



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

Case Reference : LON/00BB/LVM/2014/0007

Property : 216 Romford Road, Forest Gate,
London E7 9HY

Applicant : Eileen Mary Campbell

Representative : In person

Respondents : Romford Road Freehold Limited
Gary Gibson (Flat 3)
Titllayo Ogun (Flat 6)

Representative : Mr Fowler of Scott, Page Stock

Type of Application : For the determination of the
Appointment of a manager under
Section 24 of the Landlord and
Tenant Act 1987

Tribunal Members : Ms M W Daley LLB (Hons)
Mr T Johnson FRICS

**Date and venue of
Hearing** : 02 September 2015 at 10 Alfred
Place, London WC1E 7LR

Date of Decision : 03 September 2015

DECISION

Decisions of the tribunal

- a. That Mr John Fowler's appointment as a manager at the premises known as 216 Romford Road, London E7 9HY, be confirmed.
- b. That his appointment shall continue for a further two years until **5 August 2017**. As set out in the decision dated 6 August 2014
- c. That the terms of the order be continued as set out in the management plan produced by Stock Page Stock.

The application

The Background

1. The Tribunal in a decision dated 6 August 2014 appointed Mr Fowler of Stock Page Stock as manager for the premises known as 216 Romford Road, London E7 9HY ("The Premises"). This was further to an application dated 20 February 2014 made by Ms Campbell the leaseholder of flat 4, following the breakdown in arrangements, and the unwillingness of Mr Wales to continue as a Tribunal appointed manager pursuant to an earlier order of the Tribunal dated 3rd May 2011.
2. At the two day hearing of Ms Campbell's application, it was accepted by all of the parties, that is, the leaseholders and Ms Campbell that an appointment of a manager was necessary, although there was disagreement with who should be appointed. Ms Campbell proposed Mr Kevin Usher FRICS and the remaining leaseholders proposed Mr Fowler of Stock Page Stock.
3. In its decision dated 6 August 2015, the Tribunal stated:- "*33. The Tribunal noted that both parties accepted the need for a Tribunal appointed manager; nevertheless it was for the Tribunal to apply its judgement having heard evidence and submissions from the parties and considered all of the documents provided of whether to extend the order granted on 11 May 2011 and if so the terms upon which to grant the extension.*"
4. *34. The tribunal considers that the circumstances that exist at the premises, set out in the Tribunal's inspection and in the report prepared on behalf of Mr Wales, are such that grounds exist for the continuing appointment of a manager, as specified in section 24(2) of the 1987 Act.*"

5. At paragraph 83 the Tribunal determined that-: *“... that Mr Fowler ought to be appointed for 3 years. That a review of the appointment shall be undertaken by the Tribunal by way of a hearing, to ensure that suitable arrangements are in place for the management of the premises on 15 June 2015.”*
6. On or about 11 June 2015, Ms Campbell wrote asking that the matter be listed for a hearing in accordance with paragraph 83 of the Tribunal’s determination.
7. Directions were given on 16 June 2015. The directions stated inter alia, that-: *This matter is suitable for a paper determination.* The leaseholder Ms Campbell indicated that she wanted the matter considered at a hearing. This was initially set down for hearing on 26 August 2015, and thereafter postponed until 2 September 2015.
8. The Directions stated that-: *“...The tribunal will reach its decision on the basis of the evidence produced to it and upon an assessment of the suitability of the proposed manager. The tribunal has identified the following issues to be determined:*
9. *The Tribunal determines that the sole issue for determination is whether in all the circumstances, Mr Fowler’s appointment as manager of the premises ought to be confirmed.*
10. *If Mr Fowler’s appointment is to be confirmed, whether the order of appointment ought to be extended or varied in any way.”*
11. Mr Fowler was required by virtue of the directions to-: *“By 6 July 2015, send to each of the leaseholders a statement setting out his progress in terms of how he has complied with the terms of his appointment, and identifying areas to be included in his management plan for the next two years.”*

The Hearing

12. The hearing was attended by Mr Fowler of Stock Page Stock in his capacity as Tribunal appointed manager, and Ms Campbell, in her capacity as leaseholder of flat 4. Ms Campbell was opposing the continuance of the order. The Tribunal noted that no other leaseholder had attended the hearing.
13. Prior to the hearing, Mr Fowler provided a report, in which he had set out the steps, he had taken since his appointment, and in which he had set out

that his objective in the coming year, which was to establish a sinking fund.

