11645

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LAM/2015/0015**
Property	:	**27 Broomsleigh Street, London NW6 1QQ**
Applicant	:	**Mrs Penny Louise Marshall**
Representative	:	**Mr N Choudhury of Counsel instructed by GRM Law**
Respondent	:	**Mrs Anna Elizabeth Susan Mary Gregory (1)** **Mr David St John Gregory (2)**
Representative	:	**Mr P Galway-Cooper of Counsel instructed by Lewis Nedas Law Solicitors**
Type of Application	:	**Appointment of a manager**
Tribunal Members	:	**Judge N Hawkes** **Mr W R Shaw FRICS**
Date and venue of hearing and date of written submissions	:	**Hearing: 20th January 2016 at 10 Alfred Place, London WC1E 7LR** **Written submissions: 2nd February 2016, 8th February 2016 and 6th March 2016**
Date of Decision	:	**11th April 2016**

DECISION

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Decisions of the Tribunal

(1) The Tribunal makes an order in the terms attached appointing Ms Gillian Clyne as manager pursuant to section 24 of the Landlord and Tenant Act 1987.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlords' costs of the Tribunal proceedings may be passed to the applicant through any service charge.

The application

1. The applicant seeks an order appointing Ms Gillian Clyne of Friar Sales Lettings (Holborn) Ltd as manager pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act").

2. Directions leading up to a final hearing were drawn up following an oral case management conference which took place on 18th August 2015. The case management conference was attended by Ms Philpott of GRM Law on behalf of the applicant and by the respondents in person.

The background

3. The property which is the subject of this application is a mid-terrace Victorian house which has been converted into two flats. The respondents are the freehold owners of the building.

4. The applicant is the leasehold owner of a flat which occupies the ground floor of the property ("the ground floor flat") and the first respondent is the leasehold owner of a flat which occupies the first and second floors of the property ("the first and second floor flat"). The first respondent has lived in the first and second floor flat for over 30 years.

5. By a witness statement dated 17th November 2015, the second respondent states that he has little involvement in the day-to-day management of the property. The Tribunal has been informed that the second respondent has no beneficial interest in the property.

6. The Tribunal does not consider that an inspection of the property is necessary, nor would it be proportionate to the issues in dispute.

The hearing and closing submissions

7. The applicant was represented by Mr Choudhury of Counsel at the hearing and the respondents were represented by Mr Galway-Cooper of Counsel.

8. The applicant and the first respondent both gave oral evidence. The Tribunal also heard oral evidence from and questioned Ms Gillian Clyne, the proposed manager. The second respondent did not give evidence.

9. There was insufficient time available at the hearing for the parties to make their closing submissions and directions were therefore given for written closing submissions to be filed and served.

10. On 2nd February 2016, the respondents filed written submissions in accordance with the Tribunal's Directions and, in addition, they submitted a further witness statement of fact prepared by the first respondent and a letter from Defries & Associates Limited, managing agents.

11. On 8th February 2016, the applicant filed written closing submissions in accordance with the Tribunal's Directions. In response to a request from the respondents, the Tribunal then permitted written submissions, limited to a brief reply on the law, to be filed and served by the respondents by 4 pm on 7th March 2016. This was on the grounds that, if closing submissions had been made at an oral hearing, the Tribunal would have allowed a brief oral reply on the law.

12. The respondents filed and served written submissions in reply on 7th March 2016. The Tribunal then received a letter from the applicant's solicitors dated 8th March 2016 stating that they consider that the respondents' reply goes outside that permitted by the Tribunal and asking the Tribunal not to consider the respondents' submissions in reply until they had had the opportunity to respond.

13. On 16th March 2016, the Tribunal received a further letter from the applicant's solicitors listed their grounds of objection to the respondent's written submissions in reply.

The issues

14. It is not in dispute that the applicant may make an application to have a manager appointed and that the property is one in respect of which a manager may be appointed.

Procedural issues

15. Whether the supplemental evidence which was served together with the respondents' closing submissions dated 1st February 2016 should be admitted?

16. Whether the respondents can take the technical point that the section 22 notice is defective in their written closing submissions on the basis of grounds which were not raised in the respondents' statement of case?

