



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

Case Reference	:	CHI/18UB/LAM/2019/0014
Property	:	21 Morton Crescent Exmouth Devon EX8 1BG
Applicant	:	Vanessa Freeman
Respondent	:	Ogden Kibble Ltd (Freeholder) and Christopher Michael Tonge Lisa Dawn Tonge (Mr & Mrs Tonge) (Leaseholder Flat 21b)
Representative	:	Joyce Muriel Ogden and Charles Howard Kibble
Type of Application	:	Appointment of Manager; Section 24 Landlord and Tenant Act 1987 (the Act) Application under section 20C Landlord and Tenant Act 1985
Tribunal Members	:	Judge C A Rai (Chairman) Robert Brown FRICS Chartered Surveyor
Date and venue of Hearing	:	17 March 2020 Exeter Magistrates Court The Court House Heavitree Road Exeter Devon EX1 2LS
Date of Decision	:	14 April 2020

DECISION

1. The Tribunal determines that it is just and convenient to appoint a Manager and makes an order appointing Stephen Ralph Opie of Pegasus Property Management Ltd (Company Number 5739160) of Morris Lettings East Street Sidmouth Devon EX10 8BL for a term of one year on the terms of the draft order (a copy of which is attached to this decision) from the date on which the Order becomes operational.
2. The Tribunal makes an order under section 20C of the Act that all costs which are, or might be incurred by the landlord, the Respondent, in connection with these proceedings are not relevant costs which can be added to the service charged demanded from the Applicant. The reasons for its decision are set out below

Background

3. The Applicant applied to the Tribunal for the appointment of Baker & Baker Chartered Surveyors as Manager of the Property on 21 August 2019. A copy of a section 22 Notice dated 19 August 2019 accompanied the Application. The Notice gave the Respondent two days to remedy the alleged defects.
4. The Applicant is the owner of Flat 21d of the Property which is a basement flat. The lease of Flat 21d is dated 19 October 1964 and was granted for a term of 99 years from 29 September 1955 (the Lease). The Applicant bought Flat 21d on or about 13 November 2007.
5. Ogden Kibble Ltd is the freeholder of the Property. Joyce Ogden and Charles Kibble are joint leaseholders of Flats 21a and 21c and Mr & Mrs Tonge are joint leaseholders of Flat 21b.
6. Judge D. R. Whitney made Directions on 13 September 2019 which required that the Applicant send a copy of both the application and those directions to Mr & Mrs Tonge. He identified five matters which need to be addressed which were:-
 - a. The validity of the section 22 notice and particularly the reasonableness of the time given to the Respondent to comply; and
 - b. That the Tribunal could not appoint a firm as manager, only a named individual; and
 - c. Whether other leaseholders supported the application; and
 - d. Whether the freehold had been sold; and
 - e. If it is just and convenient to appoint a manager?
7. The Judge confirmed that the Tribunal had received a response to the Application from the Joyce Ogden and required that the Applicant provide further information within a defined period to both Ogden Kibble Ltd and Mr & Mrs Tonge. It notified the Applicant that its proposed Manager must attend the Hearing and indicated a six week hearing window. Very specific directions were made regarding the information which the Applicant should send to the Respondent, Mr and Mrs Tonge and the proposed manager. The Tribunal also directed that it would invite Mr & Mrs Tonge either to confirm support for the Application or be joined as Respondents.
8. Further Directions, dated 4 October 2019, were issued by Judge D. R. Whitney in response to a request from the Application for an extension of time. The firm she had named as proposed Manager was not willing to accept an appointment. As she suggested that the parties were trying to reach an agreement the Tribunal stayed the proceedings until 13 November 2019.