14. The Tribunal also had sight of the issues raised by Ms Campbell. Ms Campbell provided details of her grounds for opposing the continuance of the order. There were also copies of correspondence and service charge statements, and other documents pertaining to the management of the premises.

The Evidence of Mr Fowler

15. Mr Fowler stated that at the last hearing the lighting had been identified as a particular health and safety hazard, and there had also been an issue with the roof. In 2014 major works had been undertaken by one contractor who had undertaken both the lighting and the roofing works. The works had been undertaken and in addition to the lighting 8 emergency lights had been installed and there were 8 smoke detectors installed. The premises were now compliant with health and safety recommendations.
16. The roof covering had been renewed with new underlay and asphaltting, a defective pipe on the roof had been replaced with a new hopper opening, and new rain water pipes. The lead flashings had been replaced and the parapets and other re-pointing work had been carried out at a total cost of £6888.00 including a management fee of £650.00 plus VAT (total cost of £738.00 for this work) plus 10% of the contract price for the supervision and management of the major works contract.
17. In 2015, both internal and external redecoration had been carried out. This had also included work of re-pointing where necessary, and works to the guttering and down pipes as well as the internal and external redecoration. The total cost of this work had been £10681.60 (including VAT where payable) and the management fee.
18. Mr Fowler stated that he had been satisfied that the work had been carried out to a reasonable standard. He stated that he had inspected at every phase of the work, and the finished works were commensurate with the standard that he would expect. He noted that it had been pointed out by Ms Campbell, (and it was accepted by him) that there was some evidence of damp at the property. He stated that it had been expected that the re-roofing and re-pointing, would deal with this issue, however he would include this item of disrepair in the budgeted work for the next year.

19. Mr Fowler confirmed that he had inspected the premises at least quarterly. He also confirmed that there was currently no issue with non-payment of service charges. He noted that he received the rents for the basement flat, and stated that as such, he had accounted for the service charges, before the remaining monies were returned to the freeholders' account. When asked whether he wished to continue to manage the premises he stated that he-: *"... Really believed that he had done a good job and had been bitterly disappointed by Ms Campbell's criticisms and had for a period been de-motivated."* He had reflected upon this, and as such, was still prepared to continue with the appointment.

The evidence of Ms Campbell

20. It was noted by the Tribunal that Ms Campbell had asked for a hearing and in her written representations dated 17 July 2015 had stated-: *"...I agree that some work has been carried out 1) I do not consider that the quality of the work reflects the true cost of the work undertaken 2) I do not consider that the work undertaken matches with the schedule of work promised..."*

21. Ms Campbell further stated *"...I wish to oppose your continued appointment on the following grounds; Given the amount of service charges that you have collected from everyone my estimate at least £25,000-£30000 since your appointment, the quality of the work is very basic and of poor quality . Your involvement also seems minimal. I do not believe the work represents value for money or the true costs of the work undertaken."*

22. Ms Campbell was asked for details of what works were alleged to have been not completed as set out in the specification. She referred to pages 38 and 41 (the notice of intention). She stated that she was *"not sure what has been done as it was very vague and the post boxes and the garden did not appear to have been done."* She stated that there was damp coming through the common parts and the Notice of Intention did not match the work carried out. She referred to the fact that there was a piece of wood which was in the common parts and had been put up to cover damp had been painted over, and there was wood, including a bit of plywood around the front door.

23. In answer to questions from the Tribunal, Mr Fowler accepted that he had no alternative estimates for the cost of the major works, and that he had not responded to the consultation by querying the scope of the works, or asking for a nominated contractor to be added to the list of contractors. His concern about the cost had largely been based on his own opinion, and that of friends and family.

