



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

Case Reference : **CAM/OOKC/LAM/2015/0003**

Property : **80 Stotfold Road, Arlesey, Bedfordshire, SG15
6XR**

Applicant : **Heidi Katherine Jackson**

Representative : **Miss Jackson in person supported by Mr D
Hufton**

Respondent : **David van Beveren**

Representative : **Clarke & Son LLP Solicitors
Mr van Beveren represented himself at the
Hearing**

Type of Application : **Application under Section 24 of the Landlord
and Tenant Act 1987 (the Act)**

Tribunal Members : **Tribunal Judge Dutton
Miss M Krisko BSc (Est Man) FRICS
Mr R Thomas MRICS**

**Date and venue of
Hearing** : **Hitchin Priory, Hitchin, Hertfordshire on
14th July 2015**

Date of Decision : **5th August 2015**

DECISION

The Tribunal determines that the applicant has satisfied the requirements under Section 24(2)(a) and (ac) and further that it is just and convenient for an order appointing Mr Nicholas Sheridan of Sheridans Estate Agents Limited, 22 High Street, Shefford, Bedfordshire SG17 5DX as the manager under the terms of the order attached hereto, which is to be effective from 1st September 2015. Directions are set out at the foot of this decision to enable the order to be fully finalised and for certain steps to be undertaken prior to the commencement of Mr Sheridan's appointment.

REASONS

BACKGROUND

1. By an application dated 7th April 2015 the Applicant, Heidi Katherine Jackson sought an order appointing Mr Nick Sheridan as a manager of the premises at 80 Stotfold Road, Arlesey, Bedfordshire SG15 6XR (the property).
2. Prior to the issuing of the application, a notice under Section 22 of the Act had been sent to the Respondent, Mr David van Beveren setting out steps that needed to be taken to avoid the appointment of a manager. Briefly, the complaints were that the Respondent had failed to carry out maintenance of the property in a timely manner, had not ensured that all works were carried out under the service charge provisions and that the provisions for service charges and maintenance had not been fulfilled swiftly and that as a consequence of these failings a managing agent needed to be appointed.
3. Prior to the Hearing we received a bundle of papers which included the preliminary notice under Section 22 of the Act, the application and the directions order. In addition there were a number of email exchanges showing that there had been attempts to resolve issues with the property since 2009. In addition to the above there were quotes for some works, what appeared to be the draft accounts and a survey by Mr Neil Goodman RIBA of N Goodman Associates Limited from Nuneaton in Warwickshire.
4. In advance of the Hearing we inspected the property and our inspection notes are set out below.

INSPECTION

5. 80 Stotfold Road is a two storey detached property converted into four flats. The front garden has been laid to concrete to provide off-road parking although the concrete is in a somewhat untidy condition. Externally the property presents poorly, the decorative state being shabby with grass growing in guttering and moss particularly prevalent on the front lower roof level. The soffits especially to the front ground floor are in poor order. The property has a mix of UPVC double glazed windows. To the left hand side of the property is an uneven concrete path leading to the rear garden, which we were told was communal. In that rear garden is a block of four sheds, which are brick built with a plastic corrugated roof. The door of one is missing. The sheds are in a neglected condition but not in danger of collapse. The same could not be said for the fence behind the sheds which has in

fact collapsed. We were able to inspect the Applicant's flat as well as the flat belonging to Mr Danny Hufton (No 4), who attended the inspection and hearing to support Miss Jackson in her application. The inspection of Mr Hufton's flat showed that the only issue that appeared to remain was some evidence of damp to the side wall in the bedroom behind the bedhead and radiator. Mr Hufton had made some improvements by installing a new UPVC French windows leading to wooden decking. External inspection from the wooden decking showed that a wooden window at the top of the property was in a poor state of repair.

6. Accessed from the side passage way was a communal meter cupboard showing signs of damp ingress to the outer wall. Although there was security lighting in existence we were told that it was not working.
7. Inspection of Miss Jackson's flat enabled us to see the communal area which showed evidence of damp in the outer wall but which may now have been resolved. Nonetheless the wall requires decorating. In Miss Jackson's flat we noticed that none of the windows appeared to have any form of trickle vent and she told us that there had been some evidence of mould growth but that had been removed as the flat had either been cleaned or decorated. There was a suggestion as to some damp in the bedroom on the outside wall and we could see marks although it was not possible to determine what had caused those marks.

