



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

Case reference : **LON/00AX/LAM/2015/0002**

Property : **41 The Avenue, Surbiton, Surrey
KT5 8JW**

Applicants : **1. David Gaster
2. Mark & Mansoureh DeBrett
3. Martin Clifford**

Respondent: : **DWD Property & Investment Co Ltd**

Type of application : **For the Appointment of Manager**

Tribunal members : **Angus Andrew
Aileen Hamilton-Farey**

Date and venue of hearing : **20 May 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision: : **22 May 2015**

DECISION

Decision

1. We appoint Sarah Robertson BA(Hons) of Appre Management Services Ltd to manage the property for a period of 3 years from 1 June 2015 under the terms of the management order annexed to this decision.
2. The respondent may not recover any of its costs incurred in these proceedings from the applicants through the service charge.
3. The respondent must reimburse the applicants with the tribunal hearing fee of £190 by 19 June 2015.

The application and hearing

4. On 26 January 2015 the tribunal received an application from the applicants to appoint Sarah Robertson to manage the property pursuant to the provisions of section 24 of the Landlord and Tenant Act 1987 ("the Act"). The applicants also sought an order under section 20C of the Act preventing the respondent from recovering any costs incurred in these proceedings through the service charge. Finally the applicants sought an order that the landlord reimburse them with the fees paid to the tribunal in connection with these proceedings.
5. Copies of the application form were sent to both the respondent and the lessees of the other two flats in the property: James Harradin and Rob Moore ("the other two lessees"). The other two lessees were given the opportunity to be joined in the proceedings either as an applicant or a respondent but neither of them applied to be joined. On 28 January 2015 the tribunal gave notice of a case management hearing to all the parties and also to the other two lessees. By letter of 2 February 2015 the respondent said that it would not attend the case management conference and that it was "*in full agreement*" with the appointment of Appre Management Services Ltd, of which Sarah Robertson is the managing director.
6. The respondent and the other two lessees did not attend the case management conference on 17 February 2015 when directions were given for the disposal of the application. Copies of the directions were again sent to the parties and to the other two lessees.
7. At the hearing on 20 May 2015 we heard evidence from Mr Gaster and Mr DeBrett and also from Sarah Robertson the proposed manager. The respondent and the other two lessees did not attend the hearing and indeed apart from the respondent's letter of 2 February 2015 they did not engage with the tribunal or take any part in these proceedings.

Background

8. The property was an Edwardian semi-detached house that was subsequently converted into five flats. All the flats were sold on long residential leases. Mr Gaster is the lessee of Flat E and his lease was granted in 1985 although it was subsequently extended. We assume that the other four lessees are in substantially the same form. In essence the lessor is responsible for repairing, maintaining, decorating and insuring the property and recovers the cost through the service charge provisions of the lease. The service charge costs are apportioned by reference to the relative rateable value of the five flats and we were told that on that basis the lessee of Flat A pays 29%, the lessee of Flat B 14%, the lessee of Flat 15%, the lessee of Flat D 21% and the lessee of Flat E 21%. Interim on account payments are to be made on 1 January and 1 July in each year and there is a provision for payment of a balancing charge within 28 days of the publication of the year end accounts.
9. We do not know when the respondent acquired the freehold reversionary interest in the property but it was certainly before Mr Gaster purchased his flat in 1994. It appears that the respondent has always insured the property and has collected both the insurance premium contributions and the ground rent from the lessees. It has however taken no further interest in the property leaving it to the lessees to manage the property as best they can. For a short period of time, after Mr Gaster purchased his flat, this voluntary arrangement worked reasonably well but it broke down when others flats were sold and the buyers declined to cooperate.
10. In consequence the property has fallen into considerable disrepair. The extent of the disrepair is documented in a survey report of 2 February 2010. It was commissioned by Mr Gaster in the hope that it would persuade the respondent to remedy the disrepair.
11. The respondent did not however undertake any work and the property continued to deteriorate. In 2014 Mr Gaster instructed Sarah Robertson and she prepared a report dated 12 June 2014 which again documents the disrepair. The report concludes with a table listing 22 items of outstanding work the total estimated cost of which is in the region £70,000. On the instructions of the 3 applicants Sarah Robertson prepared a preliminary notice under section 22 of the Act and this was served on the respondent on 23 July 2014. The notice recites the lessor's repairing and redecorating covenants contained in the residential lessees and then lists 14 breaches of those covenants. By way of example the breaches includes disrepair to the roof resulting in water ingress to the ceiling of Flat E and a failure to repair and redecorate the exterior of the property.
12. The preliminary notice also refers to the Service Charge Residential Management Code approved by the Secretary of State for England under