24. Ms Campbell had photographs from a report which she wished to place before the Tribunal, however she was not able to say when the report had been prepared, and whether it post-dated the work, it had also not been provided to Mr Fowler, to enable him to comment on the contents. Accordingly she did not place the document before the Tribunal, although she placed reliance upon photographs that she had previously sent to the Tribunal concerning damp and trip hazards that existed at the premises.
25. Ms Campbell complained that there was an issue with the Premises Address being fraudulently used by parties who were not leaseholders, to obtain credit cards and loans. This had implications for the financial reputation for leaseholders of the premises.
26. Ms Campbell considered that greater security of the mail boxes might be addressed by the installation of a new security and mail box system. She was disappointed that this had not occurred. Ms Campbell was concerned that Mr Fowler's details as manager of the property had not been displayed in a prominent place in the common parts of the property, and that until recently. Mr Wales' contact details were displayed. She stated that her sub-tenants did not know who to call in emergencies, and that they had had problems with anti-social behaviour. She also remained troubled by sub-letting at the premises.
27. Ms Campbell was concerned (despite the reassurances of Mr Fowler) that it was possible that not all leaseholders had contributed to the service charges. She was unhappy with the statements, accounts and bank statements produced by Mr Fowler, as it seemed to her that they were only partial statements.
28. The Tribunal considered the statements and noted that it was able to identify at least three payments from three different parties.
29. In answer to a question concerning the order that she wished the Tribunal to make, Ms Campbell stated that she wanted a different manager to be appointed, someone who was more financially transparent. She noted that of the contractors appointed in respect of the major work that one of them had been from Mr Fowler's company. She was concerned that Mr Fowler could influence the process.
30. Mr Fowler acknowledged that the maintenance company had tendered and been awarded the contract for internal decorations/external decorations. He stated that this was because they had put in the lowest tender. He stated that it was in *his* interest for the highest tender to be

awarded the contract, as he was paid 10% of the contract price however this had not happened. In answer to her querying the accounts, he stated that these had been prepared and certified by an accountant.

31. The Tribunal decided that it was appropriate for a decision to be made and announced at the hearing, which would then be confirmed in writing. The Tribunal considered that in all the circumstances it was not in the interest of the parties for there to be uncertainty with regard to the management of the property.

The Decision of the Tribunal and Reasons for the tribunal's decision

32. The Tribunal adjourned the matter and upon the return of the parties, informed them that the appointment of Mr Fowler of Stock Page Stock was confirmed.
33. The Tribunal listened fully to Ms Campbell's concerns, and noted that there had been a considerable period of animosity and distrust between the various leaseholders at the property and Ms Campbell leading up to the appointment of a manager. The Tribunal also noted that, in 2011, Mr Wales had been nominated by Ms Campbell, and appointed by the Tribunal, and that, in 2014, when he was appointed, Mr Fowler had not been Ms Campbell's choice of manager for the property.
34. In order for the Tribunal to revoke Mr Fowler's appointment, the Tribunal considered that it would have to have very cogent reasons for doing so.
35. The Tribunal in making its decision on Mr Fowler's continuing appointment, carefully considered the wording of Section 24 of The Landlord and Tenant Act 1987. The Tribunal noted that notwithstanding its appointment of Mr Fowler, if it could be said, that his appointment had caused or occasioned any of the circumstances in section 24 to arise or continue, then it would not be in the interest of the leaseholders for Mr Fowler's appointment to continue.
36. The Tribunal were satisfied that none of the circumstances which had made it just and convenient for the order to be made, firstly in 2011, and then by variation in 2014 had arisen as a result of Mr Fowler's management of the premises.

