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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AC/LAM/2010/0015

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 24 (1) AND SECTION 22(3) LANDLORD
AND TENANT ACT 1987 AND SECTION 20C LANDLORD AND TENANT
ACT 1985**

Applicant: Ms M Benmax

Respondents: 41 – 47 Station Road RTM Co Ltd

Represented by: BLTR Property Management

Premises: Flat 3, 41 – 47 Station Road London NW4
4PN

Date of Application: 16th April 2010

Date of Hearing: 21st June 2010

Appearances for Applicant: Ms Benmax appeared and represented
herself

Appearances for Respondent: Mr Bruce appeared fro BLR

Leasehold Valuation Tribunal: Dr Helen Carr

Date of Decision: 21st June 2010

DETERMINATION

The Tribunal determined that it would not make an order to appoint a manager because the Applicant had failed to satisfy it that the statutory criteria had been met.

Preliminary

1. The Applicant, Ms M Benmax of Flat 3, 41 – 47 Station Road London NW4 4PN seeks to appoint a manager of 41 – 47 Station Road (the premises) under section 24 of the Landlord and Tenant Act 1987 (the Act).
2. The Respondent is a RTM company which was formed to manage the premises which comprises 15 flats within three adjoining buildings, each with its own communal entrance and stairwell.
3. The Respondent appointed BLR Property Management as managing agents of the premises in or around August 2007. Mr Bruce, Head of Property Management with BLR Property Management appeared on behalf of the Respondent.
4. Ms Benmax has previously made an application to the LVT in connection with the reasonableness and payability of service charges demanded by BLR Property Management. This application is numbered LON/00AC/LAM/2009/0013 and was determined on 17th February 2010
5. At a Directions hearing, the Chairman provided a very useful outline of the issues which this Tribunal would be required to determine. The Chairman also appended the relevant statutory provisions in order to assist both parties in preparing for the hearing. The questions which require determination were therefore made very clear to the parties prior to the hearing and are as follows:
 - a. Is the preliminary notice compliant with the requirements of section 22 of the Act?
 - b. Has Ms Benmax satisfied the Tribunal of any grounds as specified in section 24(2) of the Act?
 - c. Is it just and convenient to make a management order?
 - d. Would Mr Brown, the proposed manager, be a suitable appointee and if so on what terms and for how long should his appointment be made.

- e. Should the Tribunal make an order preventing the Respondent landlord from recovering costs incurred in connection with the proceedings via the service charge account
 - f. Should the Tribunal order the Respondent to reimburse any fee paid by the Applicant
6. Ms Benmax produced two substantial bundles in support of her application. Unfortunately the bundles were not well organised and did little to add to the application. Ms Benmax only delivered the bundles to the Respondent late on the afternoon of Friday 18th June 2010. Mr Bruce agreed that despite this delay in receiving the bundles that the hearing should go ahead.
7. Ms Benmax was accompanied by Mr Nigel Brown whom the Tribunal understood to be the proposed manager. No information about his qualifications or experience was contained in the bundle.

Determination

Introduction

1. The statutory power which is available to a lessee to apply to the LVT for the appointment of a manager is one which is constrained by a range of statutory requirements. Ms Benmax should understand the power as one which should only be resorted to when there are no other avenues open to a lessee to ensure that the leasehold property is properly managed. In other words, it is to be used sparingly, and not simply for instance because one lessee disagrees with the decisions of the manager.
2. It is also important that the Tribunal exercises care when it scrutinizes the qualifications, experience and proposals of the proposed manager. It would be wrong for the Tribunal to transfer the management of the property from the frying pan to the fire. The statutory requirements are there to ensure that the Tribunal exercises the power with appropriate restraint and Ms Benmax, in making the application, has to work within the statutory provisions.
3. The Tribunal is particularly cautious about appointing a new manager when there is no support for this course of action from the other lessees within the property. There was no evidence of such support, although the tribunal is sympathetic to the fact that several of the lessees are absent landlords.
4. The Tribunal is aware that Ms Benmax will be very disappointed at the outcome of this hearing. However every effort was made during the hearing to help her demonstrate that she had fulfilled the statutory

criteria, and the Tribunal made the importance of the criteria extremely clear.

The preliminary notice

5. The first question that the Tribunal must decide is whether the preliminary notice is compliant with the requirements of section 22 of the Act. One problem with the statutory notice was made clear in the Directions. The Respondent also raised issues about the validity of the preliminary notice.
6. The Tribunal asked Ms Benmax to explain why in her opinion the notice was valid. Ms Benmax was unable to answer the question directly. Instead she raised the problem which appeared to the Tribunal to be at the heart of her dispute with the RTM Company and the managing agents, which is the failure to repair the exterior of the property so as to prevent water ingress to her flat. She was also very upset that a letter dated 14th September 2009 which was sent to her by BLR Property Management suggested that she would not have to bear the costs of this repair work. However, this no longer represented the position of the RTM company and the managing agents.. The current position is that the necessary work is to be carried out as part of major works to the property and Ms Benmax will have to bear a proportionate share of the costs.
7. Mr Bruce explained that it was never the intention that insurance would cover the works to the exterior but only cover the costs of the redecoration of the interior.
8. The Tribunal therefore determined that the preliminary notice was not valid. Clearly there was an issue about the need for repair works and therefore a period should have been specified during which the repair works should be carried out.

The suitability of Mr Brown

9. The Tribunal then turned its attention to the qualifications and experience of Mr Brown. Mr Brown told the tribunal that he had no formal qualifications and was relying upon his practical experience. He informed the Tribunal that he had owned a block of four 2 bedroom flats in the 1970s which he had managed and maintained himself. He also had managerial experience with a company called Karfab Properties Ltd which was owned by a Mr Kon, who was in his nineties and therefore relied on Mr Brown. The company ran one property of seven flats. He had no other experience and no experience of operating the RICS code.
10. However Ms Benmax suggestion was that Mr Brown would assist another residential property management company, Urban Owners. Ms

Benmax then distributed some information about this company. It appears to be a company which is set up to assist RTM companies in the discharge of their obligations. Unfortunately Urban Owners were not present at the hearing and indeed this was the first that either the Tribunal or Mr Bruce had heard of their proposed involvement in the management of the property.

11. Mr Bruce objected to Ms Benmax relying upon this company as he had no opportunity to consider its qualifications and expertise.

12. The Tribunal considered that what Ms Benmax was proposing was not adequately thought through and had not been communicated properly to the Respondent. It therefore DETERMINED that the application must fail. Without a proper management body or plan there is no point in the Tribunal considering the other statutory requirements. It would be irresponsible of the Tribunal to make the order which Ms Benmax seeks without much more extensive information about the proposed management arrangements.

13. The Tribunal would make further observations: It is sympathetic to the situation in which Ms Benmax finds herself. Her problems appear intractable, as there has been considerable delay in remedying what appears to be a relatively straightforward structural problem. Furthermore Ms Benmax considers that the RTM company is unresponsive to her plight. Mr Bruce did note the need for a meeting and agreed that a non-litigious resolution to these problems should be sought. The Tribunal was pleased to note that the first stage of the consultation process for works to the property had commenced and that Mr Bruce was confident that work would soon be carried out, dependent of course upon the necessary funds being raised. He also assured Ms Benmax that any further internal decoration to her property consequent upon the repair work would be carried out free of charge.

Tribunal:

Chairman

Date