully considered whether this is an appropriate case for an award of costs. In our view, in pursuing this (unmeritorious) application, the Applicant has approached the borderline of unreasonable conduct. However, we bear in mind that the Applicant has been proved correct in her allegation that Peter Sherwell had breached the terms of his lease and this matter just tips the balance against an award of costs.

29. Accordingly, we make no order for costs.

SIGNED

(A.J.ENGEL – Chairman)