



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

Case reference : **CAM/12UC/LAM/2019/0001**

Property : **11 Main Street, Littleport, Ely, CB6 1PH**

Applicant : **1. James Michael Richardson
2. Charlotte Rose-Hollinshead**

Respondent : **Dennis John Harrington**

Type of application : **Appointment of Manager**

Tribunal member(s) : **Judge Wayte
Mrs M Hardman FRICS IRRV
(Hons)
Mr N Miller BSc**

Date of decision : **10 October 2019**

DECISION

The tribunal has decided that:

- (1) In accordance with section 24(1) of the Landlord and Tenant Act 1987, James Michael Richardson of 11A Main Street, Littleport ('the Manager') is appointed as manager of the property at 11 Main Street, Littleport, Ely, CB6 1PH as registered at the Land Registry under the Landlord's freehold title number CB317181 ('the Property').
- (2) The order shall continue for a period of 4 years from the date of this decision. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.
- (3) The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of powers, functions and services attached to this order;

- (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993.
- (4) 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.
- (5) An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

The application and hearing

1. On 24 April 2019 the applicants and leasehold owner of flats on the second and third floors of the property made an application for an order appointing James Michael Richardson as manager under section 24 of the Landlord and Tenant Act 1987 ("the Act"). The applicants sought the order due to the alleged failure of the freeholder to comply with the terms of its leases and relevant landlord and tenant legislation.
2. Copies of the application form were sent to the respondent who has taken no active part in the proceedings, save to confirm that he was happy to "give the freehold up", provided he is paid the money he is owed, presumably service charges. It is not in fact clear that any service charges are due as no service charge demands have been served in accordance with section 47 of the Landlord and Tenant Act 1987 and no summary of the service charge expenditure has been provided in accordance with the lease.
3. Directions were given on 23 May 2019. The following issues were identified for determination:
 - Did the contents of the section 22 notice comply with the statutory requirements?
 - Has the applicant satisfied the tribunal of any grounds for making an order as specified in section 24(2) of the Act?

- Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?
- Is it just and convenient to make a management order?
- Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the respondents' costs that may be recoverable through the service charge?

Background

4. The property is part of a building at 11 Main Street, Littleport, which was built as a bank. It was converted in or about 2016 by the respondent into three separate premises: business premises on the ground floor and two residential flats above, which are accessed via an external metal staircase at the rear of the property. The flats are let on long residential leases to the first and second applicant. In addition to the main building, there is a rear ground floor extension which is used as a residence, a courtyard used for car parking and a former coach house which has recently been developed for residential use and is for sale as a freehold property.
5. The applicants gave evidence of difficulties with the respondent from the date they purchased their leases. He had failed to separate the electricity supply for the flats from the commercial supply downstairs and charged the applicants electricity based on alleged meter readings to which they had no access. On 3 May 2017 the freehold of the ground floor was transferred to Emire Alakirik and let to Karzima Limited, who operate as Kings Barbers Littleport. Problems escalated and the electricity supply to upstairs was disconnected on several occasions until the applicants obtained an injunction in the County Court. They have now separated the electricity supply at their own expense.
6. The respondent has also failed to attend to repairs required to the external metal staircase, which is the only means of access to the residential flats. Of even greater concern, on 9 October 2018 the respondent indicated that the property was no longer insured, in breach of his covenant under the leases.
7. Further problems have developed in relation to the courtyard at the rear of the property. Mr Richardson's lease contains a right of way with or without vehicles over the accessway leading from Main Street and a right to park a motor vehicle in the rear courtyard. Despite this, the respondent sought to charge him a fee of £520 per annum for parking and has marketed the coach house with additional parking which will interfere with the rights already granted to Mr Richardson under his

lease. The tribunal was told that this is also in breach of the planning permission granted for the conversion of the coach house.

8. The respondent lives in the Republic of Ireland and has failed to provide any service charge accounts or an address for service in England and Wales.

Statutory Framework

9. Under section 24(2) of the Act, the tribunal may appoint a manager under section 24 in various circumstances. These include where the tribunal is satisfied:
 - 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
 - that unreasonable service charges have been made, or are proposed or likely to be made; and
 - that it is just and convenient to make the order in all the circumstances of the case exist which make it just and convenient for the order to be made.

