

12008



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

Case reference : LON/0024UC/LAM/2017/0003

Property : 39 Anstey Road, Alton, Hants,
GU34 2RD

Applicant : (1) Mrs L MacGregor
(2) Mr R Kakkar and
(3) Mrs Z Kakkar

Representative : Ms H Laithwaite of Counsel
instructed by Painsmith Solicitors

Respondent : KJN Developments (Alton) Limited

Representative : Mr E Hurley of Counsel

Type of application : For the appointment of a manager

Tribunal members : Tribunal Judge Evis Samupfonda
Mr Kevin Ridgeway MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 9 March 2017

DECISION

Decisions of the tribunal

- (1) The tribunal appoints Mr Roger McElroy of Canonbury Management, manager of the property known as 39 Anstey Road, Alton, Hants, GU34 2RD (the property) for a period of 2 years starting from the date of this order, on terms of the fee and Order attached to this decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (3) The tribunal does not make any further order as to costs

The application

1. The Applicants seek an order appointing Mr Roger McElroy of Canonbury Management as a manager of the property pursuant to s.24 of the Landlord and Tenant Act 1987 (the Act).
2. The Applicants also seek an order under section 20C of the Landlord and Tenant Act 1985 that the Applicants' costs incurred in these proceedings shall not be added to the service charge.
3. The Applicants made the application on 15 December 2016. By order of the Directions dated 5 January 2017, the application was transferred from the Southern Panel to London and on 25 January 2017, the tribunal issued Directions for the future conduct of the application.

The background

4. The property that is the subject of this application is described as a house converted into 8 flats.
5. The tribunal did not consider that an inspection would be helpful given the nature of the complaints raised in the Notice under s22 of the Act.
6. The First Applicant is the leasehold owner of Flat 2 and the Second and Third Applicants are the leasehold owners of Flat 4.
7. The Respondent Company is the freehold owner of the property. Mrs S Newland is the sole director and company secretary and owner of Flat 3. The Respondent Company owns the remaining 5 flats.
8. The Applicants sent a preliminary notice (the Notice) dated 20 July 2016 to the Respondent pursuant to s22 of the Act. The Notice gave grounds for the appointment of a manager and gave the Respondent an

opportunity to comply with its obligations under the lease but it failed to do so.

The hearing

9. The Applicants attended and were represented by Ms H Laithwaite of Counsel at the hearing held on 6 March 2017. Mr E Hurley of Counsel represented the Respondent. Mrs S Newland and her daughter Mrs K Cox accompanied him.
10. Immediately prior to the hearing the parties handed in further documents, namely a skeleton argument on behalf of the applicants and the Respondent's hearing bundle. The start of the hearing was delayed while the tribunal considered these new documents.
11. Following a short adjournment, the parties informed the tribunal that they had reached a compromise and agreed to appoint Mr McElroy as manager of the property for a period of 2 years and produced a draft order approved by the tribunal and attached to this decision.

The issues

12. Essentially the issues before the tribunal, were: whether the Notice complied with the requirements of section 22 of the Act, whether the grounds relied upon satisfied the need for a management order under section 24 of the Act and the suitability of Mr McElroy, the Applicants' proposed manager to fulfil the role of manager of the property.
13. The tribunal was also asked to consider whether an order under s20C of the Landlord and Tenant Act 1985 should be made.

The tribunal's decision

14. The tribunal was satisfied that the statutory grounds for appointing a manager had been met. The Respondent has clearly been in breach of the statutory requirements and the Code particularly in respect of her failure to comply with the repairing covenants.
15. The tribunal considered the correspondence from Mr McElroy setting out his experience and observed that the tribunal has previously appointed him as manager of another property. The Respondent accepted that Mr McElroy was suitably qualified to fulfil the role of manager of the property.

1. In this order:

- A. "The property" includes all those parts of the property known as 39 Anstey Road, Alton, Hants GU34 2RD and registered at the Land Registry under title number HP419443.
- B. "The landlord" means KJN Developments (Alton) Limited or in the event of the vesting of the reversion of the residential under-leases of the property in another, the landlord's successors in title.
- C. "The manager" means Mr. Roger McElroy.

