

1983

Case number: MAN/36UG/LAM/2005/0003

**NORTHERN RENT ASSESSMENT PANEL
acting as
LEASEHOLD VALUATION TRIBUNAL**

**1 PRINCESS ROYAL TERRACE
SCARBOROUGH, NORTH YORKSHIRE**

**Landlord and Tenant Act 1987, section 24 (1) as amended
Application for appointment of manager**

Between:

APPLICANT: MR STEPHEN JAMES SHORTER

RESPONDENT: FAIRHOLD LIMITED

DECISION

1. The Applicant Mr Shorter is the leasehold owner of Flat 8, a one-bedroomed self-contained flat on the second floor of a detached house at 1 Princess Royal Terrace, Scarborough which has been converted into 11 flats. There are ten flats accessed via an entrance hall and common staircase and one flat in the basement which has a separate means of access. The building has a narrow yard area for drying and storing dustbins to the rear, a small garden to the front and a garden to one side which has been converted to provide parking for some 5 vehicles. It is built of brick under a slate tiled roof and appears to be in a reasonably good state of repair overall.
2. Mr Shorter's lease is understood to be in the same terms, mutatis mutandis, as the other leases in the property. It creates a term of 999 years from 1 January 1989 at a ground rent of £50 a year payable in two annual instalments. The lease provides (at paragraph 4 and the 6th Schedule) inter alia for the Respondent to insure the property, to keep the building in repair, to decorate externally once every 5 years and to decorate the interior common parts once

every 3 years subject to an equal one eleventh share of expenditure being contributed by each flat owner. There is no provision in the lease for a sinking fund against major items of expenditure, nor any procedure whereby the Respondent can be put in funds by flat owners before incurring costs.

3. Mr Shorter became concerned that the Respondent's repairing and decorating obligations were not being carried out, and that the value of the flats was likely to be affected. He corresponded with Walker Landray Limited, a Scarborough firm of land agents who acted as the Respondent's managers for this property. Mr Shorter was not satisfied that the situation was going to improve and therefore served notice under section 22 of the Landlord and Tenant Act 1987 (the Act). Having received no response, on 7 September 2005 Mr Shorter lodged two applications with the Tribunal, namely an application to vary his lease, and an application to appoint a new manager under section 24 of the Act. By that time Mr Shorter was corresponding with Mr Duncan Cowen who had recently purchased Walker Landray Limited and taken over its business. He put forward Mr Cowen as the new manager for appointment by the Tribunal
4. Directions were given towards the end of October 2005 after a hearing which was attended only by Mr Shorter and Mr Cowen. There has been no response to the applications from the Respondent. None of the other flat owners sought to be added as a party to the proceedings. Mr Cowen indicated his willingness to accept appointment by the Tribunal. Subsequent to the directions hearing, Mr Shorter withdrew his application to vary the terms of his lease.
5. A final hearing of the application under section 24 was held on 10 February. The Tribunal inspected the common parts of the building beforehand, in the company of Mr Shorter and Mr Cowen. They noted that the timber window frames are urgently in need of repair and external decoration and that the gutters and pipes require overhauling. The state of the roof could not be assessed with any accuracy. Mr Cowen indicated that he would like to bring the general standard and appearance of the building up to that of the nursing home opposite, which is clearly well maintained. He told the Tribunal that he

received no instructions or funding from the Respondent enabling him to comply on the Respondent's behalf with the terms of the lease.

6. The Respondent did not attend and was not represented at the hearing. Mr Brookfield of Flat 4 was present as an observer. The Tribunal determined that management obligations imposed on the Respondent by the leases were not being complied with, that Mr Shorter's section 22 notice had met with no response, and that it was reasonable in the circumstances to appoint a manager for the building to carry out the Respondent's management functions of repair, redecoration, maintenance, insurance and enforcement as set out in the 6th Schedule to the leases.
7. Mr Cowen having indicated that his timescale for repairs and redecoration was 3 years, the Tribunal appointed him for an initial 3 year term with effect from 1 April 2006. Since no flat owner other than the Applicant (and, to an extent, Mr Brookfield) had shown any interest in the proceedings, the Tribunal accept that Mr Cowen will have to correspond with flat owners and arrange meetings with them in order to provide information about his proposed work at the property. However this work is required to be carried out by the terms of the lease and is not dependent on the consent of the flat-owners.
8. Having regard to the amount of work to be undertaken, the Tribunal determined that Mr Cowen's maximum fee should be set at £150 per flat per year plus VAT. Since work cannot be undertaken by a manager without sufficient funds to cover the cost, the Tribunal determined to apply conditions to the appointment designed to ensure that the building will be effectively managed in accordance with the leases. To that end, Mr Cowen has been given the right to issue proceedings by way of enforcement, and to obtain contributions from the flat owners in advance of expenditure at any appropriate time in order to be able to comply with the Respondent's management obligations.
9. The Respondent's management obligations at Schedule 6 of the leases include an obligation to arrange suitable insurance over for the building. That