17. Whether the respondents' reply dated 6th March 2016 goes beyond the remit permitted by the Tribunal?

Potential substantive issues

18. Is the preliminary notice which has been served by the applicant compliant with section 22 of the 1987 Act and/or if the preliminary notice is wanting, should the Tribunal still make an order in exercise of its powers under section 24(7) of the 1987 Act?

19. Are any of the grounds for making an order, as specified under section 24(2) of the 1987 Act, made out?

20. Is it just and convenient to make a management order?

21. Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?

22. Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985?

The Determination

23. The Tribunal is grateful to Counsel for both parties for their detailed written closing submissions. The Tribunal has not sought to set out the parties' written submissions and chronology, which amount to over 100 pages in total, in full in the body of this decision. However, the Tribunal carefully considered the written submissions before reaching its decision.

24. At the conclusion of the hearing, the Tribunal made the preliminary observation summarised at paragraph 1(1) of the applicant's submissions dated 8th February 2016, namely that any leaseholder is entitled to have their property managed in accordance with the relevant legislation.

25. The Tribunal also observed that the applicant is entitled to communicate with the respondents at arm's length through an agent should she choose to do so (the Tribunal had been made aware of correspondence in which the first respondent had indicated that she would only deal with the applicant herself regarding the property).

26. The Tribunal was not of the view that "tenants are entitled to have the lease managed at arms-length by professionals" but rather that tenants are entitled to have a lease managed in accordance with the law.

27. The Tribunal accepts the respondents' submission that the power to strip the landlords of their right to maintain their own building is "Draconian" and not to be lightly invoked and has approached its determination with this in mind. The Tribunal has also given consideration to the wishes of the respondents and to the fact that the lessee of the first and second floor flat pays 60% of the service charge.

Procedural issues

Whether the supplemental evidence which was served together with the respondents' closing submissions dated 1st February 2016 should be admitted?

28. The supplemental evidence which was served with the respondents' closing submissions comprises (i) a witness statement from the first respondent replying to allegations which were made during the course of the hearing regarding repairs to the property (which were not contained in the applicant's witness statement); and (ii) a letter dated 1st February 2016 from Defries and Associates Limited ("Defries") who state that they are willing to manage the property, subject to seeing a copy of the leases.

29. The applicant strongly opposes the admission of this new evidence. The Tribunal has been informed that the applicant's solicitors were not asked whether they consented to or opposed the admission of this evidence and were not given any advance notice of the service of these new documents before they were served.

30. As regards the letter from Defries, the applicant states that the Tribunal has not heard any oral evidence from Defries nor has the applicant had the opportunity to properly check its credentials or cross-examine its representatives and test the propositions set out in the letter. It is submitted that the applicant would be severely prejudiced should the late evidence be admitted.

31. No application to the Tribunal for a direction extending time for the service of evidence was made by the respondents before this new

evidence was served together with the respondents' closing submissions.

32. Rule 7 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Tribunal Procedure Rules") provides:

Procedure for applying for and giving directions

7.—(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

(a) by sending or delivering a written application to the Tribunal; or

(b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Except with the permission of the Tribunal, if a written application for a direction is made without the consent of every party the applicant must provide—

(a) a copy of the proposed application to every other party before it is made; and

(b) confirmation to the Tribunal that the other parties have been notified that any objection they wish to make to the application must be provided in accordance with paragraph (5).

(5) A party who wishes to object to a written application that has been made to the Tribunal for a direction must send written notice of the objection to the Tribunal and the applicant for the direction...

33. Rule 6 of the Tribunal Procedure Rules provides:

6.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

(a) extend or shorten the time for complying with any rule, practice direction or direction, even if the application for an extension is not made until after the time limit has expired;...

34. As regards the supplemental witness statement from the first respondent, the Tribunal does not find it necessary to rely upon the oral evidence given by the applicant regarding repairs to the property. The respondent's supplemental witness statement comprises a reply to that oral evidence.

35. As regards the letter dated 1st February 2016 from Defries, the Tribunal notes that Defies' willingness to manage the property is conditional upon seeing the leases. The Tribunal accepts that the evidence concerning Defries was not received and therefore put forward by the respondents until after the conclusion of the hearing. However, the respondents had a significant period of time in which to potentially seek evidence from managing agents prior to the hearing.

