



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

Case Reference : **LON/00AG/LAM/2014/0011**

Property : **64, Fitzjohns Avenue, London NW3
5LT**

Applicant : **Ms E Casdagli (flats A and B) and
Ms S Oldroyd (flat D)**

Representative : **Professor A Harrild**

Respondent : **Dr S Gabbay**

Representative :

Type of Application : **Appointment of a manager**

Tribunal Members : **Tribunal Judge Dutton
Miss M Krisko BSc (Est Man)
FRICS**

**Date and venue of
Determination** : **19th August 2014 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **19th August 2014**

DECISION

DECISION

The Tribunal appoints Mr Martin Kingsley of K & M Group as the manager of the property 64 Fitzjohns Avenue London NW3 5LT for a period of three years from the date of the Order (1st September 2014) on the terms set out in the order annexed hereto.

Background

1. This matter came before us for as a paper determination on 19th August 2014. In the papers before us we had various documents as set out on the Table of Contents received at the Tribunal on 29th July 2014. We noted all that was said, including the draft management order, the documents relating to the proposed manager and the submissions of Professor Green and the Applicants' response. We have borne these matters in mind when making the Order which is attached.
2. There is no dispute as to the appointment of Mr Kingsley. Professor Green raises concerns as to the terms of the Order which we shall address, which we hope also addresses the issues raised in the Applicants' response.

Findings

3. The Appointment of an independent surveyor is best dealt with by the manager, after proper consultation. Mr Muir of Marriotts is put forward and meets the approval of the Applicants'. We are told that consultation is being undertaken and if any leaseholder has someone else to suggest then they are free to do so provided they meet the time constraints. It must however be for the manager to decide who is the preferred party to undertake this work, provided he can justify that selection. A chartered surveyor will have professional obligations to maintain and we are satisfied that the position of the leaseholders will be satisfactorily protected.
4. We have provided for the manager to obtain payments on account which are outside the terms of the lease. We consider it is essential that he be put in funds to instruct a surveyor, hence the payment of £1,000 per flat, which we believe Professor Green, in principle, agreed with. Further a payment on account of £5,000 per flat within a short period of time will enable the reserve fund to be topped up for what are, according to the estimated costs prepared by Mr Muir, substantial future costs. Thereafter, following a meeting with the leaseholders the scheme of works can hopefully be agreed by the majority, but if not the manager will have the final say, and the costs to be paid under the s20 consultation should be paid when demanded.
5. We see no other reason to go beyond the terms of the lease. The payments on account are made based on the preceding years' accounts and a fair and reasonable sum can be added for anticipated expenditure. Any application to vary the lease terms beyond that provided for in the Order will have to be made following an application under Part IV of the Landlord and Tenant Act 1987.
6. The concern expressed by Professor Green as to enforcement action is unfounded. A charging Order is obtainable following judgment by the

Court after any defences have been considered. We consider therefore that his position is safeguarded by the County Court rules and the terms of the Landlord and Tenant Act 1985. We confirm that the recover of service charges can only be pursued if the provisions of the lease and the 1985 Act are followed. The fact that other leaseholders may have been more relaxed in their approach is not a matter of criticism but if any leaseholder wishes to adhere to the terms of the lease they are, of course, free to do so equally without criticism.

7. The Order makes provision for Mr Kingsley to address the issues raised in the s22 Notice as quickly as possible. The contribution of £1,000 per flat must of course be recorded and appear in the final certificate. It is perfectly reasonable for the report considered at paragraph 3.4.1 of the Order to be disseminated by email to those that are prepared to receive the report in that format.
8. Finally, it is clear that K & M are members of the RICS and we have no reason to disbelieve the assertions that Mr Kingsley is listed with the RICS and that he will follow the RICS code, which we have provided for in the Order.
9. We have delayed the operative date of the Order until 1st September 2014. This is to enable any party to raise concerns. However, we will not entertain a total review of the draft. If we have omitted matters that any party believes should be included they may before 1st September 2014 send written submissions to the Tribunal and to the other parties. This is not intended to be a back door method of appeal but as we did not have a hearing it is intended only for the parties to comment on the Order as it stands. If such written issues are raised we will consider them and review the draft.

Andrew Dutton
Tribunal Judge

19th August 2014

MANAGEMENT ORDER DATED 1st September 2014

Re: 64, Fitzjohns Avenue, London NW3 5LT

Case Number LON/OOAG/LAM/2014/0011

BETWEEN:

Ms E Casdagli (flats A and B) and

Ms S Oldroyd (flat D)

Applicant

Dr S Gabbay

Respondent

1. In this order:
 - A. "The property" includes all those parts of the property known as 64, Fitzjohns Avenue, London NW3 5LT
 - B. "The landlord" means Dr S Gabbay or in the event of the vesting of the reversion of the residential leases of the property in another, the landlord's successors in title.
 - C. "The manager" means Mr Martin Kingsley of K & M Group
 - D. "The leases" means the residential leases by which the lessees occupy their flats which are understood to be in the same terms with regard to service charge issues

It is hereby ordered as follows:

2. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the manager shall be appointed as manager of the property.

3. The order shall continue for a period of three (3) years from the date of this order.

4. That the manager shall manage the property in accordance with:
 - (a) The Directions and Schedule of Functions and Services attached to this order.
 - (b) The respective obligations of the landlord and the lessees by which the flats at the property are demised by the landlord and in particular with regard to repair, decoration, provision of services to and insurance of the property.
 - (c) The duties of manager set out in the Service Charge Residential Management Code (2nd Edition) ("The Code") or such other replacement 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.

