



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

Case Reference : LON/00AC/LVM/2018/0013

Property : 36 West Heath Road, London NW3 7UR

Applicant : Dr Wayne and Mrs Gillian Phillips

Representative : In person together with Mr Richard Davidoff,
proposed Tribunal-appointed Manager

Respondent : 36 West Heath Management Services Limited

Representative : Mr S Soor (Flat 4)
Mr G Kafi (Flat 1a and 6 and director of the
Respondent Company
Miss A De Martini (Flat 2)
Mr V De Mesquita (Flat 5)

Type of Application : Application under section 24 of the Landlord
and Tenant Act 1987 Part II

Tribunal Members : Tribunal Judge Dutton
Mr M C Taylor FRICS

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR on 6th
September 2018

Date of Decision : 20th September 2018

DECISION

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The Tribunal determines that pursuant to s24 Landlord and Tenant Act 1987 on the evidence put to it and on the basis of the papers before it, that it is appropriate to appoint Mr Richard Davidoff of ABC Block Management Limited to be the Manager of the property at 36 West Heath Road, London NW3 7UR (the Property) upon the terms of the management order attached hereto.

BACKGROUND

1. On 12th April 2018 Dr and Mrs Phillips served on the Respondent company a notice under section 22 of the Landlord and Tenant Act 1987 (the Act) indicating an intention to appoint a manager. The notice set out the perceived failings and gave the Respondent company 28 days in which to correct these shortcomings.
2. On the 18th May 2018 an application was made to the Tribunal seeking the appointment of a Manager under section 24 of the Act. Directions were issued on the 19th June 2018 and complied with and the matter came before us for hearing on 6th September 2018.
3. Prior to the hearing we were provided with a bundle of papers which included the section 22 notice, the application and the directions. We also had a statement from Dr Phillips dated 31st July 2018, an asbestos and fire risk report which appeared to post-date the date of the application. There were also a number of emails passing between the parties as well as photographs of the building and in particular the interior of Flat 1 owned by Mr Sharma who apparently supports Dr and Mrs Phillips' application but did not attend the hearing. A copy of a lease dated 27th September 1974 was included together also with documents from the proposed managing agent Mr Davidoff which included a management plan, CV and a draft order.

HEARING

4. The hearing took place on 6th September and Dr Phillips relying on his written statement told us as follows. He said that he had owned the flat for about 19 years and had found it difficult to deal with the directors as things were not dealt with as they should be. His view was that the windows needed repainting and he had been told that this was a matter for the individual flat owners. Apparently, there had been problems with rodents, pipework was decaying, the driveway was uneven, there had been problems with slates coming loose from the roof and leaks which afflicted Flat 1. It was also said that the other basement flat, Flat 1A owned by Mr Kafi, was in poor order and that this affected the Property.
5. He told us that the flat had been occupied by members of his family, in particular his mother-in-law who died in the summer of this year. The flat has been empty since July of 2018.
6. He said that presently scaffolding was in place and that some decorating was being undertaken using he thought, or had been told, the cheapest person. No

section 20 consultation had taken place. Requests for payment were done on an individual basis, no accounts had been produced and that he received emails which he considered ridiculed him. He said also that there were aggressive responses from the directors.