36. Further, the Tribunal accepts, on the balance of probabilities, the applicant's submission that the applicant would be likely to be prejudiced by the late admission of this evidence. The Tribunal considers that it would not be appropriate to give further directions for the purpose of alleviating the likely prejudice to the applicant (which would increase the time and expense of this litigation). The Tribunal is of the view that it is too late, in the circumstances of this case, for such fresh evidence to be admitted.

37. In all the circumstances, the Tribunal determines that it is not appropriate to exercise its discretion under rule 6(3)(a) of the Tribunal Procedure Rules to extend time for the service of the respondents' evidence and it does not waive the requirement to comply with the relevant Directions under Rule 8(2)(a) of the Tribunal Procedure Rules. Accordingly, the Tribunal does not admit the letter from Defries dated 1st February 2016 or the supplementary witness statement of the first respondent dated 1st February 2016 in evidence.

Whether the respondents can take the technical point that the section 22 notice is defective in their written closing submissions on the basis of grounds which were not raised in the respondents' statement of case?

38. The applicant observes that the respondents have filed and served a detailed and considered statement of case. The applicant states that the pleading makes a number of arguments; that the respondents do not take any technical point that the preliminary notice is defective; and that they certainly do not do so on any of the bases now made in the respondents' written submissions.

39. The applicant submits that it is plainly incumbent upon a party to set out their defence in a pleading. If the respondents had wanted to rely upon these technical points, they should have applied to amend their statement of case at the beginning of the hearing. The applicant submits that all of the paragraphs of the respondents' written submissions which complain about the defectiveness of the section 22 notice ought to be struck out.

40. The respondents state that it is a question of law whether the beaches can be remedied; that the Tribunal Procedure Rules make no provision for pleadings; and that, under the Civil Procedure Rules, statements of case must include a concise statement of the facts relied upon; statements of case may refer to any point of law but it has never been a requirement to do so.

41. The Tribunal accepts that in the present case there is no dispute of fact relevant to the issue of whether or not the breaches are remediable. The Tribunal notes that the applicant has had the opportunity to respond to the technical points raised by the respondents in their closing submissions and that the applicant has, rightly, provided a response. Accordingly, the Tribunal does not consider that it is appropriate to strike out the relevant paragraphs of the respondents' written submissions.

Whether the respondents' reply dated 6th March 2016 goes beyond the remit permitted by the Tribunal?

42. The Tribunal has permitted the respondents to file written submissions, limited to a brief reply on the law.

43. The Tribunal accepts that the reply dated 6th March 2016 goes beyond the remit permitted by the Tribunal. This is essentially because the reply includes a written application for a direction extending time for the service of the evidence which was served by the respondents on 1st February 2016.

44. There was previously no express application for such a direction and therefore no reasoned decision on the issue. Accordingly, the Tribunal has considered the application and has given reasons for its conclusions which are set out above.

Substantive issues

Is the preliminary notice which has been served by the applicant compliant with section 22 of the 1987 Act and/or if the preliminary notice is wanting, should the Tribunal still make an order in exercise of its powers under section 24(7) of the 1987 Act?

45. The respondents submit that many of the matters which are relied upon in the Third Schedule to the preliminary notice are capable of remedy and, therefore, should have been included in the Fourth Schedule together with a reasonable time for compliance and a statement that, if the respondents comply with the request, the applicant will not make the application.

46. The applicant submits that there has been a total breakdown of trust and confidence between landlord and tenant which renders the landlord's conduct irremediable. Alternatively, the applicant relies upon section 24(7) if the 1987 Act and urges the Tribunal to make a management order notwithstanding any defect in the preliminary notice.

47. The Tribunal accepts the respondents' submission that there are many matters relied upon in the Third Schedule to the preliminary notice which are capable of remedy (a failure to accept ground rent in 2014 and 2015; a failure to demand ground rent or service charges in 2014; a failure to provide a summary of the building insurance cover for the property; a failure to make available a statement of service charge payments that the tenants have individually made; a failure to provide transparent accounts; a failure to provide supporting information for the maintenance charges in 2009 and 2013).