HEARING

8. Miss Jackson and Mr Hufton attended the Hearing to present the matter on behalf of Miss Jackson and Mr van Beveren represented himself. At the beginning of the Hearing we raised concerns about the attendance of Mr Sheridan to be interviewed. Fortunately as a result of telephone calls made he was able to attend but unfortunately after Mr van Beveren had left to go to another appointment.
9. We asked Mr van Beveren at the commencement of the Hearing whether he thought that the appointment of a manager would be a good move. He told us that he had previously instructed other agents to manage the two flats which he owned in the property and which were let on assured short hold tenancies. The only long leases were those held by Miss Jackson and Mr Hufton. He said that he had had discussions with Mr Sheridan and did not have overall an issue with Sheridans being appointed, certainly to deal with the day to day management. His concern, however, was that the capital works should remain under his control as he wished to utilise his own builders as he knew them well.
10. There then followed discussions between the Applicant, Respondent and the Tribunal. It became clear that the obligations under the lease resulted in Mr Hufton having to pay 30% of the service charge costs, Miss Jackson 25% and the balance being the responsibility of Mr van Beveren in respect of the two flats that he owned. Mr Hufton expressed concern that if the works to the property were left in the hands of Mr van Beveren it may be the case that certain works to his flat would be slipped through as part of the major works. Mr van Beveren denied that this would be the case but wanted to ensure, as he had indicated above, that his own builders would do the work as he knew them well.

11. Miss Jackson for her part had not previously wished to challenge arrangements with regard to service charges but it had now become clear to her that formal management was needed. She did not live at the property and needed to be confident that it was being managed efficiently and cost effectively. It was on this basis that she had commenced the application for the appointment of a manager.
12. Mr van Beveren told us that he placed his insurance through a broker and had a block policy as it appears he owns a number of other properties, predominantly in the Midlands.
13. As he was required to leave the Hearing before it had concluded, he told us that if we decided to appoint a manager he would have no issue with that decision and that an appointment of Mr Sheridan for two years would be acceptable to him. He was also in agreement that the fees suggested by Mr Sheridan of £250 per flat, plus VAT were acceptable and that payment of money on account of £1,000 per flat would also be acceptable to start the ball rolling in respect of the major works. He emphasised, however, that he thought it was essential that the work set out in Mr Goodman's survey produced in November 2014 should be commenced as soon as possible.
14. After the luncheon adjournment Mr Sheridan attended for discussions with us to enable us to be satisfied that he would be a suitable appointment as a manager. Mr Sheridan confirmed that he was happy to take on the responsibilities of managing the property although it is not a task he has undertaken before. He told us he was 63 years old and had been in business for 34 years based in Shefford. His company manages over 1,000 units throughout the South East of England and his son is a chartered surveyor and member of the RICS. The company undertake property sales, private management and stock management and has a staff of 10 split between lettings, sales and block management. He confirmed that the company was ARMA registered and that they work to the RICS Code of Management.
15. On further questioning from the members of the Tribunal he confirmed that his charges would be £250 plus VAT per flat per annum and that it would be helpful to have £1,000 lodged from each leaseholder so that he could commence the appropriate consultation to deal with the major works as envisaged in Mr Goodman's report. He confirmed that he would in all probability utilise Mr Goodman's report but had to be satisfied that this covered all necessary works required. He said he had a list of local contractors that he would be able to call upon and that his company would supervise the contract for no fee as they were very local to the property.
16. As to the length of the appointment he thought two years would be sufficient. He confirmed that the company had £1.5 million insurance cover and that if possible he would seek the appointment to start on 1st September 2015 to enable the handover of documentation from Mr van Beveren and get all in order for a clean start on that day.