5. An order is made under s.20C of the Landlord and Tenant Act 1987 that the respondent's costs before the Tribunal shall not be added to the service charges.

.....
Tribunal Judge Andrew Dutton

19th August 2014

DIRECTIONS

1. That from the date of appointment and throughout the appointment the manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the property, the landlord or the Tribunal.
2. As the Manager has been managing the property since December 2010, not later than two weeks after the date of this order, the parties to this application shall provide all necessary information and ensure that all responsibilities under the terms of this Order are transferred. No later than this date the landlord shall transfer to the manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).
3. The rights and liabilities of the landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the property shall upon the date two weeks from the date of this order become rights and liabilities of the manager.
4. That the manager shall account forthwith to the landlord for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the landlord's covenants contained in the leases.
5. That he shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the leases of the property) in accordance with the Schedule of Functions and Services attached.

6. The Manager shall be entitled to make a demand within 28 days of the commencement of the Order for a payment of £1,000 from each leaseholder to provide funds for the purposes of instructing a suitably experienced independent Chartered Surveyor (see Major works below)
7. That at the expiry of 6 months from the date of this order, the manager shall prepare a brief written report for the Tribunal on the progress of the major works project for the property and shall submit the same to the Tribunal by no later than 3rd March 2014.
8. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following events:
 - (a) any failure by any party to comply with paragraph 2 of these directions and/or;
 - (b) (if so advised) upon the service of the report in paragraph 6 of these directions, and/or;
 - (c) in the event that there are insufficient sums held by him to pay the manager's remuneration.

SCHEDULE OF FUNCTIONS AND SERVICES

A. SERVICE CHARGE

- 1.1 Upon completion of the Certificate provided for in the leases, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees as per the percentage share of under the terms of their lease.

- 1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from the lessees. For the avoidance of doubt this includes half yearly interim payments assessed by reference to the preceding year's actual costs and any additional sum thought fair and reasonable as a contribution to anticipated expenditure. Instruct solicitors to recover unpaid rents and service charges and any other monies due to the landlord.
- 1.3 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property.
- 1.4 The Manager shall be entitled, and it is considered good practice, to continue to accrue a reserve fund for the proposed major works (see paragraph below 3.4) and thereafter.

B. ACCOUNTS

- 2.1 Prepare and submit to the landlord an annual statement of account detailing all monies received and expended on its behalf. The accounts to be certified in accordance with the leases.
- 2.2 Produce for inspection, receipts or other evidence of expenditure. Such inspection may be undertaken by the use of electronic means
- 2.3 All monies collected on the landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors. Any reserve fund monies to be held in a separate client designated trust account with interest accruing to the account.
- 2.4 Within 28 days of the Order the Manager will provide all leaseholders with a full statement of service charge payments made since 2010,

including details of all reserve fund monies held, and if disbursed details of such disbursement, together with all brought forward balances from the previous managing agents. In addition the Manager will use his best endeavours to forthwith resolve the issues raised in the s22 notice dated 16th December 2013

C. MAINTENANCE

3.1 Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems up to a maximum of £500 per item of work (subject to review). Deal with all building maintenance relating to the services and structure of the building and to be available to the leaseholders during normal office hours. To inspect the property every 6 months.

3.2 The consideration of works to be carried out to the property in the interest of good estate management and making the appropriate recommendations to the landlord and the lessees.

3.3 The setting up of a full management plan to allow for the periodic re-decorations of the exterior and interior common parts and other.

3.4 MAJOR WORKS.

3.4.1. To appoint an independent Chartered Surveyor following consultation under the provisions of section 20 of the Landlord and Tenant Act 1985 (s20) to prepare a report on the condition of the property, the works required to bring the property up to a proper standard (both internal and external) and the anticipated costs of such works

3.4.2. Subject thereto to instruct the appointed surveyor to produce specifications for the works, seek tenders and advise thereon and to supervise the necessary works.

3.4.3. The implementation of these works should, if possible be undertaken with the agreement of the leaseholders and in particular to

determine whether the works are undertaken over a period of time. To enable this implementation to take place the Manager will arrange a meeting with the leaseholders, at a time convenient to all parties, within 14 days of the dissemination of the surveyors report as provided for at paragraph 3.4.1 above. Such meeting is to take place before the commencement of the s20 consultation process for the planned works.

3.4.4. To collect advance payments from each leaseholder in respect of the major works in a sum of £5,000 per flat. Such sums to paid within 3 months of the date of this Order. This is without prejudice to the liability of the leaseholders to make further payment of monies to cover their contributions to the major works once the consultation process under s20 has been completed.

D. FEES

- 4.1 Fees for the above mentioned management services would be a basic fee of £350 per annum per unit for the flats within the property. Those services to include the services set out the in Code.
- 4.2 A sum of £80 per flat for the preparation and service of all notices under the provisions of s20, together with an additional sum not exceeding £100 for any additional consultation with a leaseholder, notice of such additional charge being firstly given
- 4.3 If required to carry out Fire Risk and Health and Safety assessments an additional fee of a maximum of £300 per annum will be charged.
- 4.4 An additional charge for dealing with solicitors enquires on transfer will be made on a time related basis payable by the outgoing lessee.
- 4.5 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.

4.6 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged for on a fee basis to be agreed.

E. COMPLAINTS PROCEDURE

5.1 The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.