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

Case Reference : LON/00AN/LAM/2014/0027

Property : 123A Dawes Road, London SW6
7DU

Applicant : Mr Philippe Pham

Representative : Mr Richard Doman of counsel

Respondent : Mr Bernard McGowan

Representative : No appearance

Type of Application : Appointment of a manager

Tribunal Members : Judge Tagliavini
Mrs J E Davies FRICS

Date and venue of hearing : 10 Alfred Place, London WC1E 7LR

Date of Decision : 28 January 2015

DECISION

- (1) The tribunal determines that the Applicant has not made out its case for an appointment of a manager pursuant to the provisions of section 24 of the Landlord and Tenant Act 1987 and therefore the tribunal dismisses the application.
- (2) The tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985.

The hearing

1. The Applicant appeared was represented by Mr Doman at the hearing. The Respondent did not appear and was not represented.

The background

2. The property, which is the subject of this application, is a flat on the two upper floors in a converted house containing two flats. The respondent is the leaseholder of the ground floor flat and freeholder of the premises.
3. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
4. The Applicant holds a long lease of the property, which requires the landlord to provide insurance and maintain the building and the tenant to contribute towards their costs by way of a percentage of their cost.

The issues

5. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether a manager should be appointed?
 - (ii) Whether Mr Nicholas Rich of Warwick Lite is a suitable appointment as a manager.
6. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues as follows.

Appointment of a manager

The tribunal's decision

7. The tribunal declines to appoint a manager.

Reasons for the tribunal's decision

8. Mr Doman submitted that the landlord is in breach of his obligations under the lease as he had failed to:

- (i) Provide evidence of any buildings' insurance in place.

- (ii) Provide responses to the solicitor's questionnaire in respect of the tenant's proposed sale of the premises.

- (iii) Provide a summary of service charges to the tenant.

- (iv) Repair damage caused to Mr Pham's flat during the landlord's works of refurbishment to the ground floor and basement flat.

- (v) Carry out repair works to the roof.

9. The tenant served a section 22 notice that required the landlord to remedy those defects. The landlord did not respond. Throughout these proceedings the landlord has played no active role and did not attend the hearing of the application. The tribunal was provided with documentary evidence of the non-responsiveness of the landlord to the tenant's requests for information and was provided with photographs of the alleged damage caused by the landlord's refurbishment. The tribunal was also provided with details of the proposed managing agent although a proposed Draft Management Order was not provided to the tribunal at the hearing. Therefore, the tribunal requested that a Draft Management Order be provided and one was sent to the Tribunal after the hearing.
10. The tribunal heard oral evidence from Mr Rich in respect of his experience as a manager and his plans on how this building would be managed. However, no Draft Management Order was provided at the hearing.
11. The tribunal was also provided with a copy of a report on the condition of the building by a prospective purchaser of the tenant's flat. However, no independent report was provided to the tribunal detailing any works of repair that are needed either urgently, or as part of a longer-term project.

10. Mr Doman sought to persuade that sections 24(2)(a)(ab)(ac) and (b) were satisfied of the 1987 Act was satisfied through the landlord's failure to comply with the obligations under the lease or comply with the relevant code of practice requiring the provision of information and that it was "just and convenient" to make an order.
11. Although, the tribunal was satisfied that the landlord had not met his obligations to provide certain information to the tenant, the tribunal is of the view that the insurance information could have been obtained elsewhere e.g. the previous insurers being contacted to see if they still insured the building, as Mr Pham had been supplied by certificates of insurance by the previous freeholder. The landlord's name and address was obtained through HM Land Registry and the tenant had been able to make contact by text. The tribunal considered that an injunction to prevent the landlord from continuing with works of refurbishment could have been sought by Mr Pham had they been considered significantly urgent. This was not done. The tribunal was informed that there were no regular annual service charges other than the buildings insurance for which the tenant was responsible for paying two thirds of the premium.
12. The tribunal queried the efficacy of appointing a manager where there no regular services provided (other than the obtaining of buildings insurance). Although Mr Pham complained about works needed to repair damage done by the landlord as he converted the ground floor shop to residential accommodation, the tribunal was not provided with any report from which it could ascertain the nature and extent of any required works.
13. The tribunal is of the opinion that the breaches complained of do not materially interfere with the tenant's enjoyment of his property, or alternatively can be remedied by the tenant himself e.g. by taking out insurance himself on his property. The tribunal is of the opinion that Mr Pham seeks the appointment of a manager in order to facilitate the sell of his flat rather than to remedy any substantive failure by the landlord. The tribunal does not consider that this appropriate use of the tribunal's jurisdiction and the tribunal is not satisfied that it is "just and convenient" to appoint a manager in the circumstances of this case.
13. Further, the tribunal was not persuaded that Mr Rich is a suitable person to appoint as manager. The tribunal is of the opinion that Mr Rich did not fully understand the duties of a tribunal appointed manager and appeared to the tribunal to be inexperienced in dealing with uncooperative and recalcitrant landlords. Further, the tribunal did not consider the Draft Management Order that was provided to be adequate, as it failed to cover the duties and obligations of a manager either appropriately or in some instances, at all e.g. lack of reference E to provision of bank accounts, indemnity insurance or a schedule of charges. Further, rather than carrying out any of the work himself as

an FTT appointed manager Mr Rich stated he would appoint the firm he is employed by to conduct the management functions and seemed unaware of his obligations to the tribunal were he to be appointed as a manager.

14. The tribunal was not therefore, persuaded that Mr Rich was an appropriate appointment to be appointed as a manager.

Section 20C

15. In light of the above decisions and the lack of costs incurred by the landlord in any event the tribunal declines to exercise its discretion under the provisions of section 20C.

Signed: Judge Tagliavini

Dated: 28 January 2015