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

Case Reference : **LON/00AG/LAM/2014/0009**

Property : **4 Southampton Road, London NW5
4HX**

Applicant : **Ms C Leaf (Top floor flat)**

Representative : **Mr R Varma of Counsel instructed
by Paine Smith Solicitors**

Respondent : **Mr B Hammer**

Representative : **In person**

Type of Application : **Appointment of a manager**

Tribunal Members : **Ms N Hawkes
Mr Sennett MA FCIEH
Mrs Hart**

**Date and venue of
paper determination** : **19th June 2014 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **23rd July 2014**

DECISION

Decisions of the tribunal

- (1) The Tribunal makes an order in the terms attached appointing Ms Mary-Anne Bowring MRICS as manager pursuant to section 24 of the Landlord and Tenant Act 1987.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the applicant through any service charge.

The application

1. The applicant seeks an order appointing Ms Mary-Anne Bowring MRICS as manager pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act").
2. In Directions drawn up following a case management conference which took place on 1st April 2014 attended by the respondent in person, a differently constituted Tribunal noted that a preliminary notice under section 22 of the 1987 Act had been served on the respondent.
3. Further, the Tribunal recorded:

"It does not appear from the case management conference that there is any dispute regarding the need for a manager to be appointed, the issue between the parties is which company should be appointed.

These Directions have been drawn up in consultation with the parties, and the Tribunal considers that this matter should be drawn to a conclusion as soon as possible, given that at the present time, there is no manager for the building."

The background

4. The property which is the subject of this application is a mid-terrace house which has been converted into three flats. The Tribunal was informed that the applicant's flat occupies the first and second floors of the building.
5. The respondent is the freehold owner of the building. It was common ground that the respondent had previously instructed Grangeview Management Limited ("GML") to manage the property but that GML had resigned on 21st June 2013. There has been no management of the property since 21st June 2013.

6. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The hearing

7. The respondent attended the hearing in person but he informed the Tribunal that he had received legal advice both before the case management conference of 1st April 2014 and again before the hearing. The Tribunal has been provided with copies of a letter dated 17th June 2014 written by solicitors on the respondent's instructions.
8. The respondent attended the hearing without the hearing bundle and he stated that he had not been served with a copy of the bundle. However, his solicitor's letter of 17th June 2014 refers to the hearing bundle and the Tribunal is satisfied and finds as a fact that a copy was served upon the respondent.
9. Nonetheless, the Tribunal gave the respondent an unmarked bundle belonging to one of the Tribunal members and the respondent was offered additional time in which to consider the bundle but this offer was declined. The Tribunal also provided the respondent with sheets of paper to enable him to take notes during the course of the hearing because he did not otherwise have any means of taking notes.
10. The respondent informed the Tribunal that he had not been served with the notice under section 22 of the 1987 Act. However, by letter dated 21st June 2013 to the applicant's solicitors, the respondent's then agents GML state, "We totally reject all of the claims made in your notice relating to matters within our remit." Accordingly, the Tribunal is satisfied and finds as a fact that the notice was served on the respondent. GML go on to state that they will not oppose the application to appoint a manager.
11. The Tribunal heard oral evidence from Ms Mary-Anne Bowring MRICS and questioned her carefully regarding her qualifications and experience; experience of managing similar blocks; management plan; awareness of the RICS code; understanding of the proposed duties; insurance provision; proposed remuneration; and the proposed period of her appointment.
12. The Tribunal also heard oral evidence from the applicant, in particular in relation to a failure on the part of the respondent to repair defects to the roof of the property which were causing water ingress into her flat and which she ultimately repaired at her own personal expense.
13. The respondent had the opportunity to fully question both witnesses. His objections to the applicant's proposed manager were that he did not

already know her; her proposed fees are higher than the manager proposed by him; and finally that her management plan may not be implemented.

The issues

14. The respondent did not serve any evidence in accordance with the Tribunal's directions. However, notwithstanding his failure to comply with the directions and notwithstanding his position at the time of the case management conference, the respondent sought to argue that the Tribunal should not appoint a manager but should instead allow him to retain control of the property and appoint a managing agent of his choice.
15. In the alternative, the respondent argued that his preferred managing agent should be appointed as the manager. However, the respondent's proposed manager did not attend the hearing and no documentation or brochures relating to the proposed manager (which the Tribunal was informed was OCK Chartered Surveyors of North London) were provided by the respondent or his solicitor.
16. Mr Varma submitted that the Tribunal should not consider the new issues raised by the respondent and pointed to the fact that no reason had been given by the respondent for his failure to comply with any of the directions.
17. The directions include provision that the respondent shall by 30th April 2014 send the applicant a statement addressing the issues identified at the directions hearing and that, if supplied, any witness statements served must include a statement of truth. The directions also state "The proposed managers shall attend the hearing and be prepared to be questioned on their management plan and relevant experience."
18. The Tribunal accepts Mr Varma's submissions. The Tribunal also notes that, in any event, it heard the argument from the respondent in respect of his proposed revised case; that the respondent accepts that he has been in breach of his obligations under the lease and that there has been no management of the property for over a year; and, as stated above, the respondent's proposed manager did not attend the hearing. Accordingly, the Tribunal is satisfied that had it formally permitted the respondent to put forward a new case at the hearing, the outcome of the application would have been no different.
19. Mr Varma relied upon section 24(2)(a) of the 1987 Act and he stated that the most obvious example of a relevant breach of covenant on the part of the respondent is the respondent's failure to repair the roof. He stated that it is common ground that the property needs outside management; that the defects to the roof were not repaired by the