9. In the absence of any agreement between the parties Further Directions were issued by the Tribunal on 4 October 2020 with amended time limits for compliance with the original directions. By then Stephen Ralph Opie (Steve Opie) had confirmed that he was willing to accept an appointment. Ogden Kibble Ltd, the freeholder had also confirmed that it did not oppose the Application although, at that time, Mr & Mrs Tonge continued to do so. Dates for compliance with the previous directions were extended.
10. In Further Directions dated 22 January 2020 Judge D. R. Whitney declined to rearrange the Hearing Date but indicated that the Tribunal would hear from the Steve Opie at the beginning of the hearing.
11. Although the Applicant prepared a Hearing Bundle the content was not compliant with Tribunal Directions and it omitted copies of the Application and all the Directions. It is not clear whether the parties copied correspondence to the Tribunal to the other party but some correspondence referred to by both parties is missing from the Bundle.
12. In a letter dated 28 January 2020 sent to the Tribunal by Ogden Kibble Ltd it stated it would like to appoint the Applicant's nominated manager Steve Opie to manage the Property "**independent**" of the **Tribunal**. [Tribunal's emphasis]. It said that Steve Opie had verbally agreed to the appointment. It expressed hope that there was no longer any need for a hearing and determination and it stated that Mr and Mrs Tonge had "verbally" agreed to the appointment. [Page 337 of the Bundle].

Inspection

13. On 17 March 2020 prior to the Hearing the Tribunal attended the Property. Joyce Ogden and Charles Kibble (both directors of Oden Kibble and joint leaseholders of Flats 21a and 21c) were present together with the Applicant and Steve Opie.
14. The Tribunal notified the parties that it was unable to make an internal inspection of any of the flats within the Property but would look at the exterior of the front of the building. (Flat 21d is the lower ground floor garden flat access to which is via steps at the front of the building.)
15. The Property is a mid-terrace three four storey building located on the seafront at the mouth of the River Exe. Substantial public works to the sea wall are ongoing which has resulted in the temporary closure of both the road between the front garden and the public road adjacent to the seafront.
16. The Tribunal inspected the Parking spaces located between the garden and the private road on to which the property fronts and saw the remnants of the garden located between the parking spaces and the public road, which area is currently used for the storage of materials associated with the public works.

17. The Applicant wanted the Tribunal to examine to certain alleged defects in the recent external redecoration and asked the Tribunal to examine the inside of Flat 21d. Its members declined to either enter Flat 21d or to look at the back of the building. It was explained to the Applicant that if she wished she should take photographs with her mobile phone to which she could refer and produce at the hearing.

The Hearing

18. Prior to hearing the parties, The Tribunal questioned Steve Opie of about his experience and qualifications. He confirmed that he had no professional qualifications but had been employed by Blenheims, a regional property management company with offices in London Bristol and Torbay, for many years. He is currently employed by Pegasus Property Management Ltd, (Pegasus). The company is owned by Richard Morris. He has undertaken some property management training and Pegasus is a member of ARLA [Association of Residential Letting Agents]. Pegasus has been appointed as Company Secretary for several of the Management Companies which are the freeholders of blocks of flats within its management. Pegasus has a dedicated block management section and manages approximately 42 blocks. He believes this amounts about 400 units. Four or five blocks are of a similar size to the Property but many comprise purpose built flats on small estates. Some are freehold properties.
19. Pegasus makes use of appropriate Information Technology systems to support its management and use a programme called “Block on line” It is in the course of developing an on line database for its entire property portfolio. That will be an administration system combined with a financial system which will facilitate and administer the separate bank accounts retained for each development. In response to questions from the Tribunal he admitted he did not expect the system to prompt Pegasus to issue legal notice where the amount of the service charge demanded exceeded the consultation limit. He confirmed that Pegasus offered client money protection.
20. Pegasus has a written complaints procedure and complies with the RICS Service charge residential management Code [3rd Edition]. “the Management Code”. It retains a “preferred contractors” list and also operates a defined selection procedure to enable them to add new contractors when unlisted contractors are nominated by leaseholders during a consultation process. He would always obtain references for nominated new contractors and check that these are independent of landlords and leaseholders. The company operate an in house “out of hours” service using a mobile number answered by a member of the team but are investigating future use of an external third part “managed system”.
21. In response to a specific question about funding major works he indicated that it would be necessary to manage the cash flow to fund necessary works and confirmed that the company have a 2/3 person

accounts team. This team is currently reviewing its processes for demanding and collection service charges.