Section 87 of the Leasehold Reform, Housing and Urban Development Act 1983. The notice lists 3 breaches of that code including a failure to install emergency escape signage, emergency lighting and mains powered smoke and fire detectors.

13. The notice required the respondent to remedy the various breaches within 6 months. Again no action was taken by the respondent and consequently the applicants made their application to this tribunal.

Statutory framework

14. Under section 24(2) of the Act, the tribunal may appoint a manager under section 24 in various circumstances. These include where the tribunal is satisfied:

- 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
- 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

that it is just and convenient to make the order in all the circumstances of the case; or

- where the Tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

Reasons for Decisions

To appointment a manager

15. We are satisfied that it is just and convenient to appoint a manager to manage this property for a period of 3 years for each of the following reasons:

- a. The respondent has over a period of at least 20 years failed to comply with the lessors management obligations contained in the five residential leases.
- b. Given the respondent past failure and in particular its failure to respond either to the survey report of 2 February 2010 or the preliminary section 22 notice there is no reasonable prospect of the respondent making good its default and remedying the existing breaches of its repairing and redecorating obligations.

- c. The respondent has failed to comply with the relevant provisions of the Service Charge Residential Management Code and for the like reason there is no reasonable prospect of its making good that default.
 - d. If a manager is not appointed the property will continue to deteriorate to the disadvantage of all five lessees.
16. Sarah Robertson is not a chartered surveyor and she manages only 13 other properties. Furthermore she has not previously acted as a tribunal appointed manager. She is however a member of ARMA and from her answers to our questions we are satisfied that she understands both her responsibilities as a tribunal appointed manager and the magnitude of the task that confronts her. Furthermore her appointment has affectively been approved by the respondent and it is not opposed by the other two lessees. Consequently and for each of these reasons we are satisfied that it is appropriate to appoint Sarah Robertson as the manager. We do however require her to produce a report on the first six month of her management, by 31 December 2015.
17. On the basis of Mr Gaster's evidence it seems unlikely that the respondent will be in possession of any funds that can be transferred to Sarah Robertson. It is self evident that she will have to be put in funds before she can commence work. Having regard to the estimated cost of the outstanding work it is appropriate to order the lessees to make an immediate collective contribution of £10,000. Sarah Robertson considers that that sum will be sufficient to enable her to start work and will see her through to the end of the year, with further interim on account service charges becoming due from the five lessees on 1 January 2016.
18. Mr Gaster told us that a contributing factor to the disrepair was the other two lessees' refusal to make realistic contributions towards the cost of essential repairs. As they are not parties to these proceedings and did not appear before us we make no formal finding of fact about that. However the other two lessees must be aware that the existing disrepair will seriously reduce the value of their flats and may render them unsalable until the disrepair is remedied. They should also be aware that their obligations to contribute towards the £10,000 referred to in the preceding paragraph and to pay future service charges are legally enforceable through the courts: if not paid they could ultimately run the risk of having their leases forfeited.
19. Our management order is annexed to this decision.

Reimbursement of fees and section 20C

20. To the extent that the costs might be recovered through the service charge the right to recover them is a property right which should not be lightly

disregarded. Section 20C however provides that a tribunal may “*make such order on the application as it considers just and equitable in the circumstances*”. Those words permit us to take into account the conduct of the parties in deciding whether to make an order.

