



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
ORDER BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

Landlord and Tenant Act 1987 Section 24

LON/00AC/LSC/2011/0170

Premises: Riverdale Lodge, 1-3 Second Avenue,
London NW4 2RR

Applicants: Mr J Myers and Mr D Primack

Represented by: Mr J Myers

Respondent: Geotam Construction Ltd

Represented by: Mr G Weisz of Dunn & White,
Management Consultants

The Tribunal: Mr J C Avery BSc FRICS
Mr M Cairns MCIEH
Ms J Dalal

Date of Hearing 25 August 2011

Background

1. On 28 February 2011 Mr Myers made an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 as amended (the Act), and on 1 March 2011 for a determination of his liability for service charges of £800 under section 27A of the Landlord and Tenant Act 1985.
2. A pre trial review was held on 17 May 2011 attended by Mr Myers and Mr Weisz. Mr Weisz withdrew his claim to the sum of £800 so that the application under section 27A was treated as withdrawn.

3. Directions were issued and the application for the appointment of a manager was held on 25 August 2011. Mr Myers represented himself and Mr Primack (who was not present). Mr Weisz, who is the Director of Dunn & White, represented the freeholder Geotam, of which he is also a director. Mr Weisz also declared that he owns a flat in the building.
4. The building is a modern two storey block of six flats. Mr Myers lives in Flat No 2, Mr Primack and Mr Weisz both sub let their flats.
5. On 5 October 2010 Mr Myers had served notice on Geotam under section 22 of the Act, that he intended to apply for the appointment of a manager unless steps were taken to do certain work within twelve weeks. That work was specified as arranging for external decoration, for fixing loose gas pipes and investigating damp.
6. On 30 November 2010 Mr Weisz served pre tender notice under the section 20 consultation regulations in respect of the external work. At the time of the hearing tenders had been received and one chosen, but not yet appointed,

The Hearing

7. The tribunal had received paperwork from the parties but was somewhat hampered by the misunderstanding by the applicant to comply with the directions relating to the presentation of his and the respondent's material. The papers had had to be sent back to the applicant with further directions but even so were not properly organised. The bundle only became available to the tribunal on the morning of the hearing.
8. The bundle did not contain a copy of the section 22 notice so, consequently it was only after the hearing had closed that a copy was discovered in paperwork originally provided with the application.

The Law

9. Section 24 of the Landlord and Tenant Act 1987 (as amended) provides that the tribunal may appoint a manager to carry out in relation to the premises such functions in connection with the management of the premises, or such functions of a receiver, or both, as the tribunal thinks fit; but may only do so in certain circumstances, and in any event that it is just and convenient to make the order.

The case for breach of obligations

10. Mr Myers' case is that the property is in disrepair and the freeholder is in breach of the terms of his lease which provides that the landlord should "*maintain repair and renew the Building and the Common Parts*", "*keep the common entrances stairways and passages in the Building properly swept cleaned and...*". " and "*as often as shall be reasonably necessary to paint.... the exterior*".
11. Mr Myers said that the exterior had not been decorated since 2003, that loose gas pipes needed securing and damp needs investigating and curing. He furthermore alleged that unreasonable charges were made without adequate explanation.
12. He also claimed that no meetings with lessees were held, the garden fence needed attention and a crack over the entrances needed investigating. He produced a Gas Safety Warning notice dated 15 April 2011, which required that gas equipment must not be used because "pipe work not clipped and sleeved"
13. He produced a photograph as evidence that the common parts were not cleaned, and said that there was no letter box. He found Mr Weisz uncommunicative and difficult to deal with. In particular he had been caused stress by his persistent pressure to pay the £800 which turned out not to be owed by him.
14. Mr Weisz' response was that the pipes were safe, they were as built in 1988 but in the light of the safety notice, action would now be taken. The contractor to be appointed for the external work was prepared to do the work within his quoted price.
15. He accepted that the external decorations were about ready for renewal but it was a matter for the landlord to decide when it is appropriate to do the work and he pointed out that the lease provides for the landlord's obligation "*subject to receipt of payments as herein provided*" and so far only two have paid on the demands sent.
16. He observed that the lessees always wanted the most but pay the least. His policy had been to keep costs to a minimum. He acknowledged that the claim for £800 was a book keeping error, for which he now apologised to Mr Myers.

The Applicants' application for appointment

17. Mr Myers claims that he should be appointed as manager in place of Dunn & White. He said he had over twenty years' experience of property, having worked as a negotiator for a number of well known estate agents. He was not currently working in the property field. As a resident in the block he was in a good position to deal with the issues that arose and had the best interest of the residents at heart. He listed the items in his management plan as including review of the insurance policy, deal with the external decoration and the gas pipes, clear the gutters, improve the garden, ensure that the lights worked, appoint an accountant, arrange monthly meetings, commission a surveyor's report and refurbish the internal common parts. He would charge £1000 per annum. He would like to establish a reserve fund for future repairs
18. In reply to questions from the tribunal he acknowledged that he had not read the RICS Code for residential management, he believed that friends would assist him if he were away on holiday, he could do the gardening himself if necessary. He believed that managing the block "can't be that difficult". He would need an accountant but expected that the present arrangements could continue.
19. He also stated that he would seek to build up a Reserve Fund, which at present was not the case. In reply Mr Weisz stated that there is no power in the lease to create a Reserve Fund.

The tribunal's decision

20. The tribunal heard conflicting views from the parties on the importance of the issues that gave rise to the application. The largest item is the external decoration. Mr Myers claims that it should have been done before now and the landlord is in breach of the lease. Mr Weisz accepts that it is "about ready" to be done but no specific timetable is laid down. It was last done about eight years ago. The tribunal heard no expert evidence on the state of the external parts and the photographs exhibited by both parties do not show conditions that would support an allegation of neglect.
21. The other issues, the gas pipes, the garden and the damp are relatively minor issues on which there is a difference of opinion but the tribunal accepts that a low cost policy of management does not necessarily equal breach of obligation.
22. The tribunal is persuaded that there is poor communication and a tendency for both parties to have become combative. The landlord has acknowledged his error in respect of the £800 and this should have been cleared up much earlier. Likewise, there was a misunderstanding about the nature of the remedy for the gas pipe problem which should have been recognised by the landlord.

23. Whilst the tribunal does not accept that the landlord has been in breach of his obligations, he is not free from criticism.
24. Having said that, the tribunal's decision must be that no breach has occurred and it is not just and convenient to make an order appointing a new manager.
25. However, it is right also to make a decision relating to Mr Myers' claim to be a suitable appointee. First, as to his experience of managing property, he fairly acknowledges that this is absent. Whilst the tribunal applauds his proposed consensual approach and accepts that he is well meaning, he has no qualification for managing leasehold premises. He had not prepared for the hearing by any research, such as the RICS code, he did not understand the lease provisions, as a single manager he would have no reliable back up should he be away for some reason. Equally his costs as a Manager would be more expensive than the current Managing Agent both in terms of his fees as a Manager and the additional costs of an Accountant.
26. Just as importantly, his appointment would not be likely to ease the communication problems between himself and Mr Weisz so that, for all these reasons, it could not be just and convenient to appoint Mr Myers as manager of the building.

Section 20C

27. The Applicants had asked for an order that the landlord's cost of the proceedings should not appear on any service charge. Mr Weisz said he would not oppose the application and the tribunal accordingly makes the order.

Costs

28. No application was made for the award of costs under the Commonhold and Leasehold Reform Act 2002

Decision

29. For the above reasons the tribunal determines that it is not just and convenient to appoint the applicant as manager of the premises.

J C Avery Chairman



31 August 2011