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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AK/LAM/2016/0005**
Property	:	**1-6 Cranmere Court, 9 Crofton Way, Enfield EN2 8HT**
Applicant	:	**Annabel Elizabeth Effie Ntow**
Representative	:	**In person**
Respondent	:	**1-6 Cranmere Court Management Limited**
Representative	:	**Philip Simmons (managing agent and director of Respondent)**
Type of application	:	**Appointment of Manager**
Tribunal member(s)	:	**Judge Hargreaves** **M. Cairns MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**15th April 2016**

DECISION

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1. The Applicant's application to appoint Martin Kingsley of K&M Group Limited as manager of the property in accordance with section 24(1) Landlord and Tenant Act 1987 is refused.

2. For the avoidance of doubt it is not just and equitable to make a *s20C* order in the Applicant's favour.

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REASONS

1. Page numbers refer to those in the trial bundle where relevant. In addition to those documents the Respondent's representative provided further photographs and copies of service charge accounts, service charge demands, and estimated demands on account from 2008, which we have taken into consideration, particularly since the Applicant had received copies of these documents as a tenant.

2. This is an application borne out of the Applicant's frustration with the management of Cranmere Court, a block of 6 flats built in the 1960's. Mr Simmons has managed the block and the communal parts since 2008. He has the support of all the other leaseholders who have provided evidence of their support to the Tribunal (p117-123). Before we provide detailed reasons for rejecting the application we wish to make it clear that they do not involve any negative findings about the proposed manager's (Mr Kingsley's) suitability as a professional for the role of manager, though we have a number of observations which are relevant to this case.

3. The Tribunal heard submissions and evidence from the Applicant, Mr Simmons, Mr Kingsley, and Mrs Antoniou (p121). The most substantial issue in terms of money is the question of liability for repairs to Garage 4; the other items are relatively small in value. This is a matter we take into account in considering what is just and convenient.

Liability for repairs to Garage 4

4. Before turning to the less financially substantial itemised issues, it is necessary to turn to the terms of the relevant lease (extended pursuant to collective enfranchisement and statute for 999 years from the date of the lease and replacing earlier leases), dated 2nd November 2011 and at p27 of the bundle. There is an important construction point which arises for consideration because part of the background to the application is the Applicant's dissatisfaction with the Respondent's failure to carry out major repairs to her garage, which is plainly in a ruinous condition (the roof has caved in) as the photographs at p103-105 demonstrate. Mr Kingsley's ballpark figure for repairs is £15-20,000. Mr Simmons' figure for repairs is up to £1500. She has not explored the cost herself, but applied to the insurers for the costs of repair, to be refused. The position of the Respondent, as represented by the others leaseholders and directors, is that they are individually responsible for the repair and maintenance of their own garages. The Applicant insists that it is the Respondent's liability.

5. The Applicant acquired Flat 4 and Garage 4 in 2006, when she was aware that the condition of the garage was poor. She has never used the garage or carried out repairs. Her service charge proportion is (see the *Particulars* of the lease) "*A fair proportion of the*

Expenditure" and the *"Property"* demised is described as *"The flat on the first floor of the Building and shown red on the plan annexed to the Lease as is more particularly described in the First Schedule and known as Flat 4 .. and Garage 4"*. See the plan at p59. The fact that the flat is described as being on the first floor of the *"Building"* points to *"the Building"* being that part of the freehold which comprises the residential block. In clause 1, the definitions section, *"Building"* is defined as *"1-6 Cranmere Court ... of which the Property forms part and registered at HM Land Registry under title number AGL112847"*. It is clear from the file plan that Garage 4 is included in the freehold title. Contrary to the Applicant's submission, the fact that the freehold title includes the Garage does not mean that Garage 4 is part of the *Building* for the purposes of the repairing covenants.

6. Specifically, clause 4.2 requires the Applicant *"To keep the Property and each and every part thereof in good and substantial repair throughout the Term ..."*. That includes Garage 4. When considering how far those covenants extend, reference should also be made to Schedule 1 which describes *"Flat number 4 (including garage 4) on the first floor of the Building including:"* followed by a list of structural items such as the interior of load bearing walls but not (as would be expected) the exterior of those walls. The rest of Schedule 1 assists in identifying the parts of the Flat which are the Applicant's liability but nothing as a matter of construction qualifies her liability in respect of Garage 4. To add to that, Garage 4 is sandwiched between other garages which do not even form part of the same development or registered title, the Respondent thereby (arguably) having no rights or obligations on the face of it to access any part of those garages to maintain Garage 4 in any event.

7. The Respondent covenants at clause 5.5 *"To provide and perform the Services listed at Schedule 4 of this lease."* These include the Respondent's repairing covenants. With regards to Schedule 4, its references to obligations in respect of *"the Building"* and *"Common Parts"* emphasise that as a matter of construction Garage 4 is neither part of the *Building* nor the *Common Parts* which reflects the positive repair liability of the Applicant in respect of Garage 4 which is set out in clause 4.2 (above). We note that the Respondent insures the garages under the block insurance policy but that does not affect the basic liability of the Applicant as a matter of the construction of the lease for her own repairs in relation to Garage 4.

8. In her amended[1] *s24* notice (p12) the Applicant asks for (1) an order requiring the Respondent to replace the roof structure of garage 4 and (2) a *s20C* order in respect of her costs. The grounds of her application are (1) the Respondent has breached the terms of a mediation agreement made in April 2013 (2) the Respondent is in

[1] It is not clear whether the fact that an amended notice was submitted in early April was considered procedurally: but as it involved deleting a number of claims, the Tribunal proceeded on the basis of the amended notice.

breach of its repairing obligations and (3) there are other circumstances which make it just and convenient for the order to be made. She prepared a draft management order containing specific requirements as to Garage 4 and guttering affecting her flat (see eg draft clause 4 p61), and a supporting witness statement at p66 which contains additional grounds. For the sake of completeness we will deal with all the grounds relied upon by the Applicant.

