



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

Case Reference : **LON/00BA/LVM/2017/0012**

Property : **Various flats at Kilmeny House, 36
Arterberry Road, London, SW20
8AQ**

Applicant : **Mr Pietro Fabbri
Ms Rebecca Nounou**

Representative : **Mr Wade Barker of Bramptons**

Respondent : **Mr Mark Blooman MRICS**

Representative : **In person**

Also in attendance : **Mr P Jung**

Type of Application : **For the determination of an
application under section 24(9) of
the Landlord and Tenant Act 1987**

Tribunal Members : **Ms M W Daley LLB (Hons)
Mr M Mathews FRICS**

**Date and venue of
Hearing** : **14 February 2018 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **12 April 2018**

DECISION

Decisions of the tribunal

The Tribunal determine that the order should be amended as set out in the appendix

The application and background

1. On 17 July 2017, the Tribunal made an order appointing Mr Mark Blooman MRICS as the tribunal appointed manager for a period of three years on terms set out in the directions appended to the decision dated 17 July 2017.
2. On 13 November 2017 the applicant's applied to vary the management order on the grounds that the manager was not compliant with the terms of the order. Paragraph 3 of the grounds for the variation stated:- "... This Application is designed to clarify matters and impose reasonable deadlines upon the Manager. "
3. The applicants in their application stated that the manager had not been willing to engage in day to day management matters and had not written to the lessees of Kilmeny House confirming arrangements for management of the property. It was further set out that no budget for the period 1 September 2017-31 December 2017 had been prepared. The Application also set out that the manager had not managed the issue with the condition of the garages or dealt with enforcing obligations in relation to subletting as required by the terms of the lease.
4. On 11 December 2017 the Tribunal wrote to the parties in the following terms:-

The tribunal has received an application under S.24 (9) of the Landlord & Tenant Act 1987 for the variation of a management order. It appears that some agreement has been made with the current manager, Mr. Blooman, a copy of which has been sent to you.

The tribunal proposes to deal with this matter by way of paper determination during the week commencing 22 January 2018. If any of the respondents or Mr. Blooman considers that the amendments to the order should not be made, they must inform the tribunal, with their reasons for their objections on or before 15 January 2018..."

5. The Tribunal further received a letter of objection from Mr Jung. As this matter was not agreed it was listed for hearing at 10 am on 14 February 2018.

The hearing

6. The hearing was attended by the parties listed above. The manager and the Applicant's representative had reached an agreement concerning the first two proposed amendments.
7. That was that in relation to paragraph 25 of the decision, the wording be amended by the addition of the sentence -:***'For the avoidance of doubt the manager is to deal with licences as set out in clause 2(j) of the leases where the lessor is to provide consent for assignments and sub-lettings.'***
8. It was further provided that reasonable fees for undertaking the work would be payable as administration charges.
9. The applicants further noted that the order provided under paragraph 26 that the order should be "registered against the landlord's title as a restriction under the Land Registration Act 2002." It was noted that this had not occurred, accordingly the Applicant proposed, that the application for registration should be made within 14 days of the Tribunal's decision on the section 24 (9) Application for a variation. Mr Blooman did not oppose the proposed amendment.
10. The Tribunal noted that Mr Jung was not satisfied with the management order, as such the Tribunal wished to hear from him concerning his objections. Mr Jung stated that the manager had not been responsive to questions. He was asked whether he was aware of the standard terms of management and the process which was set down for communication under the standard terms for management. It was suggested that this should be provided to the leaseholders together with the complaints procedure under which the manager operated.
11. The Applicants further stated that the service charge account had not been produced and that this meant that he was not able to certify the accounts, until the finalised accounts were produced. Accordingly he was unable to collect the service charge arrears.
12. Mr Blooman stated that the difficulty had been that he had not received the accounts from the previous manager. Mr Jung had been involved in the management of the premises prior to Mr Blooman's appointment. He stated that he would be able to hand over the accounts within 14 days. The Tribunal noted that this would be recorded in the decision, thereafter Mr Blooman would arrange for the accounts to be certified.

