

Residential Property Tribunal service Leasehold Valuation Tribunal

Case number CAM/38UB/LVM/2010/0002

Property 22 West Street Banbury OX16 3HD

Applicant Miss G A Tym by her representative Mr P A Tym

1st Respondent Mr T Boulton

2nd Respondent Mr J Socha

Proposed Manager Mr P Tym of 36 Melbourne Avenue London W13 9BT

Date of Application: 7th June 2010

Type of Application for the variation of an Order dated 12th March 2010 appointing a Manager under Section 24(9) of the Landlord and Tenant Act 1987 (The 1987 Act)

Members of Tribunal Mr R T Brown FRICS Chairman
Mrs I Butcher Lawyer
Mr A Kapur

Decision

1. The Tribunal determines that on the evidence presented it is just and convenient to vary the order dated 12th March 2010 in the form given below and does so with effect from the date of this decision.

The Application

2. The Application is made by the lessee of the First Floor Flat, Miss G A Tym, on the grounds that the Manager appointed has sought to resign.

The Law

3. The law is set out in the **decision** dated 12th March 2010 a copy of which is annexed to this decision.

The Property and the Tribunal's inspection

4. The Tribunal inspected the property on the 16th February 2010 in the presence of Mr P Tym and Miss P Ligerwood, representing the Applicant and accordingly did not re-inspect the property for the purpose of this decision.

The Hearing

5. A hearing was held in the Best Western Hotel, Banbury on 10th September 2010.
6. Mr Tym appeared on behalf of the Applicant, Miss Tym, and Miss Ligerwood was also present.
7. Neither of the Respondents, attended or were represented.
8. By a letter dated 26th August 2010 which was received by the Tribunal office on 9th September 2010, Mr Socha sought to surrender his appointment as Tribunal appointed Manager of the property.
9. Mr Tym stated that on enquiries at the Land Registry he had ascertained that the order dated 12th March 2010 had not been registered.
10. The Applicant proposed that Mr P A Tym, FRICS, be appointed manager in his place.
11. The Tribunal interviewed Mr Tym as to his experience and suitability of property management.

The Tribunal's Deliberations

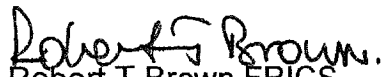
12. The Tribunal considered carefully their interview with Mr Tym and noted that although he is a Chartered Surveyor, it considered his acknowledged inexperience in the area of residential property management.
13. The Tribunal also interviewed Mr Tym in respect of his close family connection with the Applicant and was satisfied that Mr Tym understood that his appointment was as an LVT appointed official and not at the behest of the Applicant, Freeholder or other Lessee.
14. On balance the Tribunal considered that despite his inexperience Mr Tym was a suitable person to appoint as Manager and Receiver for this type of building. The Tribunal acknowledges that for a specialist firm the subject property might be too small a job to be worthwhile.

The Varied Management Order

1. The Tribunal reproduces the Order dated 12 March 2010 as varied by this determination as set out below.

2. The Tribunal appoints Mr P A Tym of Ealing Surveyors and Valuation Limited of 36 Melbourne Avenue London W13 9BT as **Manager and Receiver** of the premises known as 22 West Street, Banbury, Oxfordshire OX16 3HD.
3. The appointment shall run for a term commencing with the date of this order and expiring on completion of the accounts for the 3rd complete year (see paragraph 8 below).
4. The Manager will at all times act within the law relating to service charges; in particular the Landlord and Tenant Acts 1985 and 1987.
5. The Manager will follow the RICS Service Charge Residential Management Code approved by the Secretary of State for England under section 87 of the Leasehold Reform Housing and Development Act 1993.
6. The Manager will in the exercise of his duties follow the covenants in the leases of the two flats save that as to paragraphs 7 to 14 below:
7. The Manager shall set up a service charge account for the purpose of:
 - (1) The provision of Buildings re-instatement insurance.
 - (2) The exercise of the Freeholders duties and the cross covenants between leaseholders in respect of the maintenance of the building (as opposed to the demised units) and the common service installations.
8. The service charge account will comply with section 42 of the 1987 Act and be based on an accounting year ending 24th March each year.
9. The Manager will prepare a budget for the year and issue same to the lessees.
10. Service charge funds will be raised by the issue of an immediate demand following production of the budget and subsequently at half yearly intervals.
11. Within three months of the accounting year end the Manager will produce to the Freeholder and Lessees an income and expenditure account detailing the amount received and expended. Any credit balance to be retained towards the service charge for the following year. Any deficit balance to be collected by raising a year end service charge invoice to accompany the completed accounts.
12. The Manager may at his discretion set up a Reserve Fund for the purposes of building up a fund to execute planned major works in the future.
13. The Manager shall be entitled to prosecute such claims as are appropriate for the proper execution of his duties.
14. The Manager's fee shall in the first year be £2,200.00 plus VAT at prevailing rate, if applicable. For the following years £1,200.00, plus VAT if applicable.

