



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

Case Reference : **LON/00AP/LAM/2016/0024**

Property : **Flat 1, Avondale, 109 Truro Road,
Bounds Green, London N22 8DP**

Applicant : **Ms G Simpson**

Representative : **In person**

Respondents : **David Matthey, Steven Matthey and
Alexander Barnett.**

Representative : **Mr Thornton of Hurford Salvi Carr
Property Management**

Type of Application : **Appointment of a manager**

Tribunal Members : **Judge N Hawkes
Ms S Coughlin MCIEH
Mr C S Piarroux JP CQSW**

**Date and venue of
hearing** : **12th September 2016 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **12th October 2016**

DECISION

Decisions of the Tribunal

- (1) The application for a manager to be appointed is dismissed.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) The Tribunal does not make an order requiring the respondents to reimburse Tribunal fees which have been paid by the applicant.

The application

1. By an application dated 27th June 2016, applicant seeks an order appointing Mr Mark Reed AIRPM, Head of Block Management at ABC Block Management Limited, as manager pursuant to section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”).
2. Directions leading up to a final hearing were issued on 5th July 2016 and the hearing took place on 12th September 2016.
3. In addition to this application, the applicant has issued an application against the respondent which is dated 23rd April 2016 in which she seeks a determination as to the reasonableness and payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985.
4. The Tribunal notes that the applicant has previously issued applications against the respondent relating to the reasonableness and payability of service charges and for the appointment of a manager and that these applications were determined in 2013.

The background

5. The property which is the subject of this application is a flat on the ground floor of a three storey, purpose built block containing twelve self-contained flats. The Tribunal was informed that all of the flats are held on long leases and that the majority of the flats have been sublet.
6. The respondents are the freehold owners of the building in which the property is situated.

The hearing and inspection

7. The applicant appeared in person at the hearing and the respondents were represented by Mr Thornton of Hurford Salvi Carr Property Management (“HSC”). HSC are the respondent’s managing agents.

8. The Tribunal inspected the property on the morning of 12th September 2016, prior to the hearing, in the presence of the applicant and Ms Rowe of HSC.
9. The Tribunal inspected the common parts and the exterior of the block. The Tribunal did not inspect the interior of any of the flats.

The issues

10. It is not in dispute that the applicant may make an application to have a manager appointed and that the property is one in respect of which a manager may be appointed.
11. The issues to be determined are as follows:
 - (i) As no preliminary notice has been served, should the Tribunal still make an order in exercise of its powers under section 24(7) of the 1987 Act?
 - (ii) Has the applicant satisfied the Tribunal of any ground(s) for making an order, as specified in section 24(2) of the 1987 Act?
 - (iii) Is it just and convenient to make a management order?
 - (iv) Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should an appointment be made?
 - (v) Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the landlord's costs that may be recoverable through the service charge and/or an order for the reimbursement of any fees paid by the applicant?

The Determination

(i) As no preliminary notice has been served, should the Tribunal still make an order in exercise of its powers under section 24(7) of the 1987 Act?

12. The Tribunal notes that paragraph 19 of the decision dated 22nd July 2013, dismissing the applicant's previous application for the appointment of manager, provides that the applicant set out her complaints in a section 22 notice which she served on the landlords.

13. When asked for an explanation as to why, having previously served a section 22 notice, the applicant did not serve a section 22 notice on this occasion, the applicant stated that she had been told that the application could be dealt with without such a notice.
14. The applicant did not specify who had told her that a preliminary notice was not needed and she did not suggest that it had not been reasonably practicable to serve a section 22 notice on the landlord. She was unable to clearly explain why she had served a section 22 notice in the previous proceedings if she was of the view that no such notice was needed.
15. The applicant indicated that she believed that she had provided the landlord with information equivalent to the contents of a section 22 notice in correspondence but she was unable to point to a letter the contents of which were equivalent to a section 22 notice.
16. Under section 22(3) of the 1987 Act, the Tribunal may dispense with the requirement to serve a preliminary notice. However, the dispensation can only be given where the Tribunal is satisfied that it would not be reasonably practicable to serve such a notice on the relevant person and the Tribunal is not so satisfied in the present case.
17. Section 24(7) of the 1987 Act provides (emphasis added):

“(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).”

18. In the present case, the application for an order was not “preceded by the service of a notice under section 22” and the Tribunal does not consider that it can exercise powers under section 24(7) to make a management order. The Tribunal is of the view that it is likely that the purpose of a section 22 notice would have been apparent to the applicant from her participation in the 2013 proceedings. However, the Tribunal will, for completeness, determine the other issues which were raised and on which it heard full argument.

(ii) Has the applicant satisfied the Tribunal of any ground(s) for making an order, as specified in section 24(2) of the 1987 Act?

19. Paragraph (3) on page 1 of the lease provides:

The Company has been incorporated with the object (inter alia) of providing certain services to and for the lessees of the said flats and of managing and maintaining the said flats the services thereto and the grounds surrounding the same in manner hereinafter appearing.