THE LAW

17. The law applicable to this matter is set out in the annex hereto.

FINDINGS

18. As a result of our inspection and the papers lodged as well as our discussions both with Miss Jackson, Mr Hufton and Mr van Beveren, it seemed to us that there is no doubt it would be in all parties' benefits to have this property properly managed for a period of two years to enable the works to be undertaken to bring it to a good order. Mr van Beveren said his intention was to improve the two flats that he owned with a view to selling them. When he does, the terms of the lease provide that upon the sale of the last leasehold property, a management company is to be set up, which is then in the control of the four leaseholders. This would remove the responsibility for the management of the property from Mr van Beveren, which he indicated he would be happy to concede. His is based in the Midlands and it is difficult for him to manage the property as the Applicant and Mr Hufton would like, and indeed to be fair to Mr van Beveren, as he would wish.
19. In our finding there is no doubt that there has been a deal of time taken to deal with the works of repair particularly to the exterior of the property. We understand Mr van Beveren's concerns that he had not been put in funds but the problem here was that he was not adhering to the terms of the lease and producing accounts on an annual basis properly certified so that demands could be made to recover monies. No reserve fund has been set up. He has undertaken the management on a somewhat informal basis and although Miss Jackson and Mr Hufton have made payments in respect of service charges, notwithstanding that incorrect demands were made, the time has come for the management of the property to be put on a more formal footing. This is particular so given the state of disrepair which needs to be corrected as quickly as possible to preserve the capital values of the flats within the property. In addition also it is quite clear that Mr van Beveren had no knowledge of the RICS code required for management and taking the matter in the round we have concluded that the allegations raised in the Section 22 notice have by and large been made but that in any event it is just and convenient to make an appointment of a manager to resolve the problems with the property,
20. As to the appointment of a manger we were impressed with Mr Sheridan and we are satisfied that he would in the two years be able to bring the property round to a good condition. At that time it is likely that Mr van Beveren will have disposed of the two flats that he owns which will result in a management company being set up run by the leaseholders and they of course can continue to instruct Mr Sheridan if they so wish after our appointment has lapsed.
21. We have prepared a draft order which is attached to this decision. The parties have 14 days from the date of this decision to respond to the terms of the draft order when it will be finalised. The order will be effective from 1st September 2015 but in the meantime we are issuing certain directions which we hope will result in a pain-free handover to Mr Sheridan so that he can commence on 1st September with all in place.
22. At the conclusion of the case Miss Jackson confirmed that she was withdrawing her application under Section 20C of the Act which was noted by us.

23. **The directions are as follows:**

1. Mr Hufton will produce a copy of the lease of his flat (not in draft form) to Mr Sheridan within 7 days.
2. Mr Sheridan will lodge with the Tribunal his usual management agreement and insurance schedule within 7 days.
3. Mr van Beveren is to hand over to Mr Sheridan all relevant documentation relating to the insurance for the subject property, including the full policy, latest schedule and any valuation undertaken. In addition he must provide Mr Sheridan with details of the utility suppliers and copies of all bills for the last 12 months together with any reports that have been undertaken in respect of health and safety, fire and asbestos issues. Finally, any monies being held on account must also be transferred to Mr Sheridan on the 1st September 2015 but before then he must provide Mr Sheridan with details of any funds being held on behalf of the Applicant and Mr Hufton.
4. The parties have 14 days after the date of this decision to approve the form of draft order attached and subject to any submissions made by any party the order will then be finalised and issued with effect from 1st September 2015.

Judge:

A A Dutton

Date:

5th August 2015

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

CASE REFERENCE: CAM/OOKC/LAM/2015/0003

**IN THE MATTER OF SECTION 24 (1) OF THE LANDLORD AND TENANT ACT
1987**

AND IN THE MATTER OF

80 Stotfold Road, Arlesey, Bedfordshire SG15 6XR

B E T W E E N:

Heidi Katherine Jackson

Applicant

AND

David Van Beveren

Respondent

MANAGEMENT ORDER

Interpretation:

In this Order:

- (a) "Common Parts" means, as defined in the Leases, the areas and amenities in the Estate available for use in common by the lessees and occupiers of the Building and all persons expressly or by implication authorised by them, including the pedestrian ways, forecourts, landscaped areas and gardens, entrance halls, landings, staircases, passages and areas designated for the keeping and collecting of refuse but not limited to them.
- (b) "Leases" means the long leases vested in the Lessees of the Flats, presently Miss Jackson (flat 1) and Mr Hufton (flat 4).
- (c) "Lessee" means a tenant of a dwelling holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 ("the Act").
- (d) "the Manager" means Mr Nick Sheridan of Sheridan's Estate Agents, 22 High Street, Shefford, Bedfordshire SG17 5DG.

- (e) “the Premises” all that property known as 80 Stotfold Road, Arlesey, Bedfordshire SG15 6XR.
- (f) “the Respondent” includes any successors in title of the freehold estate registered under Title Number BD240429 or any interest created out of the said freehold title.

Preamble

UPON the Applicant having applied for the appointment of a Manager under Part II, Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the Applicant is entitled to so apply and that the jurisdiction to appoint a Manager is exercisable in the present case

AND UPON the First-Tier Tribunal being satisfied that the conditions specified in S.24 Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a Manager

IT IS ORDERED THAT

The Manager

1. The appointment of Mr Nick Sheridan as Manager of the Premises pursuant to S.24 of the Act for a period shall continue until 31st August 2017 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:
 - (a) To receive all service charges, interest and any other monies payable under the Leases and any arrears due thereunder, the recovery of which shall be at the discretion of the Manager.
 - (b) For the avoidance of doubt, the current service charge financial year shall continue to 31 August 2015 and thereafter as running from 1st September to 31st August in each year this Order is in place.
 - (c) The power and duty to carry out the obligations of the Respondent contained in the Leases and in particular and without prejudice to the foregoing:
 - (i) The Respondent’s obligations to provide services;

