

11010



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

Case Reference : **LON/00AG/LAM/2016/0016**

Property : **27 Broomsleigh Street, London
NW6 1QQ**

Applicant : **Mrs Penny Louise Marshall**

Representative : **In person**

Respondent : **Mrs Anna Elizabeth Susan Mary
Gregory (1)
Mr David St John Gregory (2)**

Representative : **In person**

Type of Application : **Variation of order for the
appointment of a manager**

Tribunal Members : **Judge N Hawkes
Mr W R Shaw FRICS**

**Date and venue of
hearing** : **30th September 2016 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **30th September 2016**

DECISION

Decisions of the Tribunal

The Tribunal varies the management order dated 11th April 2016 in the following respects:

- (1) The Tribunal substitutes Ms Alison Mooney MIRPM AssocRICS as the manager in place of Ms Gillian Clyne.
- (2) The Tribunal makes the further minor agreed amendments which appear in the attached management order.

The application

1. The applicant seeks an order substituting Ms Alison Mooney MIRPM AssocRICS for Ms Gillian Clyne of Friar Sales Lettings (Holborn) Ltd as manager pursuant to section 24(9) of the Landlord and Tenant Act 1987 (“the 1987 Act”) on the grounds that the present manager is suffering from ill health.
2. Directions leading up to a final hearing were issued on 13th July 2016.

The background

3. The property which is the subject of this application is a mid-terrace Victorian house which has been converted into two flats. The respondents are the freehold owners of the building.
4. The applicant is the leasehold owner of a flat which occupies the ground floor of the property (“the ground floor flat”) and the first respondent is the leasehold owner of a flat which occupies the first and second floors of the property (“the first and second floor flat”).
5. The Tribunal does not consider that an inspection of the property is necessary, nor would it be proportionate to the issues in dispute.

The hearing

6. The hearing was attended by the applicant and the first respondent in person and by the proposed manager.
7. The proposed manager gave oral evidence and was questioned by the Tribunal and by the first respondent.

The Determination

8. The Tribunal is satisfied, having heard from the proposed manager and from the parties, that the proposed variation of the order will not result in a recurrence of the circumstance which led to the order being made and that it is just and convenient to vary the management order.
9. Having questioned the proposed manager and having seen and heard her give evidence, the Tribunal is satisfied that she is a suitable appointee.
10. During the course of the hearing, the applicant asked whether the duration of the management order could be extended given that it is now some months since the management order was made. The respondent indicated that she would prefer the length of the manager's appointment to remain as set out in the order and that she would consider the possibility of employing the manager as a managing agent after the management order expires.
11. The Tribunal considers that it would not be appropriate, at this early stage and when no notice of the request was given in the application notice, to extend the duration of the management order. However, it is open to either of the parties to make a separate application in the future for the management order to be extended, should this appear to be necessary.
12. The Tribunal has made the minor agreed amendments which appear in the attached order.

Judge N Hawkes

30th September 2016

Appendix of relevant legislation

Landlord and Tenant Act 1987 Section 24

24.— Appointment of manager by a 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

...

(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.

PROPERTY: 27 BROOMSLEIGH STREET, LONDON NW6 1QQ

MRS PENNY LOUISE MARSHALL

Applicant

and

ANNA ELIZABETH SUSAN MARY GREGORY

and

DAVID ST. JOHN GREGORY

Respondents

MANAGEMENT ORDER

The order management order which was made in these proceedings on 11th April 2016 is varied to provide as follows

IT IS ORDERED that:-

1. In accordance with Section 24 of the Landlord and Tenant Act 1987 Ms Alison Mooney MIRPM AssocRICS of Westbury Residential Limited ("the Manager") be appointed Manager of the Property until 28 September 2019.
2. The Manager shall manage the Property in accordance with:-
 - (a) The respective obligations of the Landlord and the Lessees under the Leases dated the 14th September 1984 and 30th November 1984, as varied, and in particular, but without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services and insurance of the Property; and
 - (b) In accordance with the duties of a manager set out in the Service Charges Residential Management Code 2nd edition ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform Housing and Urban Development Act 1993.
3. The Manager shall manage the Property fairly, impartially and in accordance with the terms of the Leases.
4. The Manager shall be responsible for keeping proper Service Charge accounts and preparing and serving invoices on the Lessees. All charges shall be apportioned in accordance with the terms of the Leases.

