



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

Case reference : **LON/00BA/LAM/2020/0005**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **1 Finborough Road, London SW17 9HY**

Applicant : **Ms Rosie Pearsall**

Representative : **Mr Jack Webb of Counsel**

Respondent : **Mr Errol Farrier**

Representative : **Not represented and not present at hearing**

Type of application : **Appointment of Manager**

Tribunal members : **Judge P Korn
Judge A Hamilton-Farey**

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

Date of decision : **5th November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the Applicant and not objected to by the Respondent. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined in a remote hearing. The documents that we were referred to were in a series of electronic document

bundles, the contents of which we have noted. The order made is described at the end of these reasons.

Background

1. The Applicant seeks an order appointing Mr Paul McCormack of Love Your Block Ltd as manager of the Property under section 24 of the Landlord and Tenant Act 1987 (“**the 1987 Act**”).
2. The Property is a two-storey building converted into two flats. The Applicant is the leaseholder of one of the two flats. The Respondent is the freehold owner of the Property. A preliminary notice under section 22 of the 1987 Act was served on the Respondent on 2nd October 2019.
3. The Applicant’s lease (“**the Lease**”) is dated 8th February 2017 and was originally made between the Respondent (1) and Beacon Property Capital LLP (2).

Applicant’s case

4. The Applicant states that the Respondent has failed to comply with the landlord’s repairing covenant in the Lease. The Respondent’s inaction has led to the disrepair of the external wall, which in turn has led to water ingress into the Applicant’s flat causing damage to the interior.
5. The Respondent’s position, according to the Applicant, is that he is under no obligation to carry out repairs unless the Applicant and the other leaseholder pay for the work in advance. However, this is contrary to the wording of the Lease which does not provide for payment on account except for a fixed sum of £30 per year.
6. The Applicant was first notified of cracks to the external wall by a structural engineer in or around December 2017 and she brought this to the Respondent’s attention soon afterwards. In or around December 2018, after some correspondence between the parties, the Applicant informed the Respondent that the cracks were still present and that as a result water had started to come into her flat. She sent him further chasing emails between January and August 2019. In June 2019 the Respondent confirmed that he would start the repair works but this did not happen. The Applicant states that the Respondent then later claimed that the repair works were in fact her responsibility. When she objected and again put it to him that external repair was his responsibility the Respondent replied that he was not prepared to incur the costs, that the Applicant had a long lease and that he “*didn’t care if the house fell around*” her.
7. The Applicant has included in the hearing bundle copy photographs showing the external cracks, the water damage in the hallway, internal cracks and damp patches on internal walls. She states that the Respondent’s own surveyor has confirmed that the external cracks require repair.
8. In view of the Respondent’s lack of action and general negative response the Applicant eventually instructed solicitors, and they sent the Respondent a pre-

action letter on 2nd October 2019 setting out her concerns in an effort to persuade him to seek advice so that the dispute could be resolved in a reasonable manner. However, the Respondent replied on 4th November 2019 stating that he would not proceed with the works “*until all the funds are deposited by both lessees*”. In January 2020 the Respondent provided the Applicant with a quote for the repair work but again confirmed that he would not carry out any works until all funds were in hand.

9. As a result of the Respondent making it clear that he had no intention of complying with the terms of the Lease the Applicant felt that she had no option but to apply to the First-tier Tribunal for the appointment of a manager, after having served a preliminary notice under section 22 of the 1987 Act and affording the Respondent a reasonable time within which to remedy the matters complained of.
10. In written submissions, Counsel for the Applicant has summarised the contents of the Applicant’s preliminary notice and the grounds on which she has relied in her application. The Respondent is in breach of his obligation under paragraph (1) of Part I of the Sixth Schedule to the Lease “*to keep in good repair and decoration ... the structure of the Property*” and is also in breach of Part II of the Sixth Schedule which inter alia states that “*The Lessee paying the rent and performing and observing The Lessee’s covenants ... shall and may peaceably hold and enjoy The Demised Premises ... without any lawful interruption or disturbance by the Lessor*”. Counsel for the Applicant submits that the water ingress has affected the Applicant’s flat and has interrupted and disturbed her peaceful enjoyment thereof.
11. Counsel for the Applicant submits that it is just and convenient to order the appointment of a manager. The Respondent conceded back in October 2019 that the repairs were “*much overdue*” and the Applicant has had to live with damp problems and incurred significant costs in trying to resolve the matter. The Respondent has demonstrated a cavalier attitude both towards his repairing obligations and towards the tribunal’s directions with which he has failed to engage.

