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

Case Reference : **BIR/00FY/LVM/2014/0002**

Property : **The New Alexandra Court, Woodborough
Road, Nottingham NG3 4LN**

Applicants : **Daniel Potter and James Syson**

Respondent : **Mohammed Asif Azal Choudry**

Type of Application : **Under Sections 24 Landlord and Tenant Act
1987 ('the Act') for a variation of an Order
Appointing a Manager**

Date of Original Order : **13th October 2011**

Date of Variation Order : **16th December 2013**

Date of Application : **30th September 2014**

Date of Hearing : **22nd October 2014**

Venue of hearing : **Nottingham Magistrates Court**

Members of the Tribunal: **Judge W J Martin
Mr J E Ravenhill F R I C S**

Date of Decision : **3rd November 2014**

DECISION

DETERMINATION: The Original Order shall be varied by extending the period of the Appointment until 31st July 2015.

Reasons for the Tribunal's determination

Preliminary

- 1 On 13th October 2011, the Leasehold Valuation Tribunal ('the LVT') issued an Order under section 24 of the Act ('the Original Order') appointing Daniel Potter ('the Manager') as manager of an apartment block known as New Alexandra Court, Woodborough Road, Nottingham NG3 4LN ('New Alexandra Court') for a period of 2 years from the date of the Order.
- 2 On 17th September 2013, the Manager and James Syson (an original Applicant in the proceedings before the LVT) applied to the Tribunal ('the 2013 Variation Application') under section 24 (9) of the Act for an Order varying the terms of the Original Order (following clarification), so that it was extended for a further period of 1 year from the date of the expiration of the Original Order. No further variation of its terms was requested.
- 3 By its Decision dated 16th December 2013 the Tribunal ordered ('the Variation Order') that the period of the Original Order be extended to 31st October 2014.
- 4 On 30th September 2014 the Manager and James Syson ('the Applicants') made a further application ('the 2014 Variation Application') to further extend the term of the Original Order. The application also requested that an Order under section 20C of the Landlord and Tenant Act 1985 be made. In view of the time available until the expiry of the Manager's appointment, the 2014 Variation Application was dealt with on the Fast Track, and a Hearing was held at Nottingham Magistrates Court on 22nd October 2014. This was attended by Mr Syson, and by Mr Rupert Wills of Mainstay Residential Limited, on behalf of the Manager.

The Submissions of the Parties

- 5 In their written submissions the Applicants explained that they had requested an extension in the 2013 Variation Application for one year only, because it was the intention of the leaseholders at New Alexander Court to acquire within the months following the Right to Manage the premises in accordance with the provisions contained in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').
- 6 However, a number of administrative problems occurred during the period of the Variation Order, such that it is now envisaged that the acquisition date for the Right to Manage will now be 1st February 2015. In order to allow for any further delays, an extension of the Original Order is requested until 31st July 2015.
- 7 The Manager has been carrying out his duties in a proper manner and has continued to work alongside the Residents' Association in carrying out the Manager's duties as set out in the Original Order and the terms of the Leases. It will be the intention of the RTM Company to appoint Mainstay Residential (the Company for whom the Manager works) as managing agents, once the Right to Manage has been acquired. The leaseholders endorse the Application for an extension of the Manager's appointment in the meantime.

- 8 The credits which were due to be made following the 2011 section 27A Decision have still not been made by the Respondent.
- 9 By written submission, the Respondent makes the following objections:
- (a) No notice has been served under section 22 of the Act.
 - (b) The Applicants knew when the Appointment was coming to an end, and ought to have applied earlier to allow the proper process to be completed. Their failure to do so suggests that the Manager lacks the ability to plan ahead properly.
 - (c) He objects to the extension on the basis that it is solely to allow time for an RTM Company to serve a notice. The Tribunal is prohibited from making an order unless (a) the conditions under which the Original Order was granted still exist or are likely to continue and (b) that it is just and convenient to vary or discharge the order.
 - (d) There is no evidence brought forward that the above is the case, and therefore the Application must fail at the first hurdle.
 - (e) Two attempts have been made to complete the RTM acquisition. Both have failed and it must be doubted that the Manager has the competence to carry out his responsibilities and protect the Respondent's interests as freeholder.
 - (f) As to the section 20C request, the Respondent says that the costs are incurred as a result of the Applicant's intentions, and it is just and equitable that they are recoverable.
 - (g) There has been no progress in the recovery of tenant rent arrears prior to the Original Appointment.
 - (h) The ground rent of the Applicants has not been paid.
 - (i) The service charge reconciliation and balance paid to the landlord in 2011 has still not been done.
 - (j) The Respondent is not informed of meetings, or their outcomes.
 - (k) No applications for consent to assign the leaseholders' interests are made as required by the Leases.
 - (l) The Respondent asserts that all credits from 2011 have been applied. The leaseholders have not met their obligations as mentioned above.
 - (m) The extension should not be granted if it risks allowing the Applicants to circumvent the RTM procedures. An extension also denies the Respondent's right, as freeholder, to resume management.
- 10 In the light of the above, the Tribunal is requested to refuse the application and allow a three month transitional period for the Manager to hand back control to the Respondent. In the event that the Tribunal grants the

extension, it should be limited to 6 months maximum, with a proviso that no further extensions will be granted in the future.