20. Clause 6(7) of the lease provides:

If during the term hereby granted the Company shall go into liquidation the Lessor shall be entitled upon giving notice to the Lessee to undertake the obligations hereby undertaken by the Company and if the Lessor elects so to do the Lessor shall be entitled to recover from the Lessee all moneys hereby agreed to be paid by the Lessee to the Company.

21. It is common ground that the respondent has undertaken the rights and obligations of the Company.

22. Clause 5(1) of the lease provides:

The Company in consideration of the covenant by the Lessee in clause 2 hereof and with a view to relieving the Lessee of his obligations under sub-clauses (5) (6) (8) (9) and (10) thereof hereby covenants with the Lessee in the manner following that is to say:-

(1) That the Company will whenever reasonably necessary maintain repair redecorate and renew –

(a) The external walls and structure and in particular the roof gutters waste and rainwater pipes of the Building

(b) The gas and water pipes sewers drains and electricity cables and wires serving the demised premises and enjoyed or used by the Lessee in common with the Lessees of the adjoining or neighbouring flats

(c) The pathways and dustbin areas shown on the plan annexed hereto

(d) The garden grounds shown edged green on the said plan

(e) The fences and boundaries of the Building and will also be responsible for the lighting and cleaning of the entrance hall staircases and landings of the Building.

23. Clause 2 sub-clauses (5), (6), (8), (9) and (10) contain repairing covenants on the part of the lessee.
24. Mr Thornton accepted (as he was bound to do on the evidence) that the respondent is in breach of sub-clauses 5(1)(c), 5(1)(d) and 5(1)(e) of the lease.
25. As regards sub-clause 5(1)(c), on inspection, the Tribunal found that the dustbin area had not been maintained, redecorated, repaired or renewed.
26. As regards sub-clause 5(1)(d), on inspection, the Tribunal found that the garden had not been maintained. There were numerous rat holes in the grass which had not been properly filled in as well as an area to the side which had not been weeded and which was full of brambles.
27. As regards sub-clause 5(1)(e), on inspection, the Tribunal found that the boundary wall of the building had not been repaired, maintained or redecorated and that the entrance hall staircases and landings of the building had not been adequately cleaned.
28. Accordingly, the Tribunal is satisfied that grounds for making an order are made out.
29. It is possible that the sewers, pipes and drains are in need of repair but this is a matter which requires further investigation. Mr Thornton stated that an initial investigation had showed no problem with the drains but that a CCTV inspection will be carried out as he accepted that further investigations were needed in relation to the recurrence of the rat infestation.
30. The applicant was concerned that asbestos may have been disturbed when works were carried out to clear the gutters on the roof. Mr Thornton gave evidence, which the Tribunal accepts, that asbestos was not disturbed when this work was carried out.

(iii) Is it just and convenient to make a management order?

31. There is no provision in the lease enabling the landlord to build up a reserve fund.
32. It is recorded at paragraph 1 of the decision pursuant to section 27A of the 1985 Act dated 4th April 2013 that, at the time of that decision, the applicant had not made payment of her service charges since 13th June 2008. Mr Thornton gave evidence, which the Tribunal accepts, that whereas the landlord had expected the applicant to pay the service

charge arrears after the 2013 proceedings, the applicant was not up to date with her service charge payments until March of this year.

33. The cost of the work which is required to the building is substantial. Whilst recognising that the respondents are legally obliged to comply with the terms of the lease, Mr Thornton explained that the landlord was concerned, having regard to the history of this matter, that there might be difficulty in recovering the applicant's contribution to the cost of the major works.
34. Mr Thornton stated that HSC has, over time, built up a good relationship with the landlord and with the other lessees and that remedial work to the building is now about to be commence. He was of the view that it would be likely to take some time for a new manager to build up similar levels of trust and that, practically speaking, a change of management would be likely to delay the commencement of the works.
35. The landlord was found to be in breach of covenant in 2013 and the Tribunal is very concerned that the landlord remains in breach of covenant. A two year plan to carry out repairs had been provided at the previous hearing but this does not appear to have been carried through. On balance, however, having regard to Mr Thornton's evidence that remedial work is about to commence, the Tribunal does not consider it just and convenient to appoint a manger, at this stage. If remedial work is not now carried out, it might well be appropriate for a manager to be appointed in the future.

(iv) Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should an appointment be made?

36. Mr Reed was questioned by the Tribunal and the parties were given the opportunity to ask him questions. The Tribunal was impressed by Mr Reed and is satisfied that, if a manager were to be appointed, Mr Reed would be a suitable appointee. The Tribunal notes that Mr Reed indicated that he would be willing to provide his services for the limited remuneration which is provided for in the lease.

(v) Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the landlord's costs that may be recoverable through the service charge and/or an order for the reimbursement of any fees paid by the applicant?

37. Having considered the submissions from the parties and taking into account the determinations above:

- (i) the Tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act; and
- (ii) the Tribunal does not make an order for the reimbursement of hearing fees paid by the applicant.

Judge N Hawkes

12th October 2016

Appendix of relevant legislation

Landlord and Tenant Act 1987

Section 22

22.— Preliminary notice by tenant.

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—

(i) the landlord, and
(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is served] may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with ;

(c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and
(b) his interest in the premises specified in pursuance of subsection

(2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

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.

Landlord and Tenant Act 1985

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.