Respondent’s case

12. The Respondent has made no oral or written submissions nor engaged with these proceedings in any way.

Discussion

13. The tribunal noted at the hearing that paragraph (14) of the Eighth Schedule to the Lease allows the Lessor to charge “*upon the Maintenance Fund*” (i.e. to add to the service charge) “*such sum or sums from time to time as the Lessor’s Managing Agents for the purpose of accumulating a reserve fund as a reasonable provision against the prospective costs expenses outgoings and other matters mentioned or referred to in this Schedule or any of them*”. The tribunal then put it to Counsel for the Applicant that it appeared that the impasse between the parties could perhaps be resolved by using this mechanism for creating a reserve fund. In response, the Applicant said that the Respondent had not made any attempt to comply with the terms of the

Lease and that she had no confidence that he was prepared to carry out the works. She was also worried about the willingness of the other leaseholder to pay, and she was certainly not prepared to pay anything in the absence of a valid demand.

14. The Applicant added that she would be prepared to pay into a reserve fund set up by the Manager (if appointed). Counsel for the Applicant then said that he had been informed by the Applicant that she had previously invited the Respondent to set up a reserve fund but that he had not done so.
15. In response to a question about the other leaseholder, the Applicant said that she had not met him for a long time as his flat was rented out but then they had met. The other leaseholder had wanted details of the necessary works and had seemed content for a manager to be appointed.

The proposed manager

16. The tribunal asked Mr McCormack various questions about his qualifications and experience and about how he would manage the Property.

The terms of the Order if granted

17. The Applicant did not provide a draft order prior to the hearing and therefore the tribunal itself sent a draft form of order to both parties, inviting them to comment on it.
18. No comments have been received from the Respondent. Counsel for the Applicant said at the hearing that the Applicant was broadly content with the form of order, subject to just a few points. Most of these points are minor and, in our view, uncontroversial. The one significant change requested was for the Manager to be entitled to require the Respondent to pay any shortfall in service charges not paid by one or both leaseholders within 28 days of demand, coupled with a right for the Manager to take reasonable steps to recover from the defaulting leaseholder(s) any unpaid sums and to account to the Respondent for any sums thereby recovered.

Analysis of the tribunal

19. We note the contents of the Applicant's preliminary notice and are satisfied that the notice was valid and that the "reasonable period of time" referred to in the notice has elapsed without the Respondent having taken any steps necessary to remedy the problems specified in the notice.
20. We are satisfied on the basis of the evidence provided that the Respondent is in breach of his repairing obligations and that this has had a significantly deleterious effect on the Applicant's living conditions. It has also caused her what we consider to be legitimate concerns regarding the state of the Property generally and the possibility that the cost of carrying out the repairs could escalate if there are continuing delays. Whilst the wording in the Lease relating to 'quiet enjoyment' is slightly unclear, we are at the very least satisfied that the Respondent is in material breach of the repairing covenant in paragraph (1) of Part I of the Sixth Schedule to the Lease.

21. The evidence indicates that the Respondent's only stated excuse for not complying with his repairing obligations is his contention that he is under no obligation to carry out the repairs unless the leaseholders pay the full cost of those repairs in advance of his carrying out the work. However, whilst it is not uncommon for a lease to allow a landlord to charge in advance on the basis of the estimated cost, in this case that is not the position. The estimated service charge that the landlord is entitled to collect in advance under the Lease is limited to £30 per annum. There is a mechanism for creating a reserve fund, but the evidence indicates that the Respondent has taken no steps to try to set up such a reserve fund.
22. The evidence also indicates that the Respondent has been in breach for a considerable period of time and that the Applicant has given him ample opportunity to remedy the problems. She has acted in a proportionate manner, only resorting to making this application after other – less combative – options had been tried.
23. We have a slight reservation in that the Lease does contain a mechanism for a reserve fund to be generated, and therefore it is possible that the stand-off between the parties could have been avoided. Indeed, if the Applicant is anxious for the works to be carried out then it should in principle have been in her own interests to work with the Respondent to create a reserve fund. It would seem that part of the Applicant's reluctance to go down this route may stem from concerns that the other leaseholder would be unwilling to pay his share, in which case it is possible that a tribunal-appointed manager would also fail to gather in the funds to carry out the works.
24. However, ultimately in our view the main problem is the attitude and failure to engage on the part of the Respondent. Most unusually for a non-absent landlord, the Respondent has taken absolutely no part in these proceedings even though they relate to an application to take away his right to manage his own property. He has made no written or oral submissions and has not complied with the tribunal's directions. He has been obstructive in the face of repeated requests by and on behalf of the Applicant for him to carry out his repairing obligations. He has taken a stance which misunderstands the legal position under the Lease, and there is no indication that he has taken any steps to check the legal position with anyone else. Certain quotes attributed to him indicate a disdain for the Applicant's concerns.
25. We therefore consider that the Respondent is in breach of obligations owed by him to the Applicant and that it is just and convenient to make an order in all the circumstances of the case and therefore that the requirements of section 24(2)(a)(i) and section 24(2)(iii) of the 1987 Act have been met.
26. We now move on to the question of whether Mr McCormack would be a suitable appointee as manager and, if so, what the terms of such appointment should be.
27. We have considered the documentation provided by Mr McCormack and have had an opportunity to cross-examine him about his qualifications and experience and about how he would manage the Property.

