



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

**Case reference** : **LON/00AU/LAM/2020/0020**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **31 Dalmeny Road, London, N7 ODX**

**Applicants** : **Edward Harris-Harris Johnson  
Development Ltd  
Ms Ghosal**

**Representative** : **In person**

**Respondent** : **31 Dalmeny Road Limited**

**Representative** :

**Type of application** : **Appointment of Manager**

**Tribunal  
member(s)** : **Judge Daley  
Mr M Cairns**

**Venue and Date of  
hearing** : **Heard remotely on 15 February 2021 10  
Alfred Place, London WC1E 7LR**

**Date of decision** : **22 March 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was **CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be

determined in a remote hearing. The documents that I was referred to are in a bundle of [x] pages, the contents of which I have noted. The order made is described at the end of these reasons. The parties said this about the process: that they were satisfied with the means by which this hearing had been held.

## **Background**

1. The Applicants seek an order appointing Mr Elliot Esterson of Trent Park Properties as a manager under section 24 of the Landlord and Tenant Act 1987.
2. A preliminary Notice under section 22 of the Act dated 14 October 2020 was served on the respondent. The Respondent is a Freehold Company.
3. The premise which is the subject of this application is a Victorian terrace which was converted into two maisonettes in 1979/1980. In 1983 the lower maisonette was split into two flats which are known as the raised ground floor and the garden flat. Mr Edward Harris through his company Harris Johnson Limited is the leaseholder of the upper maisonette. Ms Ghosal is the leaseholder of the raised ground floor and Ms Chris Kloet is the leaseholder of the garden flat, and has sole use of the rear garden.
4. The three leaseholders own a share of the freehold through the respondent company. Ms Ghosal and Mr Harris are directors of the company and the applicants in these proceedings. The leaseholder Ms Kloet takes no part in these proceedings.
5. On 14 October 2020 the Applicant served a notice under Section 22 of the Landlord and Tenant Act 1987. The grounds upon which the notice was served are
  - a. The landlord is in breach of obligations owed to the tenants under their leases.
  - b. Other circumstances exist which make it just and convenient to appoint a manager.

## **The Hearing**

6. The hearing was attended by Mr Harris and Mr Esteron by Video link. The second respondent attended by telephone.
7. Ms Kloet was an interested party to this application. We heard that the Applicants had attempted to serve the hearing bundle on Ms Kloet. The directions required them to be served electronically, however the applicants did not have an electronic address for Ms Kloet. We heard that copies of the hearing bundle had been served at the premises, and attempts had been made to serve at an alternative address by recorded delivery on 5 occasions. The bundle had either been refused or not picked up from the post office by Ms Kloet.
8. We were satisfied that all reasonable efforts had been made to serve Ms Kloet and that she had chosen not to participate in the hearing. We decided that it was appropriate to proceed with the hearing in Ms Koet's absence. After the hearing on 3 March 2021, we were informed via email from a social worker acting on Ms Kloet's behalf that she had

not been able to attend the hearing due to ill health and being hospitalized. However, we were of the view notwithstanding her inability to attend the hearing, that it would not be proportionate to re-hear this matter and that it was in all of the parties' interest that a decision is made on the application.

9. Mr Harris informed us that he had purchased the property in 2015 as part of his property business, prior to his purchase the respondent company had been ran in an informal manage by the three leaseholders who managed the property very informally. They would get together and agree on what needed to be done at the property and the ground rent was used for informal repairs. The arrangements that had been made were very informal and no service charge demands were served. All leaseholders contributed to the insurance. At that time both Ms Ghosal and Ms Kloet occupied the premises.
10. Mr Harris stated that each flat's contribution was based on the old rateable values the garden flat's contribution was 30%, the raised ground floor's contribution was 27%, with the upper maisonette being responsible for 43%. He stated that he had discussed with both leaseholders the possibility of obtaining cheaper insurance.
11. We heard that Mr Harris discussed the possibility of a change of insurance, however he was told that the reason for the policy was because of historical subsidence at the premises, Ms Kloet's partner believed that there were on-going issues with subsidence, Mr Harris commissioned a surveyor's report on further investigation that proved not to be the case.
12. After this the relationships between the leaseholders deteriorated, Mr Harris had to take legal action to gain access to the cupboard underneath the steps which housed his gas supply in order to upgrade the meter. As a result of disagreement that arose between the leaseholders, Mr Harris and Ms Goshal agreed to appoint a managing agent in order to try to "keep things at arm's length, Mrs Kloet refused to participate in the process of appointing a managing agent. Salter Rex Managing agents were appointed in July 2019; However, Mrs Kloet refused to recognise the managing agent and did not pay any contributions towards the service charges.
13. We were told that as a result of Mrs Kloet's refusal to pay her contribution towards the service charges, unless the Applicants were prepared to instruct legal action to be taken nothing could be done.
14. We heard that the contract with Salter Rex was terminated by consent. At paragraph 14 of the witness statement of Mr Harris, he stated that "The current monies that Pauline Ghosal and Edward Harris have had to cover are: - 2018 – Communal minor works including the cutting back of a tree in the front garden wall of the front light well costing £120 (Document 5), Garden Flat Contribution £36 (they have refused to pay this stating in part that they wanted the tree kept as it gave privacy despite it damaging the property) - 2019 – Building Insurance of £1419.69 (Document 6), Garden Flat Contribution £425.90 (they issued a cheque however with conditions under which it could be cashed which we could not accept). - 2020 – Building Insurance of £1501.83 (Document 7), Garden Flat Contribution £450.55. - 2020 – Salter Rex Contract Termination Charge £600 (Document 8), Garden

Flat Contribution £180.00. Total now owed by the Respondent's to the Applicants is £1092.45 which they are unable to pay." Salter Rex had served a formal service charge demand which remained outstanding.