7. It appears that the Respondent company is owned by each leaseholder, there being seven flats although two owned by Mr Kafi. All are shareholders. The lease, which was in the bundle appears to have been surpassed by a lease that was created following an acquisition of the freehold. We were told that the new leases are now for 999 years but incorporate the same terms and conditions which were set out in the lease in the bundle. Both parties were happy for us to deal with the obligations on the basis that the original lease was incorporated into the new one.
8. Dr Phillips told us that he had now paid all monies due in respect of the alleged service charges, albeit on a without prejudice basis.
9. We then heard from Mr Soor who is a barrister. He said that Mr Kafi was the only director although he did indicate he was willing to take up that post as well. He said it was accepted that the Property had not been properly managed in accordance with the strict legal terms for some considerable time. The application made by Dr Phillips was "a huge wake up call." He said that the residents accepted that they needed to get "their act together." He accepted also that the emails passing between the parties were not great reading and that matters could have been dealt with much better. His concern, however, was what should be done going forward. He did not consider that the building was in a bad state of repair and asked us to consider the photographs within the bundle. The property was he said a mansion house which had been built around 1870 and for its age was in good order. The photographs focussed on small areas and some works had been undertaken, for example the tidying of the bin area. There was no site plan. The building was not listed.
10. He referred us to a photograph of the parking area which showed a large tree that may well have been contributing towards unevenness.
11. He did accept that the decoration to the windows is a responsibility of the landlord and not the individual tenants and that indeed scaffolding was in place to undertake some of this work. There was, however, no expert's report available to us dealing with the condition of the Property nor the problems which were afflicting Flat 1. There had apparently been CCTV inspection of the drains and although a short report had been issued, the CCTV inspection had been committed to a memory disc which unfortunately appears to have gone missing.
12. We were told that Mr De Mesquita, who had been the author of some of the, shall we say the more vitriolic exchanges, had now resigned. As we indicated above, Mr Soor said that he would be standing as a director and had had experience in dealing with building works at a local golf club of which he appeared to be a member.
13. He therefore put forward the following proposal. Mr Kafi would remain as a director and Mr Soor would immediately become one as well. It was not clear who was going to be the company secretary. A condition report would be

commissioned and a maintenance plan indicating affordable works prepared. He did not think that the residents were in a position to come up with large sums of money. When asked whether there had been any insurance claims made in respect of the problems to Flat 1, we were told not. The main concern, however, on the part of the Respondent was the loss of control and the cost of employing a managing agent. There was he also felt a potential conflict between Mr Davidoff and Dr Phillips and his wife. Apparently, Mr Davidoff is the managing agent for both Dr and Mrs Phillips and Mr Sharma. It was accepted at the hearing that Mr Davidoff could not continue in that role and that if he was appointed as a manager he would resign as the managing agent for Dr and Mrs Phillips and Mr Sharma.

14. That was met with some approval by the Respondents but nonetheless they suggested that there should be a six month stay to see if suitable steps could be put in place to arrest the problems which had arisen.
15. Both Mr De Mesquita and Miss De Martini said that they were interested in keeping the Property in good condition. Apparently, Mr Soor and Mr Kafi live there. Mr De Mesquita visits frequently. Mr Sharma apparently uses it as a summer home living in India for the remainder of the year and Dr Phillips, as he no longer provides accommodation for members of the family, is intending to rent it out. Miss De Martini it seems also rents the Property, she having come to the hearing from Switzerland.
16. Dr Phillips made final submissions to us which we noted. He indicated that the painting to the windows had only just been undertaken and there was no tendering or quote nor inspection by any professional surveyor. It was not clear the extent of the work. There is no reserve fund and he had no confidence that matters will be put right in the six-month period suggested by Mr Soor.
17. Mr Kafi told us that in respect of his flat 1A there had been a number of leaks apparently caused by water ingress from Dr Phillips' flat. He is apparently in the process of renovating same but has not been able to or indeed undertake any insurance claim because the Property was empty.
18. Miss De Martini told us she was not opposed to having a manager but was concerned as she has a good relationship with the existing tenants and was of the view that ABC may not be appropriate, they having been involved in court proceedings. Mr Davidoff told us about those which does not it seems to us give rise to any issues.
19. We then interviewed Mr Davidoff. He told us that he has undertaken a Tribunal-appointed management role and is in the pipeline for two others. Apparently has been involved in the management profession for some 29 years and a member of the MIRPM during most of that period. The company is ARMA accredited and an independent audit undertaken by the RICS came in the top 17% of UK agents.
20. He told us that the office was based in Edgware and had 40 members of staff. He had a number of contacts with independent RICS surveyors and a spectrum of contractors that he could call upon. The insurance cover for the company is £1.2m. He told us that there were emergency contact details and reconfirmed

that if appointed he would cease being the managing agent for Dr and Mrs Phillips and Mr Sharma.