11 At the Hearing, Mr Syson and Mr Wills made the following oral submissions:

(a) This is not a new application for an appointment. There is no requirement for a fresh section 22 Notice to be served providing an application for an extension is made before the expiry of the term of the Appointment. It is accepted the application was made fairly late, but it was within time.

(b) It is true that the acquisition of the Right to Manage has encountered problems involving delays. However, this does not impact upon the competence of the Manager.

(c) It was not part of the terms of the Appointment that the Manager should pursue historic ground rent debts. However, efforts have been made to collect arrears of service charges and ground rents. In fact most leaseholders have settled the service charge arrears, although it is the belief that outstanding balances are in respect of balances added for legal costs of collection and are not service charges. The Respondent has not provided corroborated evidence as to how the balances are formed and until this happens Mainstay's accountant and the legal team are not able to accept that these debts are due and payable. The Respondent is provided with six monthly Property Funds Reports.

(d) All current ground rents are demanded as required by the Order and accounted for to the Respondent.

(e) The Applicants are of the opinion that, despite what is said by the Respondent, the credits due from the 2011 LVT decision have not been credited to the relevant leaseholders.

(f) The Applicants consider that the period of nine months is required for the extension to allow for any possible hold ups with the RTM process, although it is hoped that the Acquisition Date will be February 1st 2015.

12 On being questioned by the Tribunal, Mr Syson confirmed that, since the Appointment of the Manager there has been a steady improvement at the New Alexandra Court. The majority of leaseholders are 'Buy to Let' landlords and they are impressed by vastly improved cleanliness, which means they are able to obtain tenants more easily. There are now very few voids. The service charge has increased from about £900 per annum per flat in 2011 to £1249 per annum, but most of this is accounted for by the employment of a concierge and proper and necessary contributions to a long term maintenance fund. There are only 4 leaseholders in arrear, in respect of whom legal action is proposed, out of a total of 77 leaseholders.

The Relevant legal provisions

13 The Act provides the following with regard to the variation of an Order made under section 24:

24 Appointment of Manager by an appropriate tribunal

(9) *An appropriate 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 under the Land Charges Act 1972 or the Land Registration Act 2002, 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 lead to the order being made, and*
- (b) that it is just and convenient in the circumstances of the case to vary or discharge the order*

The Tribunal's Determination

- 14 The Tribunal agrees with the Applicants that there is no requirement for another section 22 Notice to be served in circumstances when a variation is applied for before the expiry of the Manager's appointment. However, if an application were made after the expiry of the term of appointment, it would in those circumstances be necessary for a section 22 Notice to be served.
- 15 It is clear that the Respondent has misunderstood the import of section 24 (9A). The Tribunal has to be satisfied that the variation requested will not result in a recurrence of the circumstances, which lead to the order being made. If it is so satisfied, it must also be satisfied that it is just and convenient to make the order.
- 16 As to the first requirement, the Tribunal has no difficulty in finding that ordering an extension of the term for which Mr Potter is appointed will not result in a recurrence of the circumstances existing at the time the order was made. The Tribunal found in its Decision dated 13th October 2011, in which the Original Order was made, that it was satisfied that all of the grounds specified in subsections 2(a), 2 (ab), 2 (aba), 2 (abb), 2 (ac) and 2 (b) of section 24 of the Act existed, and that 'if the former agents Property Link were to continue as the management agent, the evident problems at New Alexandra Court would continue'. It is self evident that the variation requested will not result in these former circumstances recurring.
- 17 The Tribunal is satisfied from the submissions of the Applicants that the situation at New Alexandra Court continues to improve. The Respondent has not produced any evidence that if the Manger's appointment is terminated the Respondent would be able to continue to maintain and improve New Alexandra Court and that there would not be a return to the conditions appertaining at the time of the Original Appointment.
- 18 The Tribunal finds, therefore, that it is just and convenient to vary the Original Order. The Applicants say that in view of the fact that the new Right to Manage Claim Notice has now been served, the period of nine months is appropriate. It is considered that this period is sufficient to allow for the disposal of any proceedings that might be brought before a Tribunal with regard to the claim.
- 19 The Tribunal's object, in ordering an extension of the period is to ensure that the New Alexandra Court remains properly managed until there is a change of circumstances which would render the appointment unnecessary. Following the acquisition of the Right to Manage, the Manager's powers under the Order are transferred to the RTM Company, by virtue of section 97

of the Commonhold and Leasehold Reform Act 2002. In the circumstances, therefore, the Tribunal considers that the period of nine months requested by the Applicants is appropriate, and accordingly the Order that follows is for an extension of the original period of the Appointment to 31st July 2015.

Order

20 The Tribunal orders that the term of appointment contained in paragraph 2 of the Original Order is varied so that the appointment is extended until 31st July 2015.

Section 20 C Application

21 Mr Wills confirmed that the Manager had no intention of passing on his costs relating to the Application through the service charge and has no objection to the Tribunal granting the order. It is also unlikely that the Lessor's costs in connection with the Application could be passed on to the leaseholders in this manner. However, the Tribunal considers that it would not in any circumstances be just and equitable for any costs of the lessor to be borne by the leaseholders, and accordingly grants the section 20 C Application as requested.

22 In reaching its decisions the Tribunal took account of the submissions of the parties, the relevant law and its knowledge and experience as an expert tribunal, but not any special or secret knowledge.

23 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge W J Martin