

SOUTHERN RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1987 SECTION 24

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/29UK/LAM/2008/0009

Property: 46 South Park
Sevenoaks
Kent
TN13 1EJ

Applicant: Mr. Michael Canniford

Respondents: Mr. Daniel Thompson and
Mr. Christopher Thompson

Date of Hearing: 6th May 2009

Members of the Tribunal: Mr. R. Norman (Chairman)
Mr. R. Athow FRICS MIRMP
Mr. C. White FRICS

Date decision Issued:

RE: 46 SOUTH PARK, SEVENOAKS, KENT, TN13 1EJ

Background

1. The application is under Section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”) for the appointment of a manager and receiver.
2. The application has been made by Mr. Michael Canniford (“the Applicant”), the lessee of Flat 2 at 46 South Park, Sevenoaks, Kent, TN13 1EJ (“the property”).
3. Mr. Daniel Thompson and Mr. Christopher Thompson (“the Respondents”) are named as the Respondents in the application and they together with Mrs. Carole Thompson are the freeholders of the property.

Inspection

4. On 6th May 2009 in the presence of the parties and Mr. Randall, who had provided a statement, the Tribunal inspected the property which is a Victorian semi-detached house converted into four flats. We were told that the Applicant was the only

leaseholder in the property and that the other three flats were let by the freeholders to tenants. We were also told that there were no common parts and there was no need for us to inspect the interior of the property.

5. We could see, and indeed the Respondents pointed out to us, that there was a need for external decoration and a small amount of pointing.

Hearing

6. The hearing was attended by the parties and by Mr. Randall and Mr. Guthrie, the proposed manager who stated that although he had not seen a copy of the lease he was prepared to undertake the management if appointed by the Tribunal.

7. The parties had submitted to the Tribunal statements of their cases and the parties had copies of the statements.

8. The statements had been read by the Tribunal.

9. At the hearing evidence was given by the parties to amplify the contents of their statements of case.

10. The Tribunal was asked to determine whether under the terms of the lease the landlord could charge for management. The lessee is required by clause 1. (b) of the lease to pay by way of additional rent a service charge being a proportionate share of the cost to the landlord of complying with the landlord's obligations set out in clause 4 of the lease and we found that on a proper construction of the lease the landlord was entitled to charge for the work involved, including management. As a result some of the allegations made in the application ceased to have effect.

11. The Respondents suggested that there were five key areas where agreement should be attempted and agreement was reached on those as set out below. As a result it seemed to us that no purpose would be served by setting out in this determination the arguments put forward by the parties at the hearing.

12. Matters agreed by the parties:

(a) £480 per annum is a reasonable estimate to provide for general repairs to the building and will be paid.

(b) Fees are payable for management and £360 per annum will be paid when there are no major works. A higher figure will be appropriate when there are major works.

(c) In order to determine the proportion of the service charge payable by the Applicant an independent surveyor will measure the property. It will be left to the surveyor to use an appropriate method of measurement. The surveyor will calculate the area of the Applicant's flat as a percentage of the building and it is that percentage of the service

charge which the Applicant will pay. The parties will accept that surveyor's measurement and calculation. The surveyor's fee is expected to be about £300 and the fee will be paid by the parties in the same proportions as their responsibility for the service charge.

(d) The total "one off" cost of general maintenance incurred during the renovation is £5,040. The Applicant will pay the same percentage of that sum as is determined to be his percentage contribution to the service charge in accordance with (c) above.

(e) There is no specific provision in the lease for a sinking fund but there is a fund, which now stands at £3,001 which was transferred on the sale of the freehold. The Respondents suggested the fund should be treated as a sinking fund and left as a buffer for future works. Mr. Guthrie considered that would be prudent and it would be in line with the RICS Code. Neither party has contributed to that fund and the parties agreed that it should be kept at £3,001 plus interest "for a rainy day" and not be used for the external decoration which is planned.

13. The Applicant stated that he was not proceeding with his application for an order under Section 20C of the Landlord and Tenant Act 1985 and assumed that each party would pay its own costs. No applications were made for costs.

Decision

14. The Tribunal determined not to appoint a manager or receiver.

Reasons for Decision

15. Section 24 of the 1987 Act provides that a Leasehold Valuation Tribunal may make an order appointing a manager to carry out such functions in connection with the management of the premises or such functions of a receiver or both as the Tribunal thinks fit. There then follows a list of circumstances which, except for subsection (2)(b), deal with a situation where there has been a failure of management or unreasonable demands have been or are proposed or are likely to be made. However, added to each item in the list is the requirement that the Tribunal be satisfied that it is just and convenient to make the order in all the circumstances of the case. Subsection (2)(b) deals with the situation where circumstances, not listed in the earlier part of subsection (2), exist which make it just and convenient for the order to be made.

16. Having considered the statements of case and having heard the evidence given by the parties at the hearing the Tribunal came to the conclusion that mistakes had been made by the Respondents but that they were of a minor nature. It was also clear that the Applicant had contributed to the difficulties which had arisen. The Tribunal was conscious that the Respondents had shown a willingness to make progress and to negotiate a reasonable settlement and that the charges which they were making were low, partly because they undertook most of the work themselves. The Tribunal also noted the agreements reached by the parties at the hearing. Even if it is accepted that there have

been minor failures which come within the list in Section 24, the Tribunal was certainly not satisfied that it would be just and convenient for an order to be made and consequently no order could be made.

A handwritten signature in black ink, appearing to read 'R. Norman', with a stylized flourish at the end.

R. Norman
Chairman