48. The Tribunal notes that the failure to provide copies of Building Insurance Certificates is described in the preliminary notice as capable of remedy notwithstanding any "total breakdown of trust and confidence between landlord and tenant". The Tribunal is also of the view that some of the grounds relied upon in the preliminary notice could have been more fully particularised.

49. However, there are matters referred to by the applicant in the Third Schedule to the preliminary notice which the respondents do not argue are capable of remedy and which the Tribunal is satisfied on the balance of probabilities are made out.

50. Taking into consideration all the circumstances of this case and, in particular, the Tribunal's findings which are set out below, the Tribunal determines that it is appropriate to exercise its discretion under section 24(7) of the 1987 Act to make a Management Order notwithstanding any defects in the preliminary notice.

Are any of the grounds for making an order, as specified under section 24(2) of the 1987 Act, made out?

51. The Tribunal finds that the respondents unilaterally arranged for certain qualifying works to the property concerning the renewal of the flat roof covering to be carried out at the property without complying

with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and paragraph 13.16 of the RICS Service Charge Residential Management Code.

52. The Service Charge Residential Management Code ("the Code") has been approved by the Secretary of State for England under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993

53. Although the nature of the work is not particularised in the preliminary notice, the first respondent has responded to this allegation fully in her witness statement of 17th November 2015 under the heading "2010". The only work which required consultation under section 20 of the 1985 Act during the relevant period was the renewal of the flat roof covering.

54. The Tribunal is satisfied and finds as a fact that the respondents were not in any doubt as to the nature of the work to which the applicant was referring in the preliminary notice. The respondents do not seek to argue that the failures to comply with the consultation requirements and the Code constitute a remedial breach.

55. At paragraph 10.4 of her witness statement dated 17th November 2015 the first respondent states:

"An s20 consultation was not served on the leaseholders regarding the said work. I did not go through the formal procedure. Clearly the agent was either unaware of an s20 action requirement or believed that the communications between us was at a sufficient level, which covered the procedure in an informal manner... In all their correspondence together there is no mention by either the applicant or the agent about an s20 consultation."

56. The first respondent states at paragraph 14.2 of the statement of the informal procedure which she followed:

"I have no explanation as to why I seemingly did not send copies of the actual estimates to the agent sooner than is shown in the supporting material."

57. The "agent" referred to by the first respondent is Mr Farris FRICS, the applicant's then agent. The obligation to comply with the section 20 consultation requirements is that of the respondents and there is no requirement that the applicant must be aware of the legal requirements or that she must ensure that she or her agent mentions them to the respondents. Whether or not there was an informal consultation with Mr Farris, the statutory consultation procedure was not followed and this is a breach of the Act. The Tribunal notes that it is not in dispute

that the first respondent failed to obtain any guarantee for the work to the roof.

58. Having read the first respondent's written evidence (including the paragraph 10.4 of her statement of 17th November 2015 set out above in relation to the statutory consultation requirements) and having heard her oral evidence, the Tribunal finds that the first respondent does not currently have an adequate understanding of her legal obligations and responsibilities as landlord and that therefore she does not have the ability to comply with those legal obligations.

59. The Tribunal is satisfied that this state of affairs falls within the definition of "other circumstances" which may "make it just and convenient" for the management order to be made under section 24(2)(b) of the 1987 Act. As indicated at the conclusion of the hearing, the Tribunal considers that the applicant is entitled to have the property managed in accordance with the law.

60. At paragraph 34.6 of her witness statement dated 17th November 2015, the first respondent states:

"I am the first to put my hand up and say that I am not an avid follower of the Landlord and Tenant legislation nor did I know about the Code of Practice approved by the Secretary of State for England under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993. I would not know where to begin. I am a freeholder and trying to do the best for the house and those inhabitants therein and use the lease to guide me. It was as a result of the interrogations I have had by the applicant's agent and friend that I have had to acquaint myself with the various landlord and tenant Acts."