21. These proceedings were necessitated by the respondents’ failure over a period of 20 years to comply with its clear management obligations set out in the five leases. Furthermore the applicants have been wholly successful. Consequently and for each of these reasons it is just and equitable to make the order sought by the applicants. For similar reasons we order respondent to repay to the applicants the hearing fee of £190 that they incurred in the making this application, such fee to be paid by 19 June 2015.

Name: Angus Andrew

Date: 22 May 2015



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Applicants : **1. David Gaster
2. Mark and Mansoureh de
Brett
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Respondent : **DWD Property & Investment
Company**

The manager : **Sarah Robertson of Appre
Management Services Ltd**

Tribunal members : **Angus Andrew
Aileen Hamilton-Farey FRICS, LLB**

Date of order : **22 May 2015**

MANAGEMENT ORDER

1. In accordance with section 24(1) of the Landlord and Tenant Act 1987 ("the Act") the manager is appointed as manager of the property.
2. The appointment shall start on 1 June 2015 ("the start date") and shall end on 31 May 2018 ("the end date").
3. The manager shall fulfil the landlord's management obligations contained in the residential leases of the flats in the property and in particular those relating to the repair, maintenance, decoration and the provision of services but not those relating to the insurance of the property.

4. In managing the property the manager shall comply with the 2nd edition of the RICS Service Charge Residential Management Code ("the RICS Code").
5. The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors.
6. The manager shall comply with the statutory management obligations imposed on landlords and in particular those contained in the Landlord and Tenant Act 1985 and the Act.
7. The manager shall not collect the ground rents or insurance premium contributions payable under the residential leases. The landlord shall remain liable for insuring the property and for collecting the ground rents and insurance premium contributions from the residential lessees.
8. The manager shall collect all other service charges payable under the residential leases and may enforce the performance of the lessees' covenants and obligations contained in the residential leases.
9. To ensure that the manager has adequate funds to manage the property the manager may immediately collect £10,000 from the residential lessees. Of that sum the lessee of flat A will pay 29%, the lessee of flat B 14%, the lessee of flat C 15%, the lessee of flat D 21% and the lessee of flat E 21%.
10. All monies received by the manager in respect of the property shall be held in a designated trust account.
11. The manager may prosecute or defend court or tribunal proceedings relating to the management of the property and the enforcement of the lessees' covenants and obligations contained in the residential leases. The manager may continue to prosecute or defend proceedings commenced during the appointment after the end date.
12. The manager shall carry out the landlord's functions in the residential leases with regard to approvals and permissions including those for sublettings, assignments, alterations and improvements.
13. The manager shall by 30 June 2015 draw up a planned maintenance programme for the period of the appointment and shall send a copy to every lessee and to the respondent.
14. By 30 June 2015 the respondent shall transfer to the manager:-
 - a. All accounts, books and records relating to property including a complete record of all unpaid service charges; and

- b. All funds relating to the property including uncommitted service charges and any monies standing to the credit of a reserve or sinking fund.
15. The rights and liabilities of the respondent under any contract for the provision of goods or services to the property (other than buildings insurance) shall become the rights and liabilities of the manager from the start date.
16. The manager shall be entitled to the following remuneration:-
 - a. An annual fee of £250 per flat for performing the duties set out in paragraph 2.4 of the RICS Code; and
 - b. 8.50% of the net cost of any major works that are subject to statutory consultation.
 - c. Reasonable additional fees for the duties set out in paragraph 2.5 of the RICS Code.
 - d. VAT on the above fees in so far as recoverable.
17. During the period of the appointment the manager must hold appropriate professional indemnity insurance cover of at least £1,000,000.
18. The manager shall register this order against the registered title to the property in accordance with section 24(8) of the Act.
19. The manager or any other interested person may apply to vary or discharge this order pursuant to the provisions of section 24(9) of the Act.
20. By 31 December 2015 the manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to 30 November 2015.
21. Any application to extend or renew this order should be made at least 3 months before the end date and must include a detailed report of the management of the property during the period of the appointment to the date of the application.

Name: Angus Andrew

Date: 22 May 2015