



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

Case reference : **LON/00AN/LAM/2015/0003**

Property : **179-181 Dawes Road, Fulham,
London, SW6 7QP**

ApplicantS : **(1) Ms E Furzer (Flat 1)
(2) Ms M Durrenbach (Flat 2)
(3) Mr T Farries (Flat 3)**

Representative : **Mr Browne of Counsel**

Respondent : **Mr B McGowan**

Representative : **Did not attend and was not
represented**

Type of application : **Appointment of Manager**

Tribunal member(s) : **Judge I Mohabir
Lady Davies
Mrs L West**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **5 May 2015**

DECISION

Introduction

1. This is an application made by the Applicants pursuant to section 24 of the Landlord and Tenant Act 1987 (as amended) ("the Act") for the appointment of a manager in respect of 179-181 Dawes Road, Fulham, London, SW6 7QP ("the property").
2. The property is comprised of premises on the ground floor, which the Tribunal was told is being used for commercial purposes. The

Applicants are the long leaseholders of the 3 residential flats above. The Respondent is the freeholder.

3. The Respondent had appointed the firm of J C Francis & Partners Ltd to manage the property. However, their tenure was terminated by the Respondent on or about 2 February 2013. It seems that no other managing agent was appointed and it is the Applicants' case that no management of the property was undertaken by the Respondent or at all. The Tribunal was told that the Applicants have insured the building from the beginning of this year.
4. Consequently, by a letter dated 10 September 2014, the Applicants' solicitor served the Respondent with a preliminary notice pursuant to section 22 of the Act. The grounds relied on in the notice are:
 - (a) the landlord has failed to manage the property or at all.
 - (b) the landlord has failed to confirm that the property was insured having failed to respond to a request to do so under section 30A of the Landlord and Tenant Act 1985 (as amended).
 - (c) the landlord has failed to carry out any required or necessary repair work, the particulars of which were set out in Schedule 3 to the notice.
5. The notice gave the Respondent 14 days from the date of the notice to remedy the defects complained of by the Applicants. Upon receiving no response to the notice, the Applicants made this application dated 29 January 2015.
6. On 10 February 2015, the Tribunal issued Directions, which have been complied with by the Applicants. The Respondent has not done so nor has he engaged in these proceedings at all.
7. The hearing in this matter took place on 5 May 2015. The Applicants were represented by Mr Browne of Counsel. The Respondent did not attend and was not represented.
8. Mr Browne confirmed that the breaches of covenant set out in Schedule 2 of the section 22 notice and the particulars on which they are based had not been addressed at all by the Respondent and remained unchallenged.
9. The Tribunal then heard evidence from the Applicants' proposed manager, Mr Naish BSc of Willmotts, Chartered Surveyors. The material evidence he gave was as follow:
 - That he had a degree in finance and had 20 years' experience of property management.
 - That his firm's office was in Hammersmith approximately 2 miles away from the subject property.

- That his firm had about 220 blocks of flats currently under management, both large and small.
 - That he would personally supervise the day to day management of the property by a colleague.
 - That the property would be inspected about 3-4 times a year save for any emergency visits required.
 - That his firm had an out of hours emergency contact number and nominated contractor.
 - That he was seeking to be appointed for a 3 year term until 5 May 2018.
 - That the basic management fee would be fixed at £400 including VAT per flat.
 - That an additional charge would be made for undertaking major works to the property at a rate of 10-12.5% of the overall cost.
 - That an additional cost would be made for carrying out statutory consultation, which would depend on the section 20 notice.
 - That he had inspected the property externally and had read the residential lease.
 - That he was familiar and followed the RICS Management Code.
 - That he was familiar with the relevant statutory legislation that applied to property management.
 - That neither he nor his firm had any recent or outstanding complaints or professional indemnity claims.
10. Having heard his evidence, the Tribunal concluded that Mr Naish possessed the requisite knowledge and experience to manage the property.
11. Given that the allegations of breach of covenant to repair and insure the property remained unchallenged by the Respondent, the Tribunal went on to find that he was in breach of those obligations owed by him to the Applicants under the terms of their leases within the meaning of section 24(2)(a)(i) of the Act.
12. In addition, the Tribunal also had regard to the long history of default on the part of the Respondent to properly manage the property and the real likelihood of no management taking place in the foreseeable future. It, therefore, went on to find that in all the circumstances, it was just and convenient to make the order within the meaning of section 24(2)(a)(iii) of the Act.
13. Accordingly, the Tribunal made an order on the following terms:
14. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Naish of Willmotts, Chartered Surveyors ('the Manager') is appointed as manager of the property at 179-181 Dawes Road, Fulham, London, SW6 7QP ('the Property').
15. The order shall continue for a period of 3 years from 5 May 2015.

16. 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 leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('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 Leasehold Reform Housing and Urban Development Act 1993.
17. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.

Costs

18. At the hearing Mr Browne made an oral application under Rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent pay the Applicants' costs of having to make this application to appoint a Manager.
19. The Tribunal agreed with Mr Browne's submission that the Respondent's complete failure to engage or respond at all in this case was conduct sufficient to make an award of costs under Rule 13. The Applicants had been obliged to not only make the application for the appointment of a manager but to successfully litigate the case to a hearing thereby incurring additional costs, which might otherwise have been avoided had the Respondent participated in this matter. Not to make the order would, in effect, penalise the Applicants in costs.
20. Accordingly, the Tribunal made an order that the Respondent pays the Applicants' costs of the application under Rule 13(4)(a) to be subject to a detailed assessment on a standard basis under Rule 13(7)(c) if not agreed.
21. For the same reasons, the Tribunal also makes an order:
 - (a) that the Respondent reimburse forthwith the fees of £380 paid by the Applicants to the Tribunal to have this application issued and heard.
 - (b) under section 20C of the landlord and Tenant Act 1985 that the Respondent is not entitled to recover any costs he may have incurred in these proceedings through the service charge account as "relevant costs".

Name: Judge I Mohabir

Date: 5 May 2015

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £2,000,000 per claim and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks after the date of this order the Respondent to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 5 May 2015 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent 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 Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
6. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property;
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Demand and collect ground rents, service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) 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 Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- (i) Fees for the above mentioned management services will be a basic fee of £400 including VAT per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervise the works) will be subject to a charge of 10-12.5% of the cost. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.