61. However, in oral evidence, it was apparent that the first respondent was, at the date of the hearing, unaware that a demand for the payment of a service charge must be accompanied by a Service Charges – Summary of tenants' rights and obligations in accordance with section 21B of the Landlord and Tenant Act 1985 and the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007/1257 ("the 2007 regulations"). This is notwithstanding that the first respondent received an email from "Lease-advice.org" dated 17th October 2011 which includes the statement:

"Service Charge Demand

A valid service charge demand must be in writing, contain the name and address of the landlord and it must be accompanied by the summary of rights and obligations. If a service charge demand isn't

accompanied by the summary of rights and obligations the demand is not payable and the leaseholder can legally withhold payment but if the landlord subsequently sends the summary of rights and obligations, the demand becomes payable."

62. In cross-examination, the first respondent stated that she had never seen the "summary rights for tenants" and that she had been advised by the Leasehold Advisory Service who might have given her the wrong advice. It appears from the correspondence above that the first respondent was given correct advice by the Leasehold Advisory Service. Further, it is the respondents' responsibility to ensure that they comply with the law.

63. Twenty-four service charge demands were issued by the respondents from 11th October 2007 to 1st November 2015, none of which include the summary of rights and obligations in accordance with the 2007 regulations. This is notwithstanding that at paragraph 23.2 of her witness statement of 17th November 2015, the first respondent states:

"Due to the research concerning landlords and tenants, I found out that I should have been delivering the rent demand in the format found on A page 100. It includes the rights and responsibilities on both parties."

64. The first respondent has also issued demands for variable administration charges without complying with Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and the Administration Charges (Summary of Rights and Obligations)(England) Regulations 2007.

65. The Tribunal finds that, having regard to (i) the length of time during which the first respondent failed to comply with these legal obligations; and (ii) to her lack of knowledge of these legal requirements at the hearing; it is likely on the balance of probabilities that the respondents would have failed to remedy these matters if they had been required to do so in the preliminary notice.

66. Further, the Tribunal finds that, in April 2015, the respondents failed to agree to provide the applicant with a copy of the insurance policy for the property on demand (on payment of a proper fee) in accordance with the clause 4 of the sixth schedule to the lease.

67. By letter dated 2nd April 2015 to the applicant which is headed "Ground Rent and Service Charge 2014/15", the second respondent states:

"...Once you have paid, we would then be happy for you to inspect the building insurance policy documents."

68. In cross-examination, the first respondent explained that this was intended to operate as an "inducement" for the applicant to pay monies which the first respondent considered to be outstanding and she appeared to consider this approach to be acceptable. The Tribunal is satisfied that this breach was remedied, at the latest, when the insurance documents were given to the applicant together with the first respondent's witness statement in these proceedings. The applicant states that she also produced the insurance documents at a meeting with the applicant's then agent.

69. However, the Tribunal is concerned that, in evidence, the first respondent did not appear to appreciate that on no account should the respondents have made it a condition for the production of insurance documentation in April 2015 that the applicant first must pay all sums which the respondents considered to be outstanding.

70. A bank account which the first respondent has opened for the collection of service charge funds does not have "an appropriate description including 'Client Account' in its title" in breach of paragraph 4.5 of the Code. This is indicative of the generally informal manner in which the property has been managed without reference to the Code. The bank statements produced by the first respondent do not include the contributions to the maintenance fund which have been made by both of the lessees. The first respondent states at paragraph 16.1 of her witness statement of 17th November 2015, after referring to the account as "a combined account for both lessees":

"All the payments the applicant have made remain in the account including the ground rent. I do not otherwise make specific contributions because I would pay the building insurance out of my current account which is roughly equivalent to my contribution."

71. The Tribunal finds that the bank statements showing payments made by the applicant were not provided to the applicant before they were disclosed in these proceedings. Further, the first respondent has not given disclosure of any bank statements showing her payments to the maintenance fund.

72. The maintenance fund is defined in the First Schedule to the lease as follows (emphasis added):

"the amount from time to time unexpended from the payments of the Maintenance Charge made to The Lessor by the Lessee ***and from similar payments made to the Lessor by the lessees of other units."***

73. The Eighth Schedule of the lease provides for certain costs and expenses to be payable from the maintenance fund.

74. The first respondent states at paragraph 15.1 of her witness statement of 17th November 2015:

"It is my understanding that the lessees' contributions and accounts are discrete. They are not for public consumption... the annual statement supplied pertains to the GFF flat alone. It is not obliged to disclose the contributions of other."