37. The Tribunal however noted that in 2014, there had been grounds for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987. This was fully set out in the Tribunal decision dated 6.08.2014, and it was for this reason that it had been appropriate for a manager to be appointed for a three year period.
38. The Tribunal had found in 2014 that the property had been neglected, and that it would require some time before all of the matters that led to an appointment being made had been fully addressed. The Tribunal were satisfied that Mr Fowler-Stock Page and Stock were substantially moving in the right direction and noted that he had attended to all of the major items identified by the Tribunal from the *Health, Safety and Fire Risk Assessment of the Premises* report and from the Tribunal's inspection prior to the hearing.
39. The Tribunal noted the history of appointments at the premises, that the premises had been managed firstly by one of the leaseholders, who had been part of the freeholder company, and that in 2011 the Tribunal had appointed Mr Wales. Mr Wales had subsequently been released from his appointment. Mr Fowler of Stock, Page Stock had been appointed in 2014. The Tribunal consider that in all the circumstances, it was not in the interest of good management for a further appointment to be made after such a short period. Accordingly the Tribunal were grateful for Mr Fowler's willingness to continue with the appointment.
40. The Tribunal noted Ms Campbell's concerns, and the considerable history at the property which may have given rise to these concerns. However the Tribunal were satisfied that there were appropriate mechanisms and safeguards in place to deal with those concerns.
41. The Tribunal noted the issue with the works, and Mr Fowler's acceptance that there were issues with damp. The Tribunal hoped that Ms Campbell would enter into a constructive dialogue with Mr Fowler which would enable any snagging work to be identified and attended to. Ms Campbell also had the right to attend Mr Fowler's offices and inspect invoices. Ms Campbell also had the protection of section 27A of the Landlord and Tenant Act 1985, in respect of the reasonableness and payability of service charges.
42. The Tribunal also noted that in respect of the 2014 and 2015 major works, the section 20 consultations had been complied with. This had afforded Ms Campbell with the right to make written observations, and to nominate a contractor. The Tribunal considered that these rights might usefully be used in relation to any further work at the premises.

43. The Tribunal noted that the circumstances of management at the premises were difficult. However the Tribunal noted that it was now clear that the basement flat was being required to contribute to the service charges and that there was evidence of great cooperation from the leaseholders in relation to the payment of service charges.
44. The Tribunal referred to its previous decision, and noted as paragraph 18 of the decision it had recorded that-: *“There was also a somewhat complicated history involving the basement flat, which had been subject to a lease and was now owned by the Freehold Company, although Ms Campbell had not contributed to the cost of this acquisition and was therefore not considered by the other leaseholders to have a share. Nevertheless Ms Campbell considered that the Respondents ought to give account for the rental.”* This was one of the objectives that had been achieved by Mr Fowler.
45. The Tribunal considered that Mr Fowler was to be applauded, in that although the other leaseholders had put Mr Fowler forward as a proposed manager, they had wanted to retain management and financial control of the basement flat. Mr Fowler had managed in put in place appropriate steps to manage the finances, so that all of the leaseholders were cooperating with him and paying their service charges.
46. The Tribunal noted in his letter to Ms Campbell dated 10.08.2015 he had stated-*“...You are at liberty to come to our office and inspect the bank account, but under the Landlord and Tenants act you must give us reasonable notice, which I believe is one day’s notice...”* Ms Campbell remained at liberty to do so.
47. The Tribunal noted that whilst none of the other leaseholders had specifically supported Mr Fowler’s continuing management, they had not opposed it. The Tribunal noted that this degree of non-involvement made Mr Fowler’s job an unenviable one.
- 48. The Tribunal confirm Mr Fowler’s appointment until 6 August 2017, and hope that Mr Fowler will enjoy increased cooperation from the leaseholders.**
49. The Tribunal were not asked and did not seek applications under Section 20C of the Landlord and Tenant Act 1985. Any representations concerning the making of an order shall be made within 14 days of this decision

Name: Ms M W Daley

Date: 3 September 2015

Appendix of relevant legislation

Section 24 Landlord and Tenant Act 1987

(1) A leasehold valuation tribunal may, on an application for an order under section 24 of the Act, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which Part II of the Act 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.

(9) A Leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; ... (9A) The tribunal shall not vary or discharge an order under section (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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;

- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).