obligation will from 1 April 2006 fall to Mr Cowen as the new manager. Mr Cowen told the Tribunal that he could undertake to arrange insurance and expected to be able to achieve better terms than the present policy.

10. Mr Shorter requested the Tribunal to order that he be reimbursed by the Respondent for the fees he has paid to the Tribunal amounting to £500 in total. An order has been made accordingly, on the basis that the Respondent has failed to respond in any way to the applications, which Mr Shorter has lodged solely because he was not able to obtain compliance with the Respondent's covenants in his lease. Mr Shorter did not produce any evidence of having incurred other costs in the application and the Tribunal did not in any event find that the Respondent's failure to respond comprised sufficient grounds on which to make a costs order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.
11. Finally, Mr Shorter applied under section 20C of the Landlord and Tenant Act 1985 for an order that the Respondent's costs incurred in response to his application should not be recoverable from the flat owners as service charge. The leases do not appear to permit the Respondent to recover costs in any event, but for the avoidance of doubt the order is made as requested.



A M Davies, Chairman

14 February 2006

NORTHERN RENT ASSESSMENT PANEL
acting as
LEASEHOLD VALUATION TRIBUNAL

1 PRINCESS ROYAL TERRACE
SCARBOROUGH, NORTH YORKSHIRE

Landlord and Tenant Act 1987, section 24 (1) as amended (“the Act”)
Application for appointment of manager

Between:

APPLICANT: MR STEPHEN SHORTER

RESPONDENT: FAIRHOLD LIMITED

ORDER

- 1 Duncan Cowan of Walker Landray Limited (“the Manager”) is appointed manager of the property known as 1 Princess Royal Terrace, Scarborough, North Yorkshire (“the Property”) for a period of three years from and including 1 April 2006

- 2 The Manager shall carry out all management functions of the Respondent in accordance with
 - (a) the terms of the leases of the flats therein (“the Leases”) and any variation to those terms made after the date of this order which is notified to him in writing,
 - (b) this order, and
 - (c) the duties of a manager set out in the Service Charge Residential Management 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

and in the event of conflict the terms at (b) above shall prevail.

3 The Manager shall

- (1) hold a key to the common parts of the Property;
- (2) inspect the Property as often as he thinks fit;
- (3) give each flat owner not less than 14 days' notice of any meeting at which management of the Property is to be considered, which meetings shall be held so far as possible at a time when all flat owners can attend;
- (4) open a trust account pursuant to section 42 of the Act to receive and disburse service charge monies
- (5) collect from each flat owner from time to time such sum as he estimates will be required in the following 12 months, prior to incurring the cost of maintenance and repair of the Property pursuant to clause 4 of the Leases
- (6) prepare and serve on each flat owner annually written notice of
 - (a) expenditure incurred during the previous 12 months,
 - (b) the Manager's estimate of the service charges payable for the following 12 months, and
 - (c) in respect of each flat owner,
 - (i) the amount of any additional charge payable in respect of actual costs incurred in the previous 12 months, or
 - (ii) the amount due to the flat owner as a result of any overpayment, which amount may be retained as a credit in the service charge account; and
- (7) be at liberty to apply to the Tribunal at any time for further directions.

4. The Manager shall have authority to pursue a claim in respect of any cause of action accruing to the Respondent after the date of his appointment and to retain in the Service Charge account any monies so recovered

5. The Manager shall be remunerated out of the service charge account in the annual sum of not more than £1650 plus VAT paid at such intervals as he shall determine.

- 6 The Respondent shall reimburse fees of £500 paid by the Applicant pursuant to paragraph 9 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

7. The Respondent may not add its costs incurred in connection with this application to service charges recoverable from the applicant. (This order does not prevent the Manager from adding his charges.)

.....

A M Davies
Chairman

13 February 2006