



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

Case Reference : LON/00AE/LAM/2014/0014

Property : 244a – 258a Church Lane, London NW9 8SL

Applicant : Leaseholders at 244a – 258a Church Lane, London NW9 8SL.

Representative : Mr. H. Chavda

Respondent : Criterion Estates Limited

Representative : Mr. J.A.T. Guest

Type of Application : **Application for the Appointment of a Manager under S.24(1) of the Landlord & Tenant Act 1987.**

Tribunal Members : Aileen Hamilton-Farey
Mr. H. Geddes JP RIBA MRTPI
Mr. J. E. Francis

Date of Decision : 18 September 2014.

DECISION

Decisions of the Tribunal

(1) The Tribunal appoints Mr. Christopher Hill of Bridgeford & Co as Manager under S.24(1) of the Landlord and Tenant Act 1985, in relation to the property at 244a – 258a Church Lane, Kingsbury, Middx NW9 8SL.

- (2) The appointment shall continue for a period of three years from the date of this decision.
- (3) Mr. Hill is appointed on the basis of the Agreement between the Landlord and Residents appended to this Decision.

Background and Reasons for the Decision:

- (4) The leaseholders applied to the Tribunal under S.24(1) of the Landlord & Tenant Act 1987 for the re-appointment of Mr. Hill as Manager of the buildings known as 244a – 258a Church Lane, Kingsbury, London NW9 8SL. The previous appointment having expired on 29 November 2013.
- (5) A Preliminary Notice had been served by the applicants on the respondent landlord on or around the 15 April 2014.
- (6) It is understood that the respondent did not respond to that Notice and the applicants therefore proceeded to the Tribunal for a determination.
- (7) A case management conference was held on 3 July 2014 at which the applicants appeared in person; the landlord did not appear and was not represented.
- (8) It appears from the evidence supplied to us that the re-appointment of Mr. Hill is unopposed by the landlord and overwhelmingly supported by the lessees.
- (9) At the hearing on 18 September the applicants informed us that they were happy with the services provided by Mr. Hill and that progress had been made since the previous Order, and that the only thing they required was an alternative contact in the office for when Mr. Hill was absent, so that maintenance issues and the like could be reported. Mr. Hill informed us that he would supply a name and number to the residents as soon as possible.
- (10) Having heard the applicants and Mr. Hill we are satisfied that the appointment of a manager is appropriate and that Mr. Hill should be appointed for a further term of three years with effect from the date of this Decision.

(11) Tribunal:

Aileen Hamilton-Farey
Mr. H. Geddes JP RIBA MRTPI
Mr. J. Francis.

Terms of Appointment

1. 'The Service' to be provided by the Agent

With reasonable skill, care and diligence to:

- 1.1 attend to routine maintenance enquiries relating to the common parts and areas of the Property from the Client or from any leaseholder or freeholder at the property;
- 1.2 administer contracts and works orders and check demands for payment for goods, services, plant and equipment supplied for the benefit of the Property where the cost falls within the expenditure limits specified in the attached Agreement. Then administer payments from the service charge accounts of such valid demands;
- 1.3 inspect without use of equipment and on a regular basis and during daylight hours such of the common parts of the Property as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those common parts and to regularly report the outcome of such inspections and related works to the Client;
- 1.4 attend to routine accounts enquiries from the Client or any leaseholder, freeholder, or auditor;
- 1.5 administer any service charge or contingency and future expenditure funds;
- 1.6 prepare the annual estimate of future service charge expenditures. The annual service charge is to be set in consultation and agreement with the Directors.
- 1.7 prepare and distribute appropriate service charge accounts at the appropriate time;
- 1.8 use his best endeavours to collect current and overdue instalments, service charges, contingency and future expenditure fund contributions, and any other payments due from leaseholders of the property, and hold such sums in accordance with the guidelines of the Association of Residential Managing Agents.
- 1.9 Make reasonable efforts to ensure suitable insurance cover is in place with respect to buildings insurance and public liability insurance for the common areas of the Property;
- 1.10 Make reasonable efforts to ensure suitable insurance cover is in place with respect to Directors and Officers insurance cover for the Client, if required;
- 1.11 keep files of leases and other documents relating to the Property that have been supplied to the Agent;
- 1.12 provide quarterly statements of account to the Client, as appropriate;
- 1.13 liaise with the appointed auditors for matter relating to the auditing of end of year accounts.
- 1.14 within the time specified in the Agreement after the end of each agreed accounting period, or of the termination of the Agreement, send to the Client a written statement for that period of:
 - monies due, showing how much the Agent has received and outstanding debtors. Also, from time to time, any interest that has accrued on monies received due to the reserve fund accounts;
 - remuneration due to the Agent (any fixed element of fee being apportioned as appropriate if this Agreement takes effect or is terminated during a payment period) and any VAT due;
 - expenses and other disbursements made on behalf of the Client and whether any VAT is included;
 - any sum due to the Agent or deducted in calculating (a) above for bank charges relating to the administration of a service charge account(s).
- 1.15 Monitor requirements for compliance to current fire, health and safety legislation.