28. Mr McCormack came across well. He has had some experience of being a tribunal-appointed manager and has been involved in property management since 2002. He does not have any RICS qualifications himself but relies on surveyors employed by him (or working on a freelance basis) for technical input. He was alive to the relevant issues for this Property and said that he would generate funds for the necessary works by requesting contributions towards a reserve fund.
29. Mr McCormack appreciated that his proposed charges were quite high per unit, but for a two-unit property with known problems he felt that anything less would be uneconomic. His proposal was to be appointed for a 1 year minimum term but he was happy to be appointed for longer. The Applicant was happy with his proposed fee and was also happy with a 1 year term or longer if the tribunal felt that longer was appropriate.
30. We are therefore satisfied that Mr McCormack would make a suitable manager and that it would be appropriate to appoint him.
31. As regards the terms of the order, there are three points that we wish to make. First of all, whilst the proposed fee is on the high side per unit, this has to be seen in the context of the fact that it is only a two-unit property and that there are existing problems which are likely to require some management time to resolve. In addition, the Applicant is happy with the proposed fee. We therefore consider the fee to be acceptable in the circumstances.
32. The second point is that we do not consider that 1 year is long enough in the circumstances of this case. There are significant works to be carried out and there are currently no funds, and therefore we consider that the Manager needs a significantly longer period than 1 year. A suitable period, in our view, is 3 years. If circumstances are such that one or more parties later feel that the term of the order should be varied it will be open to them at that stage to make an application for a variation of the order.
33. The third point is that we do not accept that it is appropriate for the order to require the Respondent to pay any shortfall in service charges not paid by one or both leaseholders within 28 days of demand. That would be draconian and unfair on the Respondent and there is no evidence before us to justify what would be an unusual clause, particularly in what is just a two-unit property where the proportionate burden on the Respondent would be higher.

Costs

34. The Applicant has applied for an order under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the tribunal (if any) shall not be added to the service charges.
35. The Applicant has been successful in her application and the Respondent has not engaged with these proceedings at all. In the circumstances it is entirely appropriate to make such an order.
36. Counsel for the Applicant indicated at the hearing that the Applicant might possibly also wish to make a cost application under paragraph 13 of the Tribunal

Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. If the Applicant does wish to do so she must send written submissions to the tribunal in support of that cost application **within 14 days** after the date of this decision, with a copy to the Respondent. Any such written submissions must clarify the precise legal basis on which the application is made and must include full details of the costs claimed. If the Applicant does make such a cost application, the Respondent may make written submissions in response to that cost application. The Respondent's written submissions in response (if any) must be sent to the tribunal **within 28 days** after the date of this decision, with a copy to the Applicant.

Decisions of the tribunal

37. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Paul McCormack of Love Your Block Ltd ("**the Manager**") is appointed as manager of the property at 1 Finborough Road, London SW17 9HY ("**the Property**").
38. The order shall continue for a period of 3 years from 5th November 2020. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
39. 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.
40. 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.
41. An order is hereby made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the tribunal (if any) shall not be added to the service charges.

Name: Judge P Korn

Date: 5th November 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 £1,000,000 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 parties 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 Applicant and 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 the date which is four weeks after the date of this order become rights and liabilities of the Manager.
4. 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.
5. By no later than one year, the Manager shall prepare and submit a brief written report for the tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
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 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 accountant, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, 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.

Management Plan

The Manager, the Respondent, the Applicant and all lessees of the Property shall take all reasonable steps to facilitate the carrying out of the Major Works as set out in the Management Plan appended hereto.