22. In response to enquiries about how he would handle alleged breaches by Landlord or Tenant he said initially he would analyse the breach himself. It is Pegasus policy to hold copies of all leases relating to managed property.
23. He said that he understood his primary duty as a court appointed manager would be to the Tribunal not the Landlord or the Tenant. He is familiar with the Code of Practice and that he would be have a statutory duty to comply with it. The Tribunal also advised him that the service charge accounts should comply with Tech 03/11. (A technical guidance note issued jointly by professional accountancy bodies and the RICS which provide best practice for the preparation of service charge accounts).
24. As the Bundle did not include written details of the Pegasus professional indemnity insurance cover he was told that the Tribunal should it decide to make an Order appointing him would direct that details be produced to it. [See paragraph 9 of the Directions dated 13 September 2019].
25. Steve Opie said that his first objective would be to obtain a report from a building surveyor regarding the condition of the Property. If, as he suspected, the works might take between three to five years to complete he would want an appointment of three years initially. Steve Opie confirmed that Pegasus would charge an annual fee in accordance the estimate contained in the Bundle [Page 263]. That was £864 plus VAT. It included four meetings per year but he expected that initially it might be necessary to make monthly inspection of the Property.

Parties questions addressed to Steve Opie and submissions

26. Joyce Ogden asked Steve Opie to explain why he had suggested that it might take three years to complete works when the masonry and render at the front of the Property had been recently repaired. He replied that the purpose of the initial survey would be to record the current condition as well as assessing what further works might be required. He also acknowledged that funds would have to be obtained before any works could be undertaken.
27. Vanessa Freeman bemoaned the condition of her flat at 21d. She said that she wanted any works undertaken to be undertaken to a satisfactory standard. She would support the costs of a building survey and a 3 – 5 year appointment. She wants an affordable scheme of expenditure to be agreed to improve the building. She asked who would be responsible for arranging the buildings insurance and it was explained that the Manager would be responsible for dealing with this.
28. Vanessa Freeman acknowledged that whilst she expected to receive appropriate demands for service charges when funds are needed these

payments should be retained in a separate account. She expected to receive a management plan drawn up by a qualified surveyor.

29. Joyce Ogden, who confirmed that she represented the freeholder herself and Charles Kibble and Mr & Mrs Tonge as leaseholders, said that until now the freeholder had maintained the Property as evidenced by the decoration of the front elevation. There are ongoing discussions regarding works to the rear of the Property. She confirmed that the freeholder and all the other leaseholders, other than the Applicant support the proposed appointment.
30. Since the Applicant bought Flat 21d it has been impossible to carry out improvement works because Vanessa Freeman has blocked the works or not co-operated with the contractors. She had prepared a handwritten list recording all incidents and left copies with the Tribunal and the Applicant at the end of the Hearing.
31. Joyce Ogden told the Tribunal that Vanessa Freeman had applied to extend the Lease but not completed the extension and said it would not proceed if not completed by the 23 March 2020.
32. She said the Ogden Kibble no longer wanted to manage the Property remotely as it had until then been doing. [Joyce Ogden is resident in Lancashire and it appears that notwithstanding that the registered office of the Freeholder is 21c Morton Crescent the building has, hitherto, been managed remotely].
33. The Tribunal curtailed submissions about the defects identified in the section 22 Notice because all the parties to the proceedings supported the appointment of Steve Opie. However it advised them that notwithstanding their agreement it still has to decide if it is appropriate to make an appointment and also the terms of that appointment, as no draft management order has been provided in the Bundle. [See Paragraph 18 of the Directions dated 13 September 2019].

The Law

34. Section 24 of the Act sets out the Tribunal's jurisdiction to appoint a Manager in relation to premises to which that part of the Act applies. An extract of the section is annexed to this decision.
35. Section 22 of the Act states that the preliminary notice which identifies defects, capable of remedy, must be served on the freeholder and give it a reasonable time within which to remedy those defects.
36. Section 24(1) states the ambit of the Manager's functions and section 24(2) states that circumstances in which the Tribunal may make an order.
37. Section 24(2)(a) deals with "fault"; that is matters such as breach of obligation or imposition of unreasonable charges or failure to comply with the Management Code.

38. Section 24(2)(b) states that as an alternative an appointment can be made by the Tribunal if it is satisfied that “**other circumstances exist which make it just and convenient for the order to be made**”.
39. In the circumstances of this application it is also appropriate to have regard to subsection 24(6) which enables the Tribunal to grant any such order “**subject to such conditions as the Tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal**”.
40. Under section 20 (C) of the Landlord and Tenant Act 1985 a tenant can apply for an order that the costs of proceedings should not be added to service charges. The Applicant has done so in this case.