2. Authorisations of the Agent by the Client

The Client authorises the Agent as follows:

- 2.1 to expend any service charge monies for the benefit of the Property that are within the expenditure limits specified in the Agreement and also, in cases of emergency, to take such reasonable measures as the Agent shall consider appropriate;
- 2.2 to expend, from the service charge, any other sums considered necessary by the Agent to ensure compliance with any statutory provision affecting the Property or affecting the Client or the Agent with regard to the Property;
- 2.3 from monies received by The Agent for the Client (generally the service charge):
 - (a) at any time to pay or reimburse himself for any expenses or other disbursements recoverable from the Client;
 - (b) to deduct during any payment period his remuneration for that period, other than any charge already collected in advance by agreement;
 - (c) after termination of the Agreement, to deduct his outstanding remuneration and/or expenses due.

3. Communications between the Client and the Agent

- 3.1 All instructions of the Client to the Agent with regard to the Service to be performed by the Agent shall be given to the Agent in writing or, if given orally, shall be confirmed in writing within seven days.
- 3.2 The Client shall promptly upon request by the Agent provide to the Agent any decision or information that the Agent considers necessary for the proper performance of the Service to be performed by the Agent.
- 3.3 The Agent shall promptly upon request by the Client allow the Client to inspect and at the Client's expense copy any accounts and documents in the possession of the Agent relating to the Property.
- 3.4 It shall be sufficient service of any written notice or other written communication to send such by first class post to the address specified in the Agreement or the last known address of the person for whom the communication is intended; and
 - (a) any notice or communication posted on a Monday or Tuesday shall be deemed served on the following Thursday;
 - (b) any notice or communication posted on a Wednesday or Thursday shall be deemed served on the following Tuesday;
 - (c) any notice or communication posted on a Friday, Saturday or Sunday shall be deemed served on the following Wednesday.
- 3.5 The Client undertakes to keep the Agent informed of proposals to sell the Property or any part thereof.

4. Undertakings by the Client

The Client undertakes:

- 4.1 upon written notice by the Agent that the Agent requires the Client immediately to advance or reimburse sums in respect of Clauses 2 to immediately do so. The Agent will be entitled to charge interest at the rate specified in the Agreement on any outstanding amounts not received within 14 days of such a request.
- 4.2 to independently verify, or have verified, any communication from the Agent which may be considered as advice pertaining to legal, contractual or accounting issues or other areas in which the Agent may not reasonably be expected to be professionally qualified.

5. Bases of Remuneration

- 5.1 The basis or bases of the Agent's remuneration as recorded in the Agreement shall apply.
- 5.2 In the event of it being agreed that additional work not part of the Service (Clause 1) shall be remunerated by the hour, the rates to apply shall be as specified in the Agreement. In the case of works being undertaken beyond the scope of the Agreement (Annexe), a fee as specified in the Agreement shall apply.
- 5.3 The Client shall reimburse the Agent for any out-of-pocket expenses and disbursements immediately on request in accordance with clause 2.3.

6. Assignment

- 6.1 This Agreement may be assigned or transferred in whole or in part subject to the transferring party providing to the other party reasonable notice of its intention to assign or transfer.

7. Term of this Agreement

- 7.1 The Term is for an unlimited period from the date of this Agreement.

8. Termination

- 8.1 Either party may terminate this Agreement by serving on the other three months notice in writing.
- 8.2 Notwithstanding the provisions of Clause 7.1 if either party is in breach of this Agreement:
 - (a) the other may serve on the party in breach written notice specifying the breach or breaches and requiring them to be remedied within 60 days; and
 - (b) if the party in breach fails within 60 days of the service of such notice to remedy such breach or breaches; then
 - (c) the party who served the notice may terminate the Agreement upon serving written notice to that effect on the other party.
- 8.3 If either party commits an act of bankruptcy or has a receiving order made against him or makes any arrangement with his creditors or if distress or execution is levied or threatened upon any of his property or any judgement against him remains unsatisfied for more than 14 days or if being a limited company a party enters into liquidation whether compulsory or voluntary (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or has a receiver appointed of any of its assets, the other party may terminate the Agreement upon serving written notice to that effect.

9. Liability of the Agent

- 9.1 The Agent is not liable either in contract or in tort for any loss, injury, damage or legal or other expenses sustained as a result of:
- (a) the Agent having reasonably relied upon the Client to provide accurately all relevant information;
 - (b) any inaccurate forecast by the Agent of future income or expenditure;
 - (c) any defect or failure to identify any defect in the Property or plant, machinery, equipment, or materials used for the Property whether or not such defect be latent or apparent on examination;
 - (d) carrying out its duties under the terms of this Agreement;
 - (d) the act, omission or insolvency of any person other than the Agent.
- 9.2 The Agent shall not be liable to indemnify the Client in respect of any claims made by another or third party for any loss, injury, damage or legal or other expenses.
- 9.3 Clauses 9.1 to 9.2 above shall not be valid in so far as prohibited by statute.
- 9.4 In no circumstances shall the Agent be liable for any consequential loss or damage save where loss, death or injury results from negligence on behalf of the manager.

