



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

Case reference : **LON/00AM/LVM/2022/0007**

Property : **11 King Edward's Road, Hackney,
London E9 7SF**

Applicants : **Anton Foleros
Charles Witzel
Giorgia Depaoli
Nick Brett
Pauline Mason
Philip Adams**

Respondent : **Richard Davidoff**

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

Tribunal : **Judge Nicol
Mr T Sennett FCIEH**

Date of decision : **12th September 2022**

DECISION

(1) In accordance with section 24(9) Landlord and Tenant Act 1987, the management order made by the Tribunal on 1st November 2019 (ref: LON/00AM/LAM/2019/0007) is varied as follows:

- (a) Ms Olivia Joseph is appointed as manager in place of the Respondent;
- (b) The order is extended to 31st December 2023; and
- (c) The new Manager shall seek amendment of the restriction registered at the Land Registry by replacing the date and the name of the Manager accordingly.

(2) The Applicants remain at liberty to apply to extend the order further, save which it shall expire without further order.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicants are lessees at the subject property. The Respondent was appointed as manager of the property by order of the Tribunal made on 1st November 2019 (ref: LON/00AM/ LAM/2019/0007).
2. The Applicants have now applied for a variation of the order, in accordance with section 24(9) Landlord and Tenant Act 1987, to replace the Respondent with a new manager and, if necessary, to extend the order which is due to expire on 31st December 2022.
3. The application was heard on 12th September 2022. The attendees were:
 - Four of the Applicants: Dr Witzel, Ms Mason, Mr Brett and Mr Adams;
 - The proposed new manager, Ms Olivia Joseph; and
 - The Respondent.
4. The documents before the Tribunal consisted of:
 - A bundle of 118 pages from the Applicants, supported by an appendix of 87 pages;
 - The Tribunal's original decision on the appointment of the manager (the Applicants had included the wrong decision in their bundle); and
 - A two-part bundle totalling 294 pages, from the Respondent.
5. The Applicants set out a number of complaints against the Respondent in his role as manager as grounds for their application. It was clear that they no longer trusted him to manage their property. While such trust is not essential for a Tribunal-appointed manager, it is not a satisfactory position to be in. However, the Tribunal concluded that there was no point in going into the details of the complaints or to make findings on them. The Respondent stated in his response to the application that he had no objection to his being replaced or to Ms Joseph in particular. He pledged his full co-operation on the handover.
6. In the circumstances, the Tribunal was satisfied that it would be just and equitable to vary the management order. The issues for the Tribunal were:
 - (a) Whether to accept Ms Joseph as a suitable appointee of the Tribunal; and
 - (b) Whether to extend the order beyond the current expiry date of 31st December 2022.
7. Ms Joseph had provided a draft management agreement, a handover list, evidence of her professional indemnity insurance, and a brief covering letter dated 27th June 2022, all of which were included in the Applicants' bundle. The Tribunal asked questions of Ms Joseph, as did Ms Mason and the Respondent.

8. The Tribunal was concerned that Ms Joseph had no specific qualifications and neither she, nor her firm, Mainland, were members of any trade organisations such as IRPM or ARMA. However, she has 20 years experience in management and is supported by members of staff who include an LLM and a member of the RICS. The firm is also a member of the requisite redress scheme and complies with other regulations such as registration with the ICO.
9. The Tribunal was satisfied that Ms Joseph otherwise meets the criteria at paragraph 9 of the Practice Statement on the Tribunal's Consideration of who to appoint as Manager and is suitable for a Tribunal appointment.
10. Three of the Applicants who attended the hearing expressed a preference for allowing the existing management order to expire on 31st December 2022, after which they intended to engage Ms Joseph as their own manager – the Applicants were unanimous that they would use a professional manager for the foreseeable future.
11. However, the Tribunal's objectives in appointing a manager in the first place have not been met. Further, if one appointment can fail, so can another. In the circumstances, the Tribunal is not satisfied that it would be a good idea to relinquish all control at this stage. An extension of one year would allow Ms Joseph and the Applicants to get to know each other while prioritising the good of the whole building over the agenda of any individual or group. If, at the end of that year, the parties want to revert to a direct, private relationship, they can simply allow the order to expire without making any further application and then enter into a contract accordingly.
12. For these reasons, the Tribunal is satisfied that it is just and equitable for Ms Joseph to be appointed as manager of the subject property on the same terms as contained in the existing management order, save that the order should be extended by one year to 31st December 2023.

Name: Judge Nicol

Date: 12th September 2022

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).

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 24

- (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
 - (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;
 - (abb) where the tribunal is satisfied--
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, 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.