21. He told us that if he did get some commission that this came from either the insurance company itself or from the brokers who were paid commission. It certainly did not result in the premium charge to the lessees being increased. With that insurance commission he undertook to deal with all insurance claim matters and the renewal of the insurance on an annual basis.
22. He told us that he would be attending on a monthly basis and would be setting up a reserve fund. Those would be kept separate from the everyday service charge account. He had produced a draft management order although this had not been prepared by him. The first matter that he considered needed to be addressed was a survey of the Property to see what works may be required. He was of the view that his appointment should be for three years and that it should start on 1st October 2018.
23. We discussed with those present whether a one off contribution to the service charge fund to provide a float for Mr Davidoff would be acceptable. We were told it would be.

THE LAW

24. The law applicable to this matter is set out below.

FINDINGS

25. We heard all that was said by both sides and were pleased to hear Mr Soor's submissions that the Respondents accepted matters had not been dealt with appropriately. We considered the provisions of section 24 of the Act. It seems clear to us that there have been breaches in that consultation under section 20 has not taken place, accounts do not appear to have been prepared properly and nor have demands been made under provisions of the Landlord and Tenant Act 1985. We are not convinced that time given to the Respondent will resolve the issues. The problems have been ongoing for many years and despite Dr Phillips raising them, both himself and through ABC as his manager, nothing has been done, until these proceedings were commenced. It is apparent to us that a professional managing agent is required.
26. Taking all matters into account, we consider that it is just and convenient to make the appointment of Mr Davidoff as a Manager for the Property under provisions of section 24 of the 1987 Act for a period of two years. We consider that this should be a sufficient time to enable him to deal with any outstanding issues, to set up proper systems for dealing with the accounts and the payment and retention of service charge monies together also with a reserve fund going forward. It is hoped that at the end of the two-year period matters will be in order and the residents may wish to continue with the appointment of Mr Davidoff or there may be an extension, or lessons will have been learned. Who is to know. Either way we hope that the difficulties which have arisen through the desire on the part of the Respondent to manage the Property in a somewhat unprofessional manner will be corrected.

27. Mr Davidoff had provided us with a draft management agreement which he had not himself prepared. We have been through that and made use of it as the basis upon which the management order should be made. We have made certain alterations as it seems that reference to estate rent charges, house owners etc are irrelevant. We therefore have made changes to remove certain erroneous inclusions. The professional indemnity cover is recorded at being at least £1m and we understand that in fact the cover is £1.2m which is sufficient for the purposes of this appointment.
28. Under the heading Fees we consider that these are somewhat excessive. We are quite happy with the annual charge of £2,450 plus VAT being £350 per flat for the initial 12-month period and we have provided for that in the agreement. We consider, however, that a charge of 15% for dealing with major works including the preparation of section 20 consultation papers is excessive and this should be limited to 10%. We do not consider there should be any charge in relation to the handling of insurance claims as this is covered by the commission which Mr Davidoff said he receives.
29. We accept the additional charging rates but we think that £75 plus VAT for any letter written in connection with arrears of service charges on the high side. This would be dealt with by the assistant block manager or administrator and even allowing for the need to do certain research a charge of £50 plus VAT is more than enough for that element.
30. We are satisfied that there should be an initial payment of £500 for the setting up and a payment of £1,000 by each leaseholder per flat to give Mr Davidoff a float. With this his first three months' management charges are covered. Further, it will enable him to retain the services of a chartered building surveyor or chartered surveyor to undertake a full survey of the Property and to give advice as to those works which require to be done and those which may be able to be put off for a period of time.
31. The Tribunal order is for a period of two years and is attached.

Andrew Dutton

Judge:

A A Dutton

Date: 20th September 2018

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

The relevant law - The Act

Section 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.