Section 22 notice

10. Before an application for an order under section 24 is made, section 22 of the Act requires the service of a notice which must, amongst other requirements, set out steps for remedying any matters relied upon which are capable of remedy and give a reasonable period for those steps to be taken.
11. The notice dated 30 October 2019 was prepared by the applicants' solicitors, PBW Solicitors Ely Limited. The respondent was given 28 days to remedy those matters considered capable of remedy, including: confirmation of the effect of the sale of part of his original freehold title on the applicants' leases; proof of insurance; provision of a schedule of works and a written summary of the service charge expenditure to date, certified by a qualified accountant as required by the leases.
12. The tribunal was shown an email response from the respondent dated 17 January 2019 when he confirmed that he had no objection to an independent management company but wanted full payment of arrears prior to the change of management.
13. The tribunal is satisfied that the notice met the requirements of the Act.

Grounds under the Act

14. As set out above, the applicants provided significant evidence of the respondent's failure to comply with the leases and behave as a responsible and reasonable freeholder – for example, his refusal to confirm that the property was insured. There was also evidence of demanding unreasonable service charges or other monies, for example the claim of some £600 per flat each year without any form of breakdown as required under the lease and the demand for an additional parking fee from Mr Richardson. There are also concerns that the sale of the coach house with parking, in breach of planning permission, will affect Mr Richardson's rights under his lease.
15. In the circumstances the tribunal also determines that there are grounds for appointing a manager.

The proposed manager

16. Somewhat unusually, the first applicant, James Richardson put himself forward as the manager – with the consent and support of the second applicant. Although he is not a professional property manager, he has successfully undertaken the foundation course for the Institute of Residential Property Managers and intends to undertake 15 hours of professional development to fulfil the requirement for membership of the Institute going forward.
17. He has also taken on much of the responsibility for the building to date, including proceedings in the County Court to prevent further interruption to the electricity supply. He has also prepared a management plan. He has confirmed that he does not expect remuneration while he owns his lease but would look to share out of pocket expenses in terms of membership of the Institute, training and insurance, with the other applicant as an additional service charge.
18. He has provided a quote for professional indemnity insurance which limits his liability to £500,000 for any one claim. This is below the usual amount expected for professional managers but he is unlikely to incur any liability over and above this sum bearing in mind there are only two flats and one of them is owned by him and would therefore probably not be covered by the policy.
19. This case is akin to that of a missing landlord, given the respondent's behaviour to date. Given that there are only two flats and that Mr Richardson was able to demonstrate knowledge of service charge law, the tribunal considers that he is a suitable manager for this property, even though he is not an independent manager. The second applicant is looking to sell her flat and if the new purchaser wishes to look for professional management or Mr Richardson also wishes to move on, a further application could be made to vary the order.

Just and convenient

20. In all the circumstances of the case the tribunal considers that it is just and convenient to make an order appointing Mr James Richardson as the manager of 11 Main Street, including the rear courtyard as detailed in the respondent's freehold title CB317181. As the circumstances giving rise to the order are unlikely to change, at least insofar as the respondent is concerned, the order will be for four years.

Section 20C

21. The applicants included an application for an order under section 20C, restricting the ability of the respondent to include his costs as part of a service charge. It is not clear whether the respondent has in fact incurred any costs but given the circumstances of the case and for the avoidance of doubt, the tribunal considers that it is just and equitable for an order to be made in favour of the applicants.

Name: Judge Wayte

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £500,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks 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 Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. By no later than six months and thereafter on an annual basis, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
4. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
5. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF POWERS, FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) As stated in the Management Plan, given the transfer of the freehold for the ground floor premises, service charges in respect of 11A and 11B Main Street will be payable on a 50:50 basis for each flat (as opposed to 1/3rd as stated in the leases) and paid quarterly based on an estimate of expenditure.
- (ii) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (iii) Demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iv) Take proceedings in respect of unpaid rents service charges or if required to enforce the leaseholders' rights against third parties e.g. as to use of the courtyard or interference with water supplies.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) 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 Property.
- (ii) 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 Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- (i) As stated in the management plan, while Mr Richardson owns property in the building he does not expect remuneration for his role. He will share the cost of professional indemnity insurance, training and membership of the Institute of Residential Property Managers with the leaseholder of Flat11B as a service charge.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.