15. Nothing in this order shall prevent the Freeholder or a lessee from applying to the Leasehold Valuation Tribunal for a determination of payability and reasonableness under section 27 of the 1985 Act.
16. The Manager is forthwith to arrange for this Order to be registered as a restriction under the Land Registration Act 2002 against the Freehold and Leasehold Titles to the subject property. Such professional fees as are incurred for this purpose to be recoverable as service charges.
17. The Manager, Freeholder or lessees may apply to the Tribunal for the purposes of varying, suspending or terminating this order.
18. The Tribunal reserve the right to vary suspend or terminate this order as they see fit.


Robert T Brown FRICS
Chairman

Dated 16 September 2010

17 SEP 2010

Residential Property Tribunal service Leasehold Valuation Tribunal

Case number CAM/38UB/LAM/2009/0002

Property 22 West Street Banbury OX16 3HD

Applicant Miss G A Tym by her representative Mr P A Tym

Respondents Mr T Boulton

Proposed Manager Mr J Socha of Orchard Block Management Services Limited

Date of Application: 13th October 2009

Type of Application for the appointment of a Manager under Section 24 of the Landlord and Tenant Act 1987 (The 1987 Act) and for an order under section 20C of the Landlord and Tenant Act 1985 (The 1985 Act).

Members of Tribunal Mr R T Brown FRICS Chairman
Mrs I Butcher Solicitor
Mr A Kapur

Decision

1. The Tribunal determines that on the evidence presented it is just and convenient to make an order in the form given below and does so with effect from the date of this decision.
2. In so far as the costs of these proceedings before the LVT are recoverable under the lease the Tribunal makes an order under section 20C Landlord and Tenant Act 1985 preventing the Respondent Landlord recovering any costs as service charge.

The Application

3. The Application is made by the lessee of the First Floor Flat, Miss G A Tym, on the grounds that the Freeholder (Mr T Boulton) who is resident in and holds a long lease of the ground Floor Flat has (a) failed to insure the property and (b) Failed to reinstate the property following a fire in the spring of 2009.
4. The Tribunal is satisfied that it has jurisdiction to consider this application even though the Freeholder is also resident in the Ground Floor Flat by virtue of the exemption under section 21(3A) because at least one half of the flats are held on long leases.

5. An application for the limitation of service charges arising from the Respondent landlord's costs of proceedings in the Leasehold Valuation Tribunal (Section 20(c) Landlord and Tenant Act 1985).

The Law

The Landlord and Tenant Act 1987

21 Tenant's right to apply to court for appointment of manager

(1) The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.

(2) Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

(3) This Part does not apply to any such premises at a time when—

(a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or

(b) the premises are included within the functional land of any charity.

(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.

(4) An application for an order under section 24 may be made—

(a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b) in respect of two or more premises to which this Part applies;

and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

(5) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.

(6) An application to the court for it to exercise in relation to any premises any jurisdiction to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7)References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

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 a leasehold valuation 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 tribunal 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)A leasehold valuation 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.

23 Application to court for appointment of manager

(1) No application for an order under section 24 shall be made to a leasehold valuation tribunal unless—

(a) in a case where a notice has been served under section 22, either—

(i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or

(ii) that paragraph was not applicable in the circumstances of the case; or

(b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

(i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or

(ii) no direction was given by the tribunal when making the order.

(2) Procedure regulations shall make provision—

(a) for requiring notice of an application for an order under section 24 in respect of any premises to be served on such descriptions of persons as may be specified in the regulations; and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

24 Appointment of manager by a leasehold valuation tribunal

(1) A leasehold valuation 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) A leasehold valuation 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

(ii).....

(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;

(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).]

(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 1925 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) 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; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, 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 a leasehold valuation 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 or insurance of those premises.

The Property and the Tribunal's inspection

6. The Tribunal inspected the property on the 16th February 2010 in the presence of Mr P Tym and Miss P Ligerwood, representing the Applicant.
7. The property, located in a conservation area, comprises a three storey brick and slate victorian terrace house, converted approximately 20 years ago to provide a Ground Floor self contained flat (accessed from South Street and reserving the rear yard) and a First and Second Floor self contained flat (accessed from West Street).
8. The Tribunals inspection revealed evidence of neglect in particular:
 - Boarded up window to ground floor front.
 - Temporary plastic sheeting over wing extension damaged by fire.
 - Roof in need of maintenance possibly stripping and recovering.
 - Untidy rear with old sofa in yard.

The Hearing

9. A hearing was held in the Best Western Hotel, Banbury after the inspection.
10. Mr Tym appeared on behalf of the Applicant, Miss Tym, and Miss Ligerwood was also present. Mr. J Socha of Orchard Block Management Services Ltd attended as the prospective manager.
11. The Respondent, Mr Boulton did not attend nor was he represented.
12. Mr Tym explained that there had been a fire in the ground floor flat on the 8th June 2009 causing extensive damage to that flat and some smoke damage to the first floor flat.
13. As a result of the fire it was discovered that the property was not insured.
14. The Applicant had served notice at the Ground Floor Flat, under section 22 of the Act initially by 'recorded delivery, and subsequently by ordinary mail. No acknowledgement had been received.