It is hereby ordered as follows:

- 2. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the manager shall be appointed as receiver and manager of the property.
- 3. The order shall continue for a period of 2 years from the date of this order. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
- 4. That the manager shall manage the property in accordance with:
 - (a) The Directions and Schedule of Functions and Services attached to this order.
 - (b) The respective obligations of the landlord and the lessees and/or under-lessees by which the flats at the property are demised by the

landlord and in particular with regard to the repair and decoration provision of services to and insurance of the property.

- (c) The duties of manager set out in the Service Charge Residential Management Code 3rd Edition (“The Code”) or such other replacement Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

5. The Manager shall register the order against the landlord’s registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
6. An order is made under s.20C of the Landlord and Tenant Act 1987 that the respondent’s costs before the Tribunal shall not be added to the service charges.
7. No further order as to costs.

Name: Tribunal Judge Evis
Samupfonda

Date: 9 March 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

DIRECTIONS AND SCHEDULE OF FUNCTIONS AND SERVICES

1. That from the date of appointment and throughout the appointment the manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee or under-lessee of the property, the landlord or the Tribunal.
2. That not later than 14 days after the date of this order the parties to this application shall provide all necessary information to and arrange with the manager an orderly transfer of responsibilities. No later than this date, the landlord shall transfer to the manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).
3. 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 upon the date 14 days from the date of this order become rights and liabilities of the manager.
4. That the manager shall account forthwith to the landlord for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the landlord's covenants contained in the said leases provided always that should any of the flats owned by the landlord be in arrears of service charge then the

manager shall be entitled to deduct any rent received and apply the same towards the said arrears as he shall see fit.

5. That he shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the under-leases and/or leases of the property) in accordance with the Schedule of Functions and Services attached.
6. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following events:
 - (a) any failure by any party to comply with paragraph 2 of these directions and/or;
 - (b) in the event that there are insufficient sums held by him to pay the manager's remuneration.

A. SERVICE CHARGE

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the under-lessees as per the percentage share of under the terms of their under-lease and to the landlord to pay in respect of her two flats the balance of the service charge.

- 1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from the under-lessees and landlord. Instruct solicitors to recover unpaid rents, service charges and money owing.
- 1.3 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.

B. ACCOUNTS

- 2.1 Prepare and submit to the landlord and under lessees an annual statement of account detailing all monies received and expended on its behalf.
- 2.2 Produce for inspection upon reasonable written notice, receipts or other evidence of expenditure.
- 2.3 All monies collected on the landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution of Chartered Surveyors, subject to the manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the leaseholders .

C. MAINTENANCE

- 3.1 Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the building.
- 3.2 The consideration of works to be carried out to the property in the interest of good estate management and making the appropriate recommendations to the landlord and the under-lessees.
- 3.3 The setting up of a planned maintenance programme to allow for the periodic re-decorations of the exterior and interior common parts.

D. FEES

- 4.1 Fees for the above mentioned management services would be a basic management fee of £3,200.00 per annum inclusive of VAT for the whole of the property. Any work carried out over and above those management services to be charged in accordance with the charges set out in Roger McElroys' letter dated 30/1/17 and attached estimate reference 118952 and Canonbury Managements' standard terms and conditions.
- 4.2 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.

4.3 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged for on a fee basis to be agreed.

4.4 If the manager shall so choose, and if it shall be expedient to do so in his reasonable opinion, he shall be entitled to instruct Canonbury Management and its staff to manage the building on his behalf provided that in so doing the manager hereby undertakes to the tribunal to not to instruct them otherwise than on their standard terms of business.

E. RIGHT TO PROSECUTE CLAIMS

5.1 The manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of this appointment.

5.2 Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge and/or ground rent attributable to any of the flats in the building and for which purpose 'proceedings' shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High Court or any application made to the Leasehold Valuation Tribunal under s.27A Landlord & Tenant Act 1985 or s.168(4) Commonhold & Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

5.3 The manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT payable to any solicitors, accountant, counsel or expert on a full indemnity basis.

F. COMPLAINTS PROCEDURE

6.1 The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.

G. INSURANCE

7.1 Maintain appropriate building insurance for the Property.

7.2 Ensure that the Manager's interest is noted on the insurance policy.