10. Waiver

- 10.1 No indulgence shown by either the Client or the Agent shall prevent the other subsequently insisting upon his rights and remedies under the Agreement.

11. Arbitration

- 11.1 Any dispute between the Client and the Agent arising out of the Agreement and/or the Terms of Appointment may be referred at the insistence of either or both parties to and determined by a sole arbitrator to be agreed between the Client and the Agent or, in default of agreement, within 30 days of the dispute being identified appointed by the President or a Vice-President for the time being of the Royal Institution of Chartered Surveyors.

Annexe

The following are not part of the Service described in the Terms of Appointment to which this is an Annexe:

- (a) carrying out an inspection of the Property (other than inspection of common parts as referred to in 1.2), or a building survey or valuation of the Property as a security or for insurance purposes or preparing any schedule of dilapidations or inventory;
- (b) offering vacant property to let, advising the Client on the terms of any lease or negotiating the terms of any new or varied lease;
- (c) initiating, conducting, preparing evidence for and attending hearings for and otherwise dealing with any leasehold valuation tribunal, rent review, party wall proceedings, application for a grant or for consent, insurance claim, arbitration or litigation;
- (d) dealing with local government matters including council tax valuations, planning permission, building regulation consent and grant applications;
- (e) preparing specifications and tenders for, organising, supervising or measuring non-routine matters, or works which exceed the specified expenditure limits contained in the Landlord and Tenant Acts 1985 and 1987 or as subsequently amended;
- (f) arranging compliance to, legislation and other issues relating to health and safety (including asbestos related issues) and fire prevention;
- (g) any advertising and recruitment of staff on behalf of the Client;
- (h) supplying extra copies of statements of account and copies of any other documents;
- (i) if the Client is a company, acting as company secretary;
- (j) dealing or advising upon applications for assignment of tenancies or leases, sub lettings, alterations and changes of use;
- (k) provide information to solicitors and others in connection with enquiries on sales of flats and houses at the Property.

Agreement

The Royal Institution of Chartered Surveyors' Terms of Appointment as attached shall apply to this Agreement between the undermentioned parties, subject to the following, which also applies.

A. Start date of this Agreement:	
B. 'The Client' (name and registered office or address)	LEASEHOLDERS OF THE PROPERTY AND APPOINTED VIA THE FIRST TIER TRIBUNAL
c. 'The Agent' (name and address)	<p>Christopher John Hills Managing Director Bridgeford & Co Ltd</p> <p>13 Quay Hill Lymington Hampshire SO41 3AR</p> <p>AND</p> <p>20 Wellington Square Hastings East Sussex TN34 1PB</p> <p>Registered address: 8C High Street Southampton SO14 2DH</p>
D. 'The Property' the subject of this Agreement	244-258 CHURCH LANE, KINGSBURY, LONDON NW9 8SL
E. The Clauses listed below refer to those in the Terms of Appointment herewith the relevant information is set alongside the corresponding Clause number.	
Clause 1.2 and 2.1 - Expenditure limits	The thresholds below which the Section 20 consultation process does not need to be entered into for short term contracts or maintenance works, as appropriate.
Clause 1.14 - Period of time for sending written statement of account	3 months
Clause 4.1 - Specified rate	4% above the Bank Of England base rate
<p>Clause 5 - Basis of Agent's remuneration for the Service as described in the Terms of Appointment. For the avoidance of doubt, unless otherwise agreed in writing, this remuneration does not cover services set out in the Annexe to the Terms of Appointment. Fees should be agreed for these extra services at the time. The Agent shall also be reimbursed by the Client for any reasonable out-of-pocket expenses incurred.</p> <p>The Agent shall be entitled to retain any commission received by him for arranging insurances in respect of the Property.</p>	

Clause 5.1 - Basis of remuneration to apply	<ul style="list-style-type: none"> We propose an annual management fee of £3,260 including VAT for this property. Major works will be charged at 12%+VAT of the cost of qualifying works.
Clause 5.2 - The hourly rates for additional work	<ol style="list-style-type: none"> For a Director - £ 100 + VAT For an associate, surveyor or property manager - £80 + VAT For a clerk or secretary - £ 50 + VAT

This Agreement is to be governed, construed and enforced in accordance with the law of *England and Wales*.

Please note: References to the masculine include, where appropriate, the feminine

SIGNED BY OR on behalf of the Client:

Signature

Name in capitals

Signing as:

Director, duly authorised to do so.

in the presence of:

Signature of witness

Name of witness in capitals

Date

SIGNED by the Agent

Signature

Name in capitals

in the presence of:

Signature of witness

Name of witness in capitals

Date