managing agents previously appointed by the respondent; and that it would be just and convenient in all the circumstances for the Tribunal to make the order sought.

The determination

20. By the second schedule to the lease, the reserved property includes the roof. By the seventh schedule to the lease, the respondent is required to keep the reserved property in good order repair and condition.
21. The Tribunal accepts the oral evidence of the applicant that the respondent failed to repair the roof of the property in breach of his repairing obligations.
22. The applicant first wrote to the respondent in May 2008 stating that the roof was leaking and that water was coming onto her bed. Following further correspondence from the applicant, the respondent chose and appointed GML as managing agents on 25th March 2010.
23. By letter dated 21st September 2010 to the applicant, GML state "I note that the matter of the roof repair is pressing, though I am sure you will appreciate that gml has its hands tied in this respect as we do not have sufficient funds to maintain the building and cover the costs."
24. The applicant ultimately replaced the roof in March 2013 at her own expense having kept the respondent informed of her intentions through her solicitors.
25. The applicant gave evidence that there were other failings on the part of GML and the Tribunal accepts her oral evidence and the written evidence set out in her witness statement. This includes a statement that in their initial service charge GML charged the applicant £200 a year in respect of the lighting of the common areas by the respondent notwithstanding the fact that the respondent's electricity meter has been disconnected since 1996. By the seventh schedule to the lease, the respondent is required to light the common parts and he has clearly failed to do so.
26. The respondent did not deny that he was in breach of obligations under the lease but he assured the Tribunal that he would comply with his obligations in the future.
27. Since the service of the notice pursuant to section 22 of the 1987 Act, the only documents which have been received by the applicant from the respondent are the resignation letter dated 21 June 2013 from his then agents GML and the recent letter from his solicitors dated 17th June 2014.

28. The respondent appears to have had difficulty in conducting the tribunal proceedings. As stated above, he attended the hearing without the bundle referred to in his own solicitors' letter. At the hearing he wished to argue that he should retain control of the premises or that a different manager should be appointed but he had not managed to comply with any of the Tribunal directions or to ensure the attendance of his proposed manager at the hearing.
29. The respondent has had every opportunity to comply with the section 22 notice. He could have appointed a manager following GML's resignation but instead there has been no management of the property for over a year. For the avoidance of doubt, the Tribunal rejects the respondent's submission that the applicant is responsible for his failure to manage the property.
30. The Tribunal is satisfied that the respondent is in breach of obligations owed by him to the applicant under her lease relating to the management of the property; that Ms Mary-Anne Bowring MRICS would be a suitable manager; and that it is just and convenient to make a management order in all the circumstances of the case. The Tribunal finds that the management order should subsist until 31 March 2018.
31. The fees which may be charged by Ms Bowring in respect of the preparation of notices under section 20 of the Landlord and Tenant Act 1985 fall within a relatively wide range. The Tribunal anticipates that proportionate fees will be charged in the present case and notes that either party may request further directions from the Tribunal, if required.

Application under s.20C

32. At the hearing, the applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of his costs incurred in connection with the proceedings before the Tribunal to the applicant through the service charge.

Judge Naomi Hawkes

23rd July 2014

Appendix of relevant legislation

Landlord and Tenant Act 1987

Section 24

24.— Appointment of manager by a tribunal .

(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

...

(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).

(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.

Landlord and Tenant Act 1985

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;

- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

LEASEHOLD VALUATION TRIBUNAL

MANAGEMENT ORDER DATED 23rd July 2014

Re: 4 Southampton Road, London NW5 4HX

Case Number LON/00AG/LAM/2014/009

BETWEEN:

Caroline LEAF

Applicant

Mr Bernard HAMMER

Respondent

1. In this order:

- A. "The property" includes all those parts of the property known as 4 Southampton Road, London NW5 4HX.
- B. "The landlord" means Mr Bernard Hammer or in the event of the vesting of the reversion of the residential under-leases of the property in another, the landlord's successors in title.
- C. "The manager" means Mary-Anne Bowring.

