

12295



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

Case Reference CHI/OOML/LAM/2017/0005

Property 104 Livingstone Road,
Hove,
East Sussex, BN3 3WL

Applicants Katherine Routley and Stephen Routley

Respondents David Johnston & Leanne Bogen-Johnston

Type of Application Appointment of a Manager: Sections 22-24 of the
Landlord & Tenant Act 1987 (the 1987 Act)

Tribunal Members Judge RTA Wilson (Chairman)
Nigel Robinson FRICS (Surveyor Member)

Date and Venue of Hearing 1 August 2017
City Gate House, Brighton, East Sussex, BN3 1TL

Date of Decision 11 August 2017

DECISION

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The Application

1. The Application required the tribunal to determine an application to appoint Mr Erkal Erguven as the tribunal appointed manager of the Property pursuant to Sections 21-24 of the Landlord and Tenant Act 1987.

Summary of Decision.

2. Mr Erkal Erguven is appointed as manager of the Property for a period of two years from 1 September 2017 in accordance with the management order set out in the Schedule to this decision.

Factual Background

3. It is a particular feature of this application and of significance that the Applicants and Respondents jointly own the freehold of the Property. The Property has been converted in recent years to provide two self-contained flats with the Applicants owning the top flat and the Respondents owning the basement flat. Both flats are tenanted.
4. The Property is currently self managed and whilst all parties agree that some work needs to be carried out to the exterior of the Property to keep it in repair consistent with the repairing covenants in the leases, they cannot agree what needs to be done and by whom. This state of affairs has continued for a while as a result of which the Applicants have applied to the tribunal to appoint a manager so that management is undertaken by an independent third party.
5. A hearing of the application took place in City Gate House in Brighton on the 1st August 2017. The Applicants and the Respondents were all in attendance and presented their own cases without legal representation.

Written Evidence

6. The Applicants had prepared a hearing bundle but in the event much of the documentation was not considered because at the beginning of the hearing the Respondents consented to a management order being made. Accordingly the majority of time was spent investigating the suitability of the proposed manager to be appointed by the tribunal.

The Inspection

7. The tribunal inspected the Property immediately prior to the hearing in the company of the parties. It comprises a mid-terrace house, probably built in the late 19th century, which has subsequently been converted into two self-contained flats - a one bedroom lower ground floor flat with patio area and a ground and first floor two bedroom maisonette with

rear garden. The front elevation is rendered under a tiled roof with timber bay windows. It was suggested by the Respondents that the firewalls to the front had been repaired but required further work, however there was no obvious defect that could be seen from ground level. The paintwork to the render and the woodwork clearly would benefit from renewal. In the maisonette, attention was drawn to the hallway and bedroom party walls at ceiling level where apparently there had been damp penetration and which had been sealed over internally for the benefit of the tenants. Similarly, there had been a problem with damp in the kitchen on the rear wall which had been attended to internally. The rear of the Property was inspected from the garden to the maisonette and it was noted that the firewalls appeared to be in poor order. The main rear windows to the maisonette were UPVC but the back door leading to the garden was timber and badly rotted. The paintwork to the rendered rear elevation was generally poor. The lower ground floor flat was accessed from the front steps leading down to the entrance door. The Respondents drew attention to some panelling by the front door which contained a water stop cock and questioned whether this contained any asbestos. The rear patio was accessed through a relatively poor quality sliding door. Whilst the Property was not in such bad condition as some the tribunal have inspected, it was clear that maintenance was required to bring it back to a reasonable state.

The Leases

8. The tribunal was provided with a copy of the lease for the basement flat. It is clear that the service charge provisions in this lease are not in a form which enable effective management. In particular the provisions for the collection of advance service charge are drafted in such a way that the amount of advance service charge that can be collected in any one year is limited to the total amount spent in the previous year. One unfortunate consequence of this arrangement is that if major work is required following a year in which only routine expenditure has been incurred, then the freeholder cannot recover an adequate sum of money in advance of contracting for the work. The problems of advance funding are compounded by the fact that the lease does not appear to have any provision for the building up of a reserve fund.
9. It is not necessary for the tribunal to set out the wording of the service charge provisions in this decision, as the issues for determination do not involve construing the service charge provision of any one lease and neither parties case rested on the construction of any particular lease clause.