Reasons for the Decision

41. The Hearing which took place on 17 March 2020 was one of the last hearings which the Southern Panel of the FTT heard in March 2020. The following day all inspections and soon after all oral hearings of the FTT were suspended because of the Covid 19 pandemic. Guidance relating to the imminent changes to Tribunal procedure had already influenced the Tribunal with regard to the inspection but the Tribunal is satisfied that the parties have not been prejudiced.
42. Prior to and at the hearing, Vanessa Freeman and Joyce Opie for the Respondent confirmed to the Tribunal that both the Applicant and the Respondent supported the appointment of Steve Opie as Manager.
43. Although the section 22 notice served by the Applicant identified “faults” which would usually have required the Tribunal to consider the circumstances in section 24(2)(a) this Tribunal has not considered those circumstances because of the parties mutual agreement to the appointment of Steve Opie as Manager.
44. Therefore the Tribunal has determined this application in reliance on section 24(2)(b) because it is satisfied that other circumstances exist which make it just and convenient for an order to be made.
45. Having heard from Steve Opie, notwithstanding that he is not a qualified surveyor and that Pegasus is not a member of a professional organisation with management credentials it was satisfied that he had demonstrated an understanding of the function of a Tribunal appointed Manager. His firm has appropriate procedures in place which will enable it to comply with the Management Code .
46. The Tribunal found that Steve Opie’s responses to its questions at the Hearing demonstrated that he understood the obligations imposed by the Management Code and the financial requirements imposed by the Act. His responses regarding the appointment of contractors and vetting those not on a retained list were practical.

47. However the written submissions and those oral submissions which were given at the Hearing demonstrated a complete antipathy between the parties and a lack of understanding of the requirements of the Management Code and on the part of the Respondent's representative its applicability to every freeholder
48. Notwithstanding that the Tribunal has some doubts as to whether it will be possible to achieve harmony between the Applicant and the Respondent it determines that in all the circumstances it is just and convenient to appoint Steve Opie as manager of the Property on the terms of the draft management order attached.
49. It has limited the term of his appointment to the period of one year to enable the parties to evaluate if the appointment is satisfactory to all. Should it be so the Manager may apply for an extended appointment in reliance on his track record of management for the preceding period.
50. Attached to this decision is an order which sets out the terms of the appointment. The Tribunal requires that Steve Opie provide it with a copy of a current schedule of his indemnity insurance policy cover within 14 days of the receipt of a copy of this decision and a further copy of an updated schedule when the condition set out in **paragraph 51.b** is satisfied.
51. The operation of the Order shall be conditional upon:-
 - a. The Tribunal approving a copy of Pegasus Management Ltd Indemnity Insurance cover and it therefore directs that a copy of the policy terms and the cover note is provided to the Tribunal by email within 14 days of the receipt by the Applicant and the Manager of this Decision and an updated copy of the cover note within 14 days of the date upon which all restrictions on the movement of people and the operations of businesses such as that operated by Pegasus are lifted by the UK Government.
 - b. The proposed manager Steve Opie providing written confirmation to the Parties and the Tribunal that he is willing and able to accept the appointment at least 7 days before the date the Order becomes operative.
52. As restrictions on all business at the time of this Decision, being made during a period of restrictions on the movement of individuals on account of the Covid 19 pandemic the Tribunal suspends the operation of the Order until the date which is **28 days after the date upon which all restrictions on the movement of people and the operations of business such as that operated by Pegasus are lifted by the UK Government** provided that if that date does not occur before **31 January 2021** the Order will lapse.
53. The only submissions with regard to the application for a section 20C order are those within the Application form . No provision in the Lease enables the Landlord to recover legal costs it has incurred from

the tenant nevertheless in the light of the acrimony between the parties and the late production of a document at the Hearing the Tribunal makes an Order that any costs incurred by the Respondent in relation to these proceedings may not be added to the service charges.

Judge C. A Rai

Chairman

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annexe

Landlord and Tenant Act 1987

24 Appointment of manager by tribunal.

(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver, or

both, as the tribunal thinks fit.

(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—

(a) where the tribunal is satisfied—

(i) 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 (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii)

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

(ab) where the tribunal is satisfied—

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

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

(aba) where the tribunal is satisfied—

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

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

(ac) where the tribunal is satisfied—

(i) 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

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

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section “relevant person” means a person— (a) on

whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) “variable administration charge” has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager’s functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.

(9A) the tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied—

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.