- (ii) The Respondent's repair and maintenance obligations; and
 - (iii) The Respondent's power to grant consent.
- (d) The power to delegate to other employees of Sheridan's, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions, and pay the reasonable fees of those appointed.
- (e) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (f) The power in his own name or on behalf of the Respondent to bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Respondent. The Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account.
- (g) The power to commence proceedings or such other enforcement action as is necessary to recover sums due from the Respondent pursuant to Paragraph 1 (f) of this Order.
- (h) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (i) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 or any replacement and to hold those funds pursuant to S.42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if

any) or to power given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

- (j) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money under his Lease.
 - (k) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold of the Premises in respect of the Respondent).
 - (l) The power to insure the whole building as a cost to the service charge account.
 - (m) The power to raise a reserve fund.
2. The Manager shall manage the Premises in accordance with:
- (a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;
 - (b) the respective obligations of all parties – landlord and tenant – under the Leases and Transfers and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
 - (c) the duties of managers 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 S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.

3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.
4. From the date of this Order, the Respondent shall not, whether by himself or any agent, servant or employee, demand any further payments of services charges, administration charges or any other monies from the Lessees at the Premises, such functions having been transferred to the Manager from 1st September 2015.
5. The Respondent and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
6. Without prejudice to the generality of the foregoing hereof:
 - (a) The Respondent shall permit the Manager and assist him as he shall reasonably require to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.
 - (b) The rights and liabilities of the Respondent as Landlord arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.
 - (c) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
 - (d) Prior to the commencement of this Order the Respondent and the Applicant and Mr Hufton shall have deposited with the Manager the sum of £1,000 for each flat in the Premises which they hold. Failure to do so will enable the Manager to take action against any defaulting part for the recovery of the said sum of £1,000 for each flat held by them.
7. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the

performance of the said functions and shall ensure they have appropriate professional indemnity cover in the sum of at least £1,000,000 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.

- 8. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
- 9. The Manager’s appointment shall continue from the date of this Order and the duration of his appointment shall be limited to a period of two years until 31st August 2017
- 10. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leaseholder interest (whether by assignment or fresh grant) or freehold.

Liberty to apply

- 11. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
 - a. Any failure by any party to comply with an obligation imposed by this Order;
 - b. For directions generally;
 - c. Directions in the event that there are insufficient sums held by them to discharge their obligations under this Order and/or to pay their remuneration.

Signed.....

Dated.....

SCHEDULE
FUNCTIONS AND SERVICES

Financial Management:

1. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the proportions under the terms of the Leases, currently 25% for Miss Jackson; 30% for Mr Hufton and the remaining 45% payable by the Respondent in respect of the two flats held by him.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees in the proportions set out in paragraph 1 above. Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent.
3. Create a form of reserve fund.
4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
6. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

Insurance:

7. Take out in accordance with the terms of this Order an insurance policy in the Manager's own names in relation to the buildings and the contents of the common parts of the Premises with a reputable insurer, and provide a copy of the cover note/schedule to all Lessees and the Respondent.
8. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Repairs and Maintenance

9. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.
10. Administer contracts in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.
11. Manage the Common Parts and service areas of the Premises, including the arrangement and supervision of maintenance.
12. Carry out regular inspections (at the Manager's discretion but not less than twice a year) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

Major Works

- 13a. In addition to undertaking and arranging day-to-day maintenance and repairs, as soon as possible, to arrange and supervise major works which are required to be carried out to the Premises, in particular those works set out in the report of N Goodman Associates Limited given in November 2014, and or such other works as may be required to the Premises to bring it up to a proper state of repair (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the Leases or other major works where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works in question).
- 13b. In particular, if required, to undertake as soon as practicable a full health and safety and fire review of the Premises.

Administration and Communication

14. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquires from the Lessees or their solicitors.
15. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.

16. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

Fees

17. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £1,000 plus VAT per annum (payable as to £250 plus VAT per flat) for the Premises for the first year of management under the Order. Thereafter the fee shall be reviewed annually in line with inflation.
18. An additional charge shall be made in relation to statutory consultation procedures under section 20 of the Landlord and Tenant Act 1985 of £250 and other consultation procedures (whether evening meetings or by written communication) and liaison between lessees and contract administrators/builders whilst works are in progress on the basis of a fee of £125 per hour plus VAT. External surveyors or appropriate consultants may be instructed with regard to the contract administration/CDM compliance in regard to the major works contracts.
19. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £150 plus VAT payable by the outgoing Lessee.
20. The undertaking of further tasks which fall outside those duties described above are to be charged separately at a present hourly rate of £125 plus VAT