

12084



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

**Case Reference** : **CAM/00KA/LSC/2016/0043**

**Property** : **74 flats at Startpoint, Downs Road,  
Luton, Bedfordshire LU1 1XW**

**Applicant** : **Prime Lettings t/a Prime  
Management**

**Representative** : **Mr D A P Abbott, tribunal  
appointed manager**

**Respondent** : **Lessees of the 74 flats at Startpoint,  
Downs Road, Luton, Beds as set out  
in the schedule attached to the  
application**

**Representative** : **See attached schedule**

**Type of Application** : **Application for the determination  
of liability to pay and  
reasonableness of service charges**

**Tribunal Member** : **Tribunal Judge Dutton  
Mr D Barnden MRICS  
Mr N Maloney FRICS FIRPM MEWI**

**Date and venue of  
Determination** : **8th November 2016 at Luton and  
South Beds Magistrates Court  
Stuart Street Luton**

**Date of decision** : **23rd November 2016**

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**DECISION**

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## DECISION

- 1. The Tribunal consents to the withdrawal of part of the case relating to the determination of the service charges claimed for the years commencing January 2014 and January 2015 for the reasons set out below.**
- 2. The Tribunal directs that Mr Abbott must allocate monies recovered by him under demands made for payments by reference to the management order dated 21st October 2015 (the Order) to those demands and not to historic arrears of service charges said to be due by the lessee in question.**
- 3. The sums due under the Order are recoverable from those lessees who have not paid their contribution to date. They should be paid within 28 days or such other period or arrangement as is agreed with Mr Abbott.**

## BACKGROUND

1. The Tribunal has received an application pursuant to s27A Landlord and Tenant Act 1985(the Act) made by Prime Lettings Limited t/a Prime Management on behalf of Mr David Abbott the Tribunal appointed manager whose appointment is established under the terms of the Order.
2. The Application seeks to recover substantial arrears of service charge payments for the periods 1st January 2014 to 31st December 2014 being £1,954.05 per lessee and for the period 1st January to 31st December 2015 the sum of £1,615.47 per lessee. In addition further sums of £2000 are sought under the terms of the Order. Details of the lessees said to be owing these monies or part therefore were annexed to the application
3. The Applicant relies on accounts prepared by Fred Lamptey& Co certified chartered accountant dated 7th July 2016.
4. The matter came before us on 8th November 2016. Prior to the commencement of the hearing we received a bundle of papers which included a specimen copy lease, correspondence and minutes of an

AGM held on 3rd August 2016. The bundle also included responses from a number of lessees:

- Mr S Chippeck owner of flats 7 and 26
- Mrs R Begum owner of flat 12
- Mr A Z Wasil owner of flat 13
- Mr and Mrs Mazinani owners of flat 15, which included a number of documents
- Mr P Dabner owner of flat 24
- Miss D Kanji owner of flat 27
- Mr and Mrs Kastraki who own flat 42

5. Within the bundle we were also supplied with the accounts for the years commencing January 2014 and 2015 and copies of the demands sent by Mr Abbott to the lessees named in this application. The demands included those relating specifically to the payments due under clause 1(n) of the Order.

6. The relevant terms of the Order for the purposes of this application are set out below:

*1(a) To receive all service charges, interest and any other monies payable under the Leases from 1st November 2015. Any arrears due for the period prior to 1st November 2015 shall be recoverable by the Respondent but any funds so recovered shall be deposited with The Manager, who shall be responsible for the recovery of future service charge payments during the currency of this Order and any extension hereto, the recovery of which shall be at the discretion of the Manager.*

*1(n) To forthwith demand from each lessee the sum of £1,000 on account of service charges for the year commencing November 2015 and to make a further demand of £1,000 from each lessee on 1st May 2016. Such sums are payable in lieu of the monthly standing order currently being paid by the lessees and are*

*recoverable as a debt to the Manager in respect of service charges for the year commencing 1st November 2015. Immediately upon receipt of sufficient funds the Manager is to ensure that insurance is in place for the Premises, unless such insurance has already been placed by the Manager, in which case he shall be entitled to recover the premium paid as a priority from the funds recovered under this clause*

7. An inspection was not considered necessary as we had visited the property on 24th October 2016 when considering the application to vary/extend the Order.

### **HEARING**

8. Three lessees were represented and a number attended to voice their concerns in respect of the historic failings in management and the unreasonable costs incurred by Startpoint Management Company Limited (the Company). Mr Otchieof Counsel represented Mr Amiri and told us that he had purchased in 2015 and had not been made aware of the problems as he had bought at auction. He told us that Mr Amiri had been paying £166.60 per month since December 2015 and Mr Abbott confirmed there was no dispute with Mr Amiri concerning payments due under clause 1(n) of the Order.
9. Mr Wales represented Mr Dabner who had filed a statement dated 29th September 2016, the contents of which we noted. At the hearing Mr Wales highlighted what he considered to be unreasonable expenditure in both years 2014 and 2015. The charges, for example, in respect of the handyman were excessive as was the charge made for the directors fees and caretaker. The accounts he said were subject to qualifications, for example the lack of information on the balances. In addition he submitted that the provisions of section 20B (the 18 month rule) would certainly apply to the accounts commencing January 2014. Mr Abbott confirmed that there was no evidence that the Company, through Mr Stubbs the then sole director, had issued demands.