13. The Tribunal was informed by Mr Jung that there were also issues concerning the major works. The Tribunal was informed that one particularly urgent issue which needed to be resolved, concerned the balcony serving as a fire escape. It remained in a poor state of repair and the local authority had served an improvement notice.
14. Mr Blooman stated that there are flats which do not have access to the fire escape and as such there was an issue on whether they should contribute to the costs of the balcony and if so on what basis. There were four flats which had access to the balcony, only three had provisions in the lease which required them to contribute towards the costs of the balcony. The issue appeared to be on whether the structure was defined as a balcony or alternatively as a fire escape.
15. The Tribunal noted that although the issues were urgent that as a tribunal appointed manager, Mr Blooman faced many issues which would take time to resolve. The Tribunal noted that it may be necessary for Mr Blooman to seek further direction from the Tribunal for example if the lease did not make adequate provision for repairs then it was possible to make an application under the Landlord and Tenant Act 1987 for a variation to be made to the lease. Alternatively the Manager could make an application under Section 27A of the Landlord and Tenant Act 1985 concerning the payability of the service charges.
16. Mr Jung was also critical of the fact that the managing agent had allowed the insurance to simply roll over rather than implementing a more comprehensive policy which covered the garages.
17. Mr Blooman acknowledge that this had occurred however he had not had sufficient time to fully consult with the Leaseholders and allowing the insurance to continue allowed for continuity. He was committed to ensuring that the arrangements for insurance were put in place on a timely basis, for the forthcoming period so as to enable full consultation to take place.
18. Mr Jung's final issue related to the plans for the major work including the fact that there was currently no plan in place to deal with the major work, consultation had not taken place and there was some urgency with the work in that masonry had fallen of the building onto Mr Reed (a leaseholder's) car.
19. Mr Jung was also concerned that the costs of the work appeared to be open-ended. The Tribunal noted that Mr Blooman would be required to consult under Section 20 of the landlord and Tenant Act 1985, and part of this consultation could include the issue of affordability together with identifying the most urgent priorities. In respect of the urgent matters, there was provision for the work to be

carried out where it was urgent and for an application for a dispensation under Section 20ZA to be made.

20. The Tribunal considered that save for the few amendments that had been agreed there was no fundamental changes that were needed to the management order.

The changes are set out below in the appendix

Application under s.20C and refund of fees

1. At the end of the hearing, No application was made under section 20 C, any party wishing to make such an order may do so by

Name: Judge Daley

Date: 12 April 2018

Appendix

1. Paragraph 25 B shall include the following after the wording including replacement and repair thereof. The wording-: ***For the avoidance of doubt the manager is to deal with licenses as set out in clause 2(j) of the leases where the lessor is to provide consent for assignments and sub-lettings.*** - shall be included.
2. Paragraph 26 shall include the word “forthwith” in the first line.
3. The proposed amendment to Schedule of Functions and Services forming part of the Order of 17 July 2017 shall be amended as follows-:

Service Chares

4. Point (v) the new sentence at the end “in respect of the interim service charge demands due to 1 July 2018 the Manager will issue demands to all lessees 30 days prior to 1 July 2018).
5. Amendment to point (vi): add to end of sentence ‘such estimate to be sent to all lessees prior to the commencement of the relevant service charge year.’
6. Amendment to point (viii): add new sentence to the end ‘ The manager will issue interim service charge demands in good time and by no later than 30 days prior to the service charge demand being issued on 1 January.’

Accounts

7. Amendment to point (i): insert at the beginning of the sentence “Within ninety (90) days from 31 December of each year...”

Appendix of relevant legislation

S24 Appointment of manager.

- (1) A leasehold valuation 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 court thinks fit.
- (2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely— (a) where the court 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; or
- (ab) where the court 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 court 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;
- (b) where the court 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 court 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 court thinks fit; and, on any subsequent application made for the purpose by the manager, the court 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 court thinks fit, and in particular its operation may be suspended on terms fixed by the court.
- (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 court 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) A leasehold valuation 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 court may by order direct that the entry shall be cancelled.