15. Mr Tym acknowledges the lease is not clear as it appears that both the lessor and lessee each covenant to insure the property. Terms had been agreed with the Respondent's then solicitor to vary the lease although the variation had never been executed.
16. The Tribunal interviewed Mr Socha at some length about his suitability to manage this property. Mr Socha confirmed that although he is not personally qualified other than by 12 years experience. His firm, Orchard Block Management Service Ltd had been admitted to membership of the Association of Residential Managing Agents.
17. After issuing further directions Mr Socha produced evidence of:
 - A client account held at Allied Irish Bank, Northampton in accordance with Section 42 of the Act.
 - Evidence that his Professional Indemnity Insurance was up to date.
 - Complaints Procedure.
 - Standard Terms of Business.
18. The further directions also required Mr Socha to produce:
 - A quote for reinstatement insurance for the whole property.
 - An itemised budget of the immediate work required to the building.

The Tribunal's Deliberations


19. The Tribunal is satisfied that notice under section 22 of the Act was served and that there was no response.
20. The Tribunal concluded on the evidence of the inspection, on hearing Mr Tym in person and the lack of attendance of Mr Boulton, the Respondent Freeholder that it was 'just and convenient' to make an order being satisfied that the Respondent Freeholder was in breach of, amongst other things:
 - his obligation as Freeholder to insure,
 - his obligation as lessee to maintain his own flat ,
 - his obligation to contribute to the maintenance of the property,
 - there was no evidence of any purposeful attempt to manage the building and meet both his obligations as Freeholder and as occupying lessee of the ground floor flat.
21. The Tribunal considered carefully their interview with Mr Socha and was concerned by his lack of formal qualification but noted his willingness to study for the exams of Institute of Residential Property Managers (The education trust set up by the Association of Residential Managing Agents for the purpose of training individuals).

22. On balance the Tribunal considered that despite his lack of formal training Mr Socha was a suitable person to appoint as Manager and Receiver for this type of building. The Tribunal acknowledges that for a specialist firm the subject property might be too small a job to be worthwhile. In making the order below the Tribunal places certain restrictions on Mr Socha in respect of the carrying out of 'major works' as defined by section 20 of the Landlord and Tenant Act 1985.
23. The Tribunal conclude on the basis of the lack of response and non attendance of the Respondent Landlord that it is appropriate to make an order under section 20C.

The Management Order

1. The Tribunal appoints Mr J Socha of Orchard Management Services Ltd, Adams House, 1 Adams Avenue, Northampton, NN1 4LQ as **Manager and Receiver** of the premises known as 22 West Street, Banbury, Oxfordshire OX16 3HD.
2. The appointment shall run for a term commencing with the date of this order and expiring on completion of the accounts for the 3rd complete year (see paragraph 7 below).
3. The Manager will at all times act within the law relating to service charges; in particular the Landlord and Tenant Acts 1985 and 1987.
4. The Manager will follow the RICS Service Charge Residential Management Code approved by the Secretary of State for England under section 87 of the Leasehold Reform Housing and Development Act 1993.
5. The Manager will in the exercise of his duties follow the covenants in the leases of the two flats save that as to paragraphs 6 to 14 below:
6. The Manager shall set up a service charge account for the purpose of:
 - (1) The provision of Buildings re-instatement insurance.
 - (2) The exercise of the Freeholders duties and the cross covenants between leaseholders in respect of the maintenance of the building (as opposed to the demised units) and the common service installations.
7. The service charge account will comply with section 42 of the 1987 Act and be based on an accounting year ending 24th March each year.
8. The Manager will prepare a budget for the year and issue same to the lessees.
9. Service charge funds will be raised by the issue of an immediate demand following production of the budget and subsequently at half yearly intervals.

10. Within three months of the accounting year end the Manager will produce to the Freeholder and Lessees an income and expenditure account detailing the amount received and expended. Any credit balance to be retained towards the service charge for the following year. Any deficit balance to be collected by raising a year end service charge invoice to accompany the completed accounts.
11. The Manager may at his discretion set up a Reserve Fund for the purposes of building up a fund to execute planned major works in the future.
12. In the carrying out of major works as defined by section 20 of the 1985 Act the Manager shall seek appropriate technical advice from suitably qualified professionals as to: specification, tendering, letting of contracts, supervision and health and safety. Such reasonable charges incurred shall be recoverable as a service charge expenditure
13. The Manager shall be entitled to prosecute such claims as are appropriate for the proper execution of his duties.
14. The Manager's fee shall in the first year be £480.00 plus VAT at prevailing rate. For the follow years such fee as is appropriate.
15. Nothing in this order shall prevent the Freeholder or a lessee from applying to the Leasehold Valuation Tribunal for a determination of payability and reasonableness under section 27 of the 1985 Act.
16. The Manager is to arrange for this Order to be registered as a restriction under the Land Registration Act 2002 against the Freehold and leasehold titles to the subject property. Such professional fees as are incurred for this purpose to be recoverable as service charge.
17. The Manager, Freeholder or lessees may apply to the Tribunal for the purposes of varying, suspending or terminating this order.
18. The Tribunal reserve the right to vary suspend or terminate this order as they see fit.


Robert T Brown FRICS
Chairman

Dated 12 March 2010