10. Miss Banerjee, of Counsel represented Mr Chippeck and adopted all that was said by Mr Wales. She told us that no accounts had been prepared since 2008 and the certificates initially prepared by Mr Lamptey did not regularise the position.
11. A number of lessees in attendance spoke. These included Miss Kanji, Mrs Mazinani, MsNagy-Murnyak of flat 52, Mr Kastraki of flat 42, Mr Fasihuddin of flat 20, Mr Issa of flat 30 and Mrs Pawjani of flat 74. Without exception all were very critical of the previous management, both as to the standard and the costs said to have been incurred. They did agree that matters were improving under the management of Mr Abbott and that the payments due under clause 1(n) of the Order should be made. Mr Kastraki told us that he had attempted to reach an agreement to settle the sums due under the Order by monthly payments of £500 but these had been declined by solicitors acting for Mr Abbott.
12. In response to this point Mr Abbott said payments had been refused as a number of lessees had only agreed to make payments under the Order if any arrears were written off.
13. Discussions took place in respect of the 2015 accounts and Mr Wales raised the issue with regard to the inclusion of the insurance premium of £18,750 in these accounts. This sum had been expended by Mr Abbott following his appointment, as at that time there was no insurance of the property. It was suggested by Mr Wales that this should fall into the accounts commencing November 2015 and thus the payments due under the Order would go towards this item. To leave them in the earlier accounts was unfair on the lessees.
14. After a short adjournment Mr Wales suggested that the proceedings should be struck out. Ms Banerjee considered that all aspects should be dealt with today. She considered that Mr Abbott should be in a position to deal with all matters although accepted that the question as to strike out or otherwise was a legal issue.

15. Mr Abbott confirmed that he had a management agreement with the Company entered into in August 2015. We had not been aware of this. He told us that there was a further agreement appointing him the Company secretary and he had thought it would be right to bring the claims for the earlier years as well as the sums due under the Order. He requested, in the light of submissions made by those attending and their representatives, that he be allowed to withdraw the claims in respect of the arrears said to be due for January 2014 and 2015
16. Mr Wales suggested that there was a conflict of interest between Mr Abbott's role as manager and as Company secretary.

### **THE LAW**

17. We have considered the provisions of sections 18, 19, 20B and 27A of the 1985 Act and also section 24 of the Landlord and Tenant Act 1987 in reaching our decision.

### **FINDINGS**

18. Rule 22 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, allows a party to withdraw all or part of a claim and at rule 22 (1) (a) such withdrawal can be made at the hearing.
19. We consider that it is appropriate for such withdrawal of the claims for 2014 and 2015 to be made by Mr Abbott and we consent to same. Our reasons for doing so in part reflect Mr Wales argument that the Order did not give Mr Abbott power to deal with these earlier years. The provisions of clause 1(a) is clear and was intended to avoid Mr Abbott becoming involved in arguments over historic accounts. There is nothing to stop the Company taking action against lessees who have not made contributions in these earlier years. However, they must bear in mind the numerous issues raised by those attending this hearing. The provisions of section 20B may well impact and there is no doubt in our mind that some of the items recorded in the accounts are susceptible to challenge. Nonetheless it might be considered fair to those who have

paid for some attempt to be made to deal with these arrears. It is however, inappropriate for lessees to state that they will only pay the sums due under the Order if any arrears are remitted.

The sums due under the Order are payable without deduction or offset.

20. We are also concerned at the dual role that Mr Abbott appears to have taken on as Tribunal appointed manager and Company secretary. There is, in our view, the potential for confusion although we accept that provided these roles are kept entirely separate, there is no conflict. His first priority however must be to comply with the Order and its varied/extended format. We are satisfied that the Management agreement (but not the other agreement to act as Company Secretary) he entered into with the Company in August 2015 is overridden by the Order.
21. There appeared to be acceptance that the sums demanded under the Order at clause 1(n) are properly due and owing. Those lessees who have not made payments should do so forthwith to avoid further action. We do however direct Mr Abbott to credit to the current account those lessees who paid in respect of the demand which specifically refers to the Order and not to allocate those payments to the historic arrears. This was the point raised on behalf of Mr Dabner and Mr Chippeck. Mr Abbott may also seek to accommodate those lessees who are unable to pay in one lump sum and accept reasonable payments on account, where it is appropriate to do so. For those who sought to pay by instalments and were thwarted it is hoped they nonetheless saved those payments up and can make reasonable one off contributions very shortly. This development will not get onto the right footing unless the lessees honour their obligations under the Order and its extended/varied form and ultimately their lease.
22. We also direct that the insurance premium of £18,750 recorded in the 2015 accounts should be reallocated to the accounts running from November 2015.

23. Finally the question of lease variation was raised. This is something that can be considered but is for the directors of the Company to pursue. It does have its merit, particularly with regard to amendments to the accounting arrangements and the creation of a reserve fund.
24. Matters are now going in the right direction and it is important for the lessees to work with Mr Abbott in improving the development to a standard acceptable to all concerned.

Tribunal Judge Dutton

23rd November 2016

### **Schedule of attendees and representatives**

Melinda Nagy-Muruyak

Mr J Amiri represented by Mr Otchie - Counsel

Miss D Kanji

Mr Dabner represented by Mr B Wales FIOD FIRPM

Mrs S Mazinani

Mr S Chippeck represented by Ms Banerjee - Counsel

Mrs R Bebum

Mr M Fasihuddin

Mr M Issa

Mr K Kastraki

Mrs Pawjani

### **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application

for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.