75. The Tribunal finds that the respondents are in breach of paragraphs 10.2 and 10.3 of the Code which require accounts to be transparent and to indicate clearly all of the income in respect of the accounting period and all of the expenditure. The Tribunal is concerned by the fact that the first respondent currently continues to maintain her stance that she is not obliged to disclose her own contributions to the service charge fund and that she can prepare accounts/annual statements which relate to the ground floor flat alone rather than to the property as a whole.

76. In all the circumstances, the Tribunal considers it likely on the balance of probabilities that the respondents would have failed to remedy this breach if they had been asked to do so in the preliminary notice.

77. The Tribunal finds that the applicant was charged 45% for insurance by the respondents when the relevant percentage under the terms of the lease is 40%. At paragraph 50.11 of the first respondent's witness statement dated 17th November 2015, the first respondent states:

"The 45% was solely applied to the applicant's contribution to the insurance and not to the interim maintenance charge, which remained at 40% as stated in the lease. This was a supplementary charge on the insurance for the additional work the freeholder was forced to do due to the unauthorised commercial subletting of the applicant's property. .."

78. The Tribunal notes that this 45% charge continued to be made by the respondent in November 2015 notwithstanding that the applicant had herself been residing in the ground floor flat since June 2013. The Tribunal accepts that the sums of money involved are low but is concerned that the first respondent, in principle, considered herself entitled to unilaterally demand an additional 5% charge without any proper legal basis.

79. Having seen and heard the first respondent give evidence, the Tribunal is not satisfied that she currently fully recognises that it was not acceptable, in principle, to unilaterally made additional charges without any reference to the lease; to specific paragraphs of the Code; or to statutory provisions or case law.

80. The Tribunal is satisfied that the respondents have failed to comply with the Code in the respects identified above. Further, by reason of all of the findings set out above and, in particular, the Tribunal's finding that the first respondent currently does not have an adequate understanding of her legal obligations and responsibilities as landlord and the ability to comply with her legal obligations, the Tribunal is satisfied that "other circumstances exist" within the meaning of section 24(2)(b) of the 1987 Act. Accordingly, the Tribunal does not consider it necessary to make a determination in respect of the remaining facts which are in dispute.

Is it just and convenient to make a management order?

81. It is stated at paragraph 4 of the respondents' statement of case that:

"Because the relationship between the applicant and the freeholders has broken down, the freeholders agree that a third party needs to be engaged, after an initial period potentially a managing agent could be appointed."

82. Further, the first respondent states at paragraph 53.2 of her witness statement dated 17th November 2015:

"However I do accept that a third party needs to be appointed as we are at a stalemate."

83. The Tribunal is not satisfied that the respondents have learned from past errors. The second respondent did not give evidence and appears to play no significant role in the management of the property. As stated above, the Tribunal finds that the first respondent does not currently have an adequate understanding of her legal obligations and responsibilities as landlord and that therefore she does not currently have the ability to comply with those legal obligations.

84. It was apparent from the first respondent's evidence that she has a strong wish to take back the management of the property after a period of management by a third party. The Tribunal finds it that is it likely on the balance of probabilities that if no management order were in place she would seek to take back the management of the property prematurely. The Tribunal therefore finds that it is just and convenient for a management order to be made.

85. Had there been admissible evidence before the Tribunal that suitable managing agents were willing to manage the property, the Tribunal would nonetheless have found it just and convenient to make a management order to ensure that the respondents did not take back management of the property before it was appropriate for them to do so.

Would the proposed manager be a suitable appointee and, if so on what terms and for how long should the appointment be made?

86. The Tribunal has considered all of the points raised by the respondents at paragraphs 32 to 39 of the respondents' closing submissions. However, having questioned the proposed manager and having seen and heard her give evidence, the Tribunal is satisfied on the balance of probabilities that she is a suitable appointee.

87. The Tribunal notes that the respondents' initial position, set out at paragraph 4 of the respondents' statement of case, was that "The proposed manager, if totally independent might be a reasonable appointee."