15. In the Preliminary Notice dated 14 October 2020, the Applicant's referred to disrepair being caused to the fences by trees within the garden of the garden flat, which because of their proximity to the premises had the potential to cause structural damage at the premises. We heard that it had caused damage to the neighbour's fence. We were provided with digital photographs which had been taken from within the premises. The applicants submitted that these issues had not been resolved and could not be resolved by the freeholder company and asked for the appointment of Mr Elliot Esterson of Trent Park Properties as manager of the premises.
16. Mr Esterson gave evidence to the Tribunal and provided details of his experience. He stated that he would make contact with the leaseholders and would try to build relationship. He stated that he would ensure that the management was carried out in accordance with the terms of the lease. He had explained to the leaseholders that they would not necessary be able to have a pristine garden however his objective was to manage the premises recognising that the state of affairs that existed was possibly a breach of the terms of the lease and was a nuisance, and he would take steps to ensure that the terms of the lease were met by all leaseholders. He stated that he has over 25 years' experience of property management. He stated that he managed 65 blocks of flats and over 1000 units.
17. In his written statement he provided details of his experience of tribunal appointed property management. He stated that:- "The Leasehold Valuation Tribunal appointed me as managing agent in 2007 for 45 Lea Bridge Road, London E5 9QB as the Freeholders were absent and the Leaseholders wanted 48 to have the building properly managed. We still manage this block of flats today. (Tribunal reference number LON/OOA M/LAM/2007/0007). More recently I was appointed managing agent by the First Tier Tribunal for Flats 1-10 Manor Mansions, 455 Holloway Road, London N7 6LR where a group of leaseholders had lost faith in the Freeholder and as a result the buildings internal and external repair and redecorations had been left outstanding for many years. Since commencing management we have been able to get all these major works carried out and the building has been restored back into good condition and is looking at its best. We still manage this block of flats today. (CASE REFERENCES: LON/OOAU/LSC/2017/0460 and LON/OOAU/LAM/2018/0001)."
18. We were told that the fees for management of the property would be £800.00 per flat with 10% of the costs for major works, the charges would be index linked. Amongst the changes that he would institute were that he would immediately appoint a building surveyor to carry out a full survey, and would take steps to ensure that all insurance claims would go through the managing agent. We were provided with information concerning Trent Park Properties indemnity insurance, which was in the sum of £1 Million Pounds, Mr Esterson stated that they were also members of The Property Ombudsman, whose role is to help resolve complaints. We heard from Mr Esterson that he would serve service charge demands, and that if they remained outstanding the matter would be referred to solicitors who would act on behalf of the managing agent.

19. We heard from Ms Goshal that she was fully in agreement with Mr Harris and that she acknowledged the difficulties at the property. Both leaseholders accepted the charges put forward by Mr Esterson.
20. The parties were asked if they were satisfied with the means by which the hearing had been carried out; all of the parties who were present stated that they were satisfied, although Ms Goshal had only been able to join by telephone.

### **Decision of the tribunal**

21. We heard and accepted the evidence from the applicant's we noted that the circumstances that existed at the premises were that the respondent company, 31 Dalmeny Road Limited, a freeholder company has essentially broken down and that the attempts that have been made to try to manage the premises by appointing a manager have broken down. We note that the Respondent company has been unable to manage the premises within the terms of the lease.
22. We have also found that the outstanding service charges that have not been collected and that the unmanaged trees in the garden together with photographic evidence of outstanding maintenance and repair. Of these matters the trees may cause damage which could render the insurance void under the terms of clause 2 (iii) (as set out in the deed of variation. We also find that because of the way in which the relationship has broken down at the premises, circumstances exist that mean that it is just and convenient to make an order in all the circumstances in this case.
23. We are also satisfied that Mr Elliot Esterson is an experienced property manager who having been appointed by the Tribunal is aware of his obligations as a tribunal appointed manager, and is also knowledgeable and has experience of the difficulties that have been experienced at the subject property.
24. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Elliot Esterson of Trent Park Properties ('the Manager') is appointed as manager of the property at 31 Dalmeny Road, London N7 0DX ('the Property').
25. The order shall continue for a period of 5 years dates from 18 March 2021. 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.
26. 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 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.
  - (d) The terms of the draft Management Order, which is accepted and adopted into schedule two of this decision.
1. 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.
  2. 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.

**Name:** Judge Daley

**Date:** 22 March 2021

### **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 £1,000,000 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. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1 April 2021 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent 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 Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
6. By no later than 1 April 2022, 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.
7. 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.
8. The Manager shall be entitled to apply to the Tribunal for further directions.



## **SCHEDULE OF 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) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) [Set] Demand and collect [ground rents,] service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) [Set] Demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (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 ground rent, 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) Fees for the abovementioned management services will be a basic fee of £2500.00 for the block per annum. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10 % of the cost (subject to a minimum fee of £300.00. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

## **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.

Schedule 1 of the Order

Section 24 of the Landlord and Tenant Act 1987

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

(ii).....

(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)]

## Schedule two Management order