The Relevant Law

10. Under S.24 of the 1987 Act the tribunal may, on an application for an order under that section, appoint a manager to carry out in relation to the relevant premises;
 - (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.

11. In summary, by Section 24(2) of the 1987 Act the tribunal may only make an order in one or more of the following circumstances:

(a) Where it is satisfied that the landlord is in breach of any obligations owed by him to the tenant under his/her tenancy and relating to the management of the premises in question or any part of them and that it is just and convenient to make the order in all the circumstances of the case.

(b) Where it is satisfied that unreasonable service charges have been made, or are proposed or likely to be made, and that it is just and convenient to make the order in all the circumstances of the case.

(c) Where it is satisfied that the landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and that it is just and convenient to make the order in all the circumstances of the case.

(d) Where it is satisfied that other circumstances exist which make it just and convenient for the order to be made.

Discussion

12. The Property comprises a mid terrace Victorian building divided into two self-contained flats with the parties jointly owning the freehold. One consequence of this arrangement is that the parties 'wear two hats'. They share the responsibility of being freeholders whilst also being individual leaseholders of their respective flats. For some years past, the parties have managed the Property satisfactorily themselves with repairs and maintenance being dealt with on an ad-hoc basis.

13. However the evidence filed by the parties reveals that in recent years communication between them has deteriorated sharply to the point where the Respondents state in their written submissions that they no longer trust the Applicants. For the Applicants part, they have brought this application alleging that the Property is in disrepair on account of the Respondents frustrating all attempts to have necessary work carried out. The Respondents deny this allegation.

14. There is a divergence of opinion as to what exterior work needs to be done and by whom. The parties also disagree as to how the on-going management of the Property can best be achieved. There are also a host of other management issues upon which no agreement has been reached. The bringing of this application has done nothing to narrow or define the areas of disagreement; instead it has hardened the attitude of the parties towards each other and caused a further deterioration in communication. In this situation of mutual distrust, self-

management is unlikely to be effective and the appointment of an independent manager has merit.

15. The tribunal noted that the written submissions of the Respondents contain no less than three statements confirming agreement to the appointment of a property manager. Accordingly at the commencement of the hearing the tribunal invited the Respondents to confirm if they still stood by what they had set out in their written submissions. After a short discussion between themselves Mr Johnston confirmed that he and his partner supported the application for the appointment of a manager provided that manager was independent of the Applicants.
16. In view of the consent recorded in the preceding paragraph, it was not necessary for the tribunal to hear detailed evidence from both parties. However the tribunal first reminded itself of the legal requirements to be satisfied before a management order can be made. Whilst the relevant law is cited above, in brief summary the first step to be taken is for a preliminary notice to be served on the freeholder, which must comply with the provisions of S.22 of the 1987 Act. Thereafter an application can be made to the tribunal but an appointment can only be made if the grounds, as set out in S.24 of the 1987 Act, are made out. The hearing bundle contains a Section 22 notice and the Respondents raised no issues as to its validity.
17. S.24 (2)(d) of the 1987 Act enables the tribunal to make a management order if it is satisfied that it is just and convenient to make one. This legislation confers on the tribunal a wide and largely unfettered discretion to make an order and in this case the tribunal is satisfied that it is just and convenient to do so. There is clear evidence that communication between the freeholders have broken down to the extent that the parties are unable to agree even the most straight forward of management decisions. The result is that no effective management of the Property is taking place. If this hiatus persists then the Property will suffer to the detriment of all parties. A tribunal appointed manager will mean that in the event of difficulties he or she will be answerable not to the freeholders but to the tribunal. This should give the parties confidence that service charge monies paid by them will be used in the best interests of the Property as a whole.
18. The proposed manager Mr Erguven was in attendance at the hearing and gave evidence to the tribunal concerning his fitness to be appointed.
19. Mr Erguven confirmed to the tribunal that he was willing to take on the appointment, even with the deficiency in the leases. He told the tribunal that his firm managed a variety of residential properties ranging from 38 units down to just three. His firm had been in business for more than 40 years and had been undertaking block management for more than 20 years. He had particular expertise in managing buildings where the leaseholders had secured the right to manage. He confirmed that he was familiar with the latest RICS residential management code and that he would abide by it. He confirmed that his firm had a separate client account to hold service charge monies. He told the tribunal that he maintained professional indemnity cover of £1 million per claim and that a copy of this insurance would be sent to the tribunal for approval. (Upon perusal of the policy the tribunal noted that the cover was for

£250,000). He further confirmed that he had had no previous dealings professional or otherwise with the Applicants and that if appointed he would have no difficulty in acting impartially and in the best interests of the Property.