88. As regards the length of the manager's appointment, the applicant initially contended for an appointment until further order and now submits that a 7 year appointment would be appropriate. The respondents contend for a management order for 2-3 years (if, contrary to their case, a manager is appointed). Having reviewed the evidence, the Tribunal finds that it is just and convenient to make a management order ending on 28th September 2019. The terms of the management order other than its duration are not in dispute.

89. During the hearing, the first respondent demonstrated a willingness to learn. The Tribunal anticipates that, by the time the management order comes to an end, the respondents should have sufficient knowledge of the obligations and responsibilities of a landlord to enable them to manage the property either directly or by instructing managing agents, if managing agents are needed or preferred.

Application under s.20C

90. Having considered the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondents may not pass any of their costs incurred in connection with the proceedings before the Tribunal to the applicant through the service charge.

Judge N Hawkes

11th April 2016

Appendix of relevant legislation

Landlord and Tenant Act 1987

Section 22

22.— Preliminary notice by tenant.
(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—
(i) the landlord, and
(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.
(2) A notice under this section must—
(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is served] may serve notices, including notices in proceedings, on him in connection with this Part;
(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with ;
(c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
(e) contain such information (if any) as the Secretary of State may by regulations prescribe.
(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.
(4) In a case where—
(a) a notice under this section has been served on the landlord, and
(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

Section 24

24.— Appointment of manager by a tribunal .
(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
(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.
(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely—
(a) where the tribunal is satisfied—
(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
...
(iii) that it is just and convenient to make the order in all the circumstances of the case;
(ab) where the tribunal is satisfied—
(i) that unreasonable service charges have been made, or are proposed or likely to be made, and
(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied—
(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied—
(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
(ii) that it is just and convenient to make the order in all the circumstances of the case; or
(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.
(2ZA) In this section "relevant person" means a person—
(a) on whom a notice has been served under section 22, or
(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.
(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

(a) if the amount is unreasonable having regard to the items for which it is payable,
(b) if the items for which it is payable are of an unnecessarily high standard, or
(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.
In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).
(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
(4) An order under this section may make provision with respect to—
(a) such matters relating to the exercise by the manager of his functions under the order, and
(b) such incidental or ancillary matters,
as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.
(5) Without prejudice to the generality of subsection (4), an order under this section may provide—
(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
(c) for remuneration to be paid to the manager by any relevant person , or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.
(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22 , the tribunal may, if it thinks fit, make such an order notwithstanding—
(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
(9) The 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 registered 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 led to the order being made, and
(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.
(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.

Landlord and Tenant Act 1985

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

CASE REF: LON/00AG/LAM/2015/00155

PROPERTY: 27 BROOMSLEIGH STREET, LONDON NW6 1QQ

MRS PENNY LOUISE MARSHALL

Applicant

and

ANNA ELIZABETH SUSAN MARY GREGORY

and

DAVID ST. JOHN GREGORY

Respondents

MANAGEMENT ORDER

IT IS ORDERED that:-

1. In accordance with Section 24 of the Landlord and Tenant Act 1987 Ms Gillian Clyne of Friar Lettings (Holborn) Limited ("the Manager") be appointed Manager of the Property until 28 September 2019.

2. The Manager shall manage the Property in accordance with:-

    (a) The respective obligations of the Landlord and the Lessees under the Leases dated the 14th September 1984 and 30th November 1984 as varied by the Deed of Variation of the 7th September 2006 by which the two flats at the Property are demised, and in particular, but without prejudice to the generality of the foregoing, with regard to the repair, decoration, provision of services and insurance of the Property; and

    (b) In accordance with the duties of a manager set out in the Service Charges Residential Management Code 2nd edition ("the 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.

3. The Manager shall manage the Property fairly, impartially and in accordance with the terms of the Leases.

4. The Manager shall be responsible for keeping proper Service Charge accounts and preparing and serving invoices on the Lessees. All charges shall be apportioned in accordance with the terms of the Leases.

5. From the date of appointment, and throughout her appointment, the Manager shall maintain a policy of professional indemnity insurance to cover her obligations and liabilities as Manger.