5. From the date of appointment, and throughout her appointment, the Manager shall maintain a policy of professional indemnity insurance to cover her obligations and liabilities as Manger.
6. The Respondents to this Application shall, not later than 28 days from the date of this Order, provide all necessary information to the Manager and arrange an orderly transfer of responsibilities. All accounts, books, records, survey reports and funds shall be transferred within 28 days to the Manager.
7. The Manager is entitled to such disclosure of documents as held by the Respondents, their advisers or agents, as is reasonably required for the proper management of the Property.
8. The Respondents shall, within 28 days of this Order, give full details to the Manager of all sums of money they hold in the service charge fund and any reserve fund in relation to the Property, including copies of any relevant bank statements and shall forthwith pay such sums to the Manager.
9. The Manager opens and operates bank accounts in her own name and described as 'Client Account' in relation to the management of the Property and to hold and invest any sums received in respect of service charges or other sums provided for in the leases in accordance with the terms of the lease and pursuant to all relevant legislation.
10. The Manager will receive all sums, whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said Leases. The Manager will account forthwith to the freehold owners for the time being of the Property for the payment of ground rent received by her and will apply the remaining amounts received by her (other than those representing her fees as hereby specified) in the performance of the Landlords' covenants contained in the said Leases.
11. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall, in 28 days from the date of this Order, become the rights and liabilities of the Manager.
12. The Manager and the parties shall be entitled to apply to the Tribunal for further directions if so advised and/or in the event that circumstances necessitate such an application.
13. The Manager shall be entitled to remuneration as set out below.
14. The Manager has the power to delegate to other employees of Westbury Residential Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as she may reasonably require to assist her in the performance of her functions.
15. From the date of this Order the freehold owners and the Lessees shall, on receipt of 7 days' written notice, or 24 hours' written notice if access is urgently required, give the Manager reasonable access to any part of the Property which she might require in order to perform her functions under this Order.
16. The Manager shall create a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the Institution upon request.

Schedule of Functions and Services

Service Charges

- 1.1 Prepare an annual Service Charge Budget, administer the service charge and prepare appropriate accounts in accordance with the relevant Leases and the Code.
- 1.2 Demand and collect service charges, insurance premiums and any other payments arising under the Leases as appropriate.
- 1.3 Hold all monies received pursuant to this Order and/or pursuant to the Lease Provisions as a trustee, in an interest bearing account (if appropriate), pending such monies being defrayed.
- 1.4 The Manager shall be entitled to take such action and Court or Tribunal proceedings as may be necessary to collect the service charges or rent arrears and to take such action in the Courts or Tribunals as may be necessary or desirable to secure compliance with the Lessees' obligations under the Leases relating to the flats in the Property.

Accounts

- 2.1 Prepare an Annual Statement of Account for the Lessees, detailing all monies received and expended and held over or held by a reserve fund.
- 2.2 Produce for inspection by the Lessees, receipt or other evidence of expenditure.
- 2.3 All monies collected on the Lessees' behalf will be accounted for in accordance with any relevant code.

Maintenance and Management

- 3.1 The Manager shall inspect the Property quarterly on the first Monday of each quarter to give consideration to works to be carried out to the Property in the interest of good management and make the appropriate recommendations to the parties.
- 3.2 Arrange, manage and, where appropriate, supervise all repair and maintenance, building work and service contracts applicable to the Property and instruct contractors to attend the same as appropriate.
- 3.3 The Manager will instruct a surveyor if appropriate to obtain quotations for any major works required and will prepare and enter into the section 20 consultation process.
- 3.4 The Manager will deal with all reasonable enquires raised by the Lessees in relation to repair and maintenance work and instruct contractors to attend and rectify problems as necessary.

Insurance

- 4.1 The Manager will, with the consultation of the parties, take out an insurance policy in her name (noting the parties' interests) in relation to the Property with a reputable insurer, and provide a copy of the schedule and policy to all parties.

Fees

- 5.1 The fees for the above-mentioned management service (with the exception of supervision of major works) will be £600 + VAT per annum payable jointly between the Lessees of the Property.
- 5.2 The Manager shall also be entitled to a project co-ordination fee of 10% + VAT of the total cost of any building, redecoration or repair works which at any time is in excess of £500 charge for any one Lessee.
- 5.3 An additional charge for dealing with Solicitors' enquires on transfer will be made on a time-related basis payable by the outgoing Lessee.

Dated 30th September 2016