Fees

Will be as per the Management Plan appended hereto. Routine management shall be charged in line with the “full” management service of £2,940 for the Property.

Complaints procedure

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

**LOVE YOUR
BLOCK**

Joveyourblock.co.uk

Management Plan 1 Finborough Road

Love Your Block

Paul McCormack

4 August 2020

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Introduction

This document is prepared to support a request to the First Tier Property Tribunal to appoint a Manager for the Property,

Love Your Block has been provided with information about the property by Rosie Pearsall during multiple telephone conversations, We were also provided with a copy of the lease for the upper flat so that we can assess the service charge payment provisions within the lease,

We understand that the property suffers from visible cracking to the external walls from the roof to about one metre above ground level, The repair of these cracks will be the priority for this plan,

Service Charge Collection

The terms of the lease allow for an "Interim Maintenance Charge" of the greater of €30 or a proportion of the previous year's Maintenance Charge per annum to be collected "from time to time" in advance. Other costs are to be paid in arrears following production of the 'Managing Agent's or Accountant's Certificate showing the additional amount expended during the Maintenance Year (which runs to the calendar year).

The lease also allows a provision for future expenditure as a reserve fund,

Full details of the Maintenance Charge are specified in The Eighth Schedule of the lease.

Major Works

We propose the following steps are followed to ensure that repairs to the property can be undertaken as soon as possible;

- 1) Assess the Maintenance Fund to determine if there is sufficient cash to pay for Surveyor's fees and the Managing Agent's anticipated Section 20 fees.
- 2) If insufficient funds, raise a payment request to the leaseholders for a contribution to the reserve fund to cover the expected Surveyor's and Managing Agent's fees, Payment terms to be 28 days from receipt of the payment request (to be held in a dedicated bank account under trust and used to pay the costs as they arise).
- 3) Issue a Section 20 Notice of Intent to Perform Work to leaseholders and the freeholder
- 4) Surveyor to assess the cracking to the building and provide an estimate for repairs,
- 5) Raise a payment request to the leaseholders for a contribution 'to the reserve fund to cover the estimated cost of the repairs (including contingency sums) and anticipated professional fees. Payment terms to be 28 days from receipt of the payment request.
- 6) Surveyor to prepare the Tender Specification document and issue to contractors, taking into consideration any feedback from the Notice of Intent.
- 7) Review estimates received and issue Statement of Estimates to leaseholders and the freeholder.

- 8) Select contractor, taking into consideration any feedback from 'the Statement of Estimates, Issue further payment request if necessary, Seek reimbursement from the freeholder for any increase in the cost (based on freeholder's previous estimate) due to delays in arranging the works,
- 9) Upon receipt of sufficient funds in reserve, instruct the selected contractor to commence work,

If the works are valued less than €12,000, our fee for managing the Section 20 consultation process would be 3% of the final value of the work, or 3% of the lowest estimate, or €500, whichever is greatest plus VAT. Surveyors fees would be separate.

If the works are valued in excess of €12,000, our fee for managing the Section 20 consultation and delivery of the work by our Surveyor would be 10% of the final value of the work, or 10% of the lowest estimate whichever is greater plus VAT.

Routine Management

We propose our "remote" management service for this property due to the property only comprising two leasehold flats. Our fee for the routine management of the property will be €1,044 per annum,

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The remote management service excludes site inspections and management of maintenance matters. Invoices would need to be sent to us for payment. Our only hesitation in recommending this service is that we would need clarity about who would manage onsite work if the Tribunal appoints a Manager to replace the lessor in these matters.

If the remote service is not suitable for the reason outlined above, our "full" management service fee would be €2,940 for routine management. This service includes management of the on-site contractors and quarterly inspections (subject to Coronavirus restrictions),

Enforcement of covenants

The fees outlined in the previous section are for "routine" management of the property. Any requirement to enforce the covenants of the lease, or to assist with any disputes will be chargeable on a time and materials basis at €95 + VAT per hour, Solicitors fees may also apply,

Please refer to our Management Agreement for details of what is included in our routine management service,

Right To Manage

Now that the leaseholders are in contact with each other, consideration should be given to undertaking a Right To Manage claim for the property.

Leaseholders should be mindful of the provisions of the lease in relation to the payment of the Interim Maintenance Charge when deciding whether this option is appropriate for them.

We believe that acquiring the Right To Manage will be a good longterm solution for this building, assuming appropriate professional services are obtained for the ongoing management,