6. The Respondents to this Application shall, not later than 28 days from the date of this Order, provide all necessary information to the Manager and arrange an orderly transfer of

responsibilities. All accounts, books, records, survey reports and funds shall be transferred within 28 days to the Manager.

7. The Manager is entitled to such disclosure of documents as held by the Respondents, their advisers or agents, as is reasonably required for the proper management of the Property.

8. The Respondents shall, within 28 days of this Order, give full details to the Manager of all sums of money they hold in the service charge fund and any reserve fund in relation to the Property, including copies of any relevant bank statements and shall forthwith pay such sums to the Manager.

9. The Manager opens and operates bank accounts in her own name and described as 'Client Account' in relation to the management of the Property and to hold and invest any sums received in respect of service charges or other sums provided for in the leases in accordance with the terms of the lease and pursuant to all relevant legislation.

10. The Manager will receive all sums, whether by way of ground rent, insurance premiums, payment of service charges or otherwise arising under the said Leases. The Manager will account forthwith to the freehold owners for the time being of the Property for the payment of ground rent received by her and will apply the remaining amounts received by her (other than those representing her fees as hereby specified) in the performance of the Landlords' covenants contained in the said Leases.

11. The rights and liabilities of the Landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall, in 28 days from the date of this Order, become the rights and liabilities of the Manager.

12. The Manager and the parties shall be entitled to apply to the Tribunal for further directions if so advised and/or in the event that circumstances necessitate such an application.

13. The Manager shall be entitled to remuneration as set out below.

14. The Manager has the power to delegate to other employees of Friar Lettings (Holborn) Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as she may reasonably require to assist her in the performance of her functions.

15. From the date of this Order the freehold owners and the Lessees shall, on receipt of 24 hours written notice, give the Manager reasonable access to any part of the Property which she might require in order to perform her functions under this Order.

16. The Manager shall create a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the Institution upon request.

Schedule of Functions and Services

Service Charges

1.1 Prepare an annual Service Charge Budget, administer the service charge and prepare appropriate accounts in accordance with the relevant Leases and the Code.

1.2 Demand and collect service charges, insurance premiums and any other payments arising under the Leases as appropriate.

1.3 Hold all monies received pursuant to this Order and/or pursuant to the Lease Provisions as a trustee, in an interest bearing account (if appropriate), pending such monies being defrayed.

1.4 The Manager shall be entitled to take such action and Court or Tribunal proceedings as may be necessary to collect the service charges or rent arrears and to take such action in the Courts or Tribunals as may be necessary or desirable to secure compliance with the Lessees' obligations under the Leases relating to the flats in the Property.

Accounts

2.1 Prepare an Annual Statement of Account for the Lessees, detailing all monies received and expended and held over or held by a reserve fund.

2.2 Produce for inspection by the Lessees, receipt or other evidence of expenditure.

2.3 All monies collected on the Lessees' behalf will be accounted for in accordance with any relevant code.

Maintenance and Management

3.1 The Manager shall inspect the Property quarterly on the first Monday of each quarter to give consideration to works to be carried out to the Property in the interest of good management and make the appropriate recommendations to the parties.

3.2 Arrange, manage and, where appropriate, supervise all repair and maintenance, building work and service contracts applicable to the Property and instruct contractors to attend the same as appropriate.

3.3 The Manager will instruct a surveyor if appropriate to obtain quotations for any major works required and will prepare and enter into the section 20 consultation process.

3.4 The Manager will deal with all reasonable enquires raised by the Lessees in relation to repair and maintenance work and instruct contractors to attend and rectify problems as necessary.

Insurance

4.1 The Manager will, with the consultation of the parties, take out an insurance policy in her name (noting the parties' interests) in relation to the Property with a reputable insurer, and provide a copy of the schedule and policy to all parties.

Fees

5.1 The fees for the above-mentioned management service (with the exception of supervision of major works) will be £600 + VAT per annum payable jointly between the Lessees of the Property.

5.2 The Manager shall also be entitled to a project co-ordination fee of 10% + VAT of the total cost of any building, redecoration or repair works which at any time is in excess of £500 charge for any one Lessee.

5.3 An additional charge for dealing with Solicitors' enquires on transfer will be made on a time-related basis payable by the outgoing Lessee.