It is hereby ordered as follows:

2. In accordance with s.24(1) of the Landlord and Tenant Act 1987 the manager shall be appointed as a manager of the property with the functions of a receiver in relation to accumulated funds, ground rents, service charges and insurance premiums.
3. The order shall continue until 31st March 2018.
4. That 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 lessees and/or under-lessees by which the flats at the property are demised by the landlord and in particular with regard to the repair and decoration provision of services to and insurance of the property.
 - (c) The duties of manager set out in the Service Charge Residential Management Code (2009) ("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 of the Leasehold Reform Housing and Urban Development Act 1993.
5. An order is made under s.20C of the Landlord and Tenant Act 1987 that the respondent's costs before the Tribunal shall not be added to the service charges.

Judge Naomi Hawkes

23rd July 2014

DIRECTIONS AND SCHEDULE OF FUNCTIONS AND SERVICES

1. That from the date of appointment and throughout the appointment the manager shall ensure that she has appropriate professional indemnity cover in the sum of at least £5,000,000 and shall provide copies of the current cover note upon a request being made by any lessee or under-lessee of the property, the landlord or the Tribunal.
2. That not later than 14 days 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 landlord shall transfer to the manager all the accounts, books, records and funds (including without limitation, service charge reserve fund).
3. The rights and liabilities of the landlord arising under any contracts of insurance, and/or any contract for the provision of any services to the property shall upon the date 14 days from the date of this order become rights and liabilities of the manager.
4. That the manager shall account forthwith to the landlord for the payment of ground rent received by her and shall apply the remaining amounts received by her (other than those representing her fees) in the performance of the landlord's covenants contained in the said leases provided always that should any of the flats owned by the landlord be in arrears of service charge then the

manager shall be entitled to deduct any rent received and apply the same towards the said arrears as she shall see fit.

5. That she shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of the under-leases and/or leases of the property) in accordance with the Schedule of Functions and Services attached.
6. That the manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited to) the following events:
 - (a) any failure by any party to comply with paragraph 2 of these directions and/or;
 - (b) in the event that there are insufficient sums held by her to pay the manager's remuneration.

A. SERVICE CHARGE

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the under-lessees as per the percentage share under the terms of their under-lease with the landlord to pay in respect of any flats retained by the landlord the balance of the service charge.

- 1.2 Demand and collect rents, service charges, insurance premiums and any other payments due from the under-lessees and landlord. Instruct solicitors to recover unpaid rents, service charges and money owing.
- 1.3 Place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the property within the service charge budget.

B. ACCOUNTS

- 2.1 Prepare and submit to the landlord and underlessees an annual statement of account detailing all monies received and expended on its behalf.
- 2.2 Produce for inspection upon reasonable written notice, receipts or other evidence of expenditure.
- 2.3 All monies collected on the landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution of Chartered Surveyors, subject to the manager receiving interest on the monies whilst they are in her client account. Any reserve fund monies to be held in a separate client account with interest accruing to the leaseholders .

C. MAINTENANCE

- 3.1 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 building.
- 3.2 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 landlord and the under-lessees.

3.3 The setting up of a planned maintenance programme to allow for the periodic re-decorations of the exterior and interior common parts.

D. FEES

4.1 Fees for the above mentioned management services would be a basic fee of £1,500 per annum plus VAT for the whole of the property. Those services to include the services set out in paragraph 2.4 of the Service Charge Residential Management Code (2009) published by the RICS. Any work carried out over and above those services to be charged in accordance with the charges set out in the management plan of Ms Bowring dated 4th May 2014.

4.2 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.

4.3 The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described at 4.1 above, are to be charged for on a reasonable fee basis.

4.4 If the manager shall so choose, and if it shall be expedient to do so in her reasonable opinion, she shall be entitled to instruct Ringley Limited Chartered Surveyors and its staff to manage the building on her behalf provided that in so doing the manager hereby undertakes to the tribunal to not to instruct them otherwise than on their standard terms of business produced in proceedings and a copy of which is attached hereto.

E. RIGHT TO PROSECUTE CLAIMS

5.1 The manager shall be entitled to bring proceedings in any court or tribunal in respect of any causes of action (whether contractual or tortious) accruing before or after the date of this appointment.

5.2 Such entitlement shall include, but shall not be limited to, bringing proceedings in respect of any arrears of service charge and/or ground rent attributable to any of the flats in the building and for which purpose 'proceedings' shall include any application made under Part 7 or Part 8 of the Civil Procedure Rules 1998 for judgment in the County Court or High Court or any application made to the First Tier Tribunal (Property Chamber) under s.27A Landlord & Tenant Act 1985 or s.168(4) Commonhold & Leasehold Reform Act 2002 and shall further include any appeal made against any decision made in any such proceedings.

5.3 The manager shall be entitled to be reimbursed from the service charge account any costs, disbursements or VAT payable to any solicitors, accountant, counsel or expert on a full indemnity basis. The manager may require the Landlord to provide reasonable funds on account to enable her to take action against the leaseholders to recover service charges.

F. COMPLAINTS PROCEDURE

6.1 The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the institution on request.