20. He expressed concern over the alleged deficiencies in the leases concerning service charge, indicating that he would have to be in funds to be able to carry out effective management. At the hearing the Applicants and the Respondents agreed that with immediate effect they would recommence and maintain advance service contributions to a minimum of £1,500 per year payable in two half yearly instalments on the dates set out in their leases. This sum would be divided between the parties in the proportions set out in the leases.
21. Having regard to the evidence adduced by Mr Erguven the tribunal is satisfied that he is a fit and proper person to be appointed and for the reasons stated above the tribunal determines that he is appointed as manager of the Property for a period of two years from 1st September 2017 in accordance with the order and upon the terms set out in the Schedule hereto.

Schedule

ORDER UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

104 Livingstone Road, Hove, East Sussex BN3 3WL

1. In accordance with section 24(1)(a) of the Landlord and Tenant Act 1987 Mr Erguven ('the Manager') is appointed as manager of the property at 104 Livingstone Road, Hove, East Sussex ('The Property').
2. The order shall continue for a period of two years from 1st September 2017.
3. The Manager shall manage the Property in accordance with:
 - (a) These directions and the schedule of functions and services appearing below.
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised and in particular with regard to repair, decoration, provision of services and insurance of the Property.
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement 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.

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £250,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property.
2. That no later than 1 September 2017 the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date the Applicants and the Respondents shall transfer to the Manager all the accounts, books, records and funds.
3. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the terms described in the decision and this order.
4. The Manager shall be entitled to apply to the tribunal for further directions.
5. In the event of any inconsistency between these directions and or the schedule of functions and services set out below and the leases of the Property the provisions of these directions and/or the schedule of functions and services shall prevail.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- i. Maintain appropriate building insurance for the Property and ensure that the Manager's interest is noted on the insurance policy.

Service charge

- i. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- ii. Set, demand and collect service charges, insurance premiums and any other payment due from the lessees. Instruct solicitors to recover unpaid rents and service charges and any other monies due.
- iii. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.
- iv. On the 25 March and 29 September in each year the Manager shall have power to collect from each lessee such sum as the manager shall specify at his discretion to be a fair and reasonable interim payment on account of the lessees anticipated service charge liability for the year.

- v. The manager shall also have the power to collect from each lessee such annual sum as he shall reasonably consider desirable to be retained by way of a reserve fund as reasonable provision for costs expenses and outgoings as are not of a regular annual recurrent nature.

Accounts

- i. Prepare and submit to the parties an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor if required by the Manager.
- ii. Maintain efficient records and books of account, which are open for inspection. Produce for inspection receipts or other evidence of expenditure.
- iii. To maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide into which ground rent if any, service charge contributions and all other monies arising under the leases shall be paid.
- iv. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.
- v. Any service charge payments, which are not paid within 28 days of demand, shall attract interest at 5% per annum on the amount outstanding until payment as been made in full.

Maintenance

- i. Deal with repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- ii. The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the parties.
- iii. The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts (if any) of the Property.

Fees

- i. The basic annual fee for the above mentioned management services will be £500 in the first year rising to £600 in the second year. Services and duties outside of the scope of the basic annual fee as envisaged by the current Service Charge Residential Management Code published by the RICS Third edition at paragraph 3.6 are to be charged for on a time basis.
- ii. Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the total cost of the work, subject to a minimum charge of £500.

- iii. An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis.
- iv. VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- v. The preparation of insurance valuations and the undertaking of other tasks, which fall outside those duties described above, are to be charged for on a time basis.

Complaints procedure

The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

Dated: 11 August 2017

Judge RTA Wilson (Chairman)

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.