Breach of liability to repair Garage 4

9. For the reasons given above, the Respondent is not liable to repair Garage 4 as a matter of the construction of the Respondent's repairing covenants. Even if (assuming the Tribunal is wrong) it has a liability to repair it, the Applicant's service charge would include a *"fair proportion"* of the relevant expenditure. That would, arguably, on the facts we have heard, include the *whole* of the relevant expenditure because the Applicant has not paid towards the costs of any other garage repairs which have been carried out by the other leaseholders at their own expense. The financial outcome for her is the same. So if we are wrong as a matter of construction of the lease, so that there is a breach under *s24(a)(i)*, it would not be just and convenient to make the order in any event. It might be just and convenient if the breach prejudiced her financially or otherwise, but her assumption that somehow the cost to her would be less if the Respondent carried out the works is misplaced. It is also notable that her proposed manager's estimate for repairs is about 10 times that of Mr Simmons, which would have grave financial consequences for her, given her current financial relationship with the Respondent (see below).

Breach of the mediation agreement March 2013

10. In her witness statement the Applicant carefully explains how with increasing dissatisfaction she issued an application to the Tribunal seeking the appointment of a new manager in January 2013, which was mediated by another Tribunal Judge, see p81-83. The Applicant contends that the agreement has been breached in the following circumstances, and that Mr Simmons, who was present and signed up to it, deserves to be replaced for failing to implement terms to which he evidently agreed. For his part, he was frank enough to tell the Tribunal that having started the mediation at 10am, he was ready for a deal by 5pm in order to have achieved something. He also told the Tribunal that when he received the current application, he wrote to the Respondent's directors to offer his resignation, which they refused to accept.

11. We deal with these allegations on the assumption that it is open to the Applicant to rely on the mediation agreement pursuant to *s24(2)(b)*.

12. However, possibly the most surprising revelation in relation to the mediation agreement is that the Applicant herself is in breach of clause 6, her obligation to pay arrears of service charge in the sum of £1091.88 by 1st June 2013. That is a stark fact which could and should have been brought to the Tribunal's attention by the Applicant (not just by Mr Simmons in his response on the mediation agreement), particularly when she is seeking to argue that it is *"just and convenient"* to make an order and deploy judicial discretion. It transpires that she recalls she paid part of the sum, refused to pay the rest, and is now over £3000 in arrears with her service charges, being the only leaseholder to be in arrears. It follows that it is arguable that by being in breach of her own obligations, she must have solid grounds for this application.

Unauthorised tree works

13. This appears to relate to item 2(b) of the mediation agreement. The Applicant contends that works were carried out to a tree in breach of the TPO regulations. There was some confusion as to which tree was the subject of her complaint. Mr Simmons' oral evidence, supported by his indication of where the tree was on the file plan (doing his best with the scale), was that the tree in question was not on the Respondent's property, but on neighbouring land which he also managed (the details of the tree works are not relevant). The Applicant located the relevant tree in a different position though the mediation agreement states that the tree was felled *"on the boundary"*. Doing our best with this conflict of evidence, the Tribunal accepts Mr Simmons' evidence: it follows that the dispute about the unauthorised works to a tree is irrelevant to this application.

Meeting with Mr John

14. The next allegation is that Mr John, also a signatory to the agreement and a director, failed to meet the Applicant within a month of the agreement to arrange the Respondent company's meetings and their frequency, in breach of clause 2(c) of the agreement. That is first of all a failure of Mr John and nothing to do with Mr Simmons. Secondly the Applicant frankly told the Tribunal that she had not chased him up personally to hold a meeting and when we suggested that the evidence amounted to a *"massive failure of personal communication on both sides"*, the Applicant accepted that was a fair summary. It would not be just and convenient to make an order on this basis at all even if the breach is that of the Respondent or Mr Simmons.

Failure to repair, overhaul and replace rain water goods as required

15. This is item 1 on the schedule attached to the mediation agreement. The Applicant says it remains outstanding. Mr Simmons accepts

that the item was not completed within 3 months but in February 2014 he replaced the rear guttering which was the subject of the complaint. It is cleared twice a year (with the reach and vac system) and otherwise when there are specific complaints. The Building is near a wooded area and the gutters require regular attention. He said he had no contact with the Applicant in relation to the occasion in July 2015 when there was heavy rain and the gutters overflowed (see p94) and there was no evidence in the bundle that the Applicant had drawn his attention to any problem then. Photographs show her balcony doors to be in a poor condition and the Applicant accepted that they are original and now need replacing (as the others in the Building appear to have been). They appear to lack a water bar.

16. In reply (orally) the Applicant said she contacted the directors, not Mr Simmonds, due to their bad personal relationship. It follows that he cannot be held responsible if problems do not come to this attention. His technical breach in not remedying the guttering in 3 months by the end of June 2013 would not make it just and convenient to replace him, given the overall history of this complaint and the Applicant's own acceptance that she needs to replace her (evidently, if occasionally, leaking) balcony doors.

Damp to exterior of wall of Flat 2

17. Curiously this (item 2 in the mediation schedule) does not affect the Applicant directly. Mr Simmons explained that he remedied this problem by fixing a leaking washing machine hose in Flat 2. On the evidence taken, there are no outstanding issues in relation to Flat 2 that are properly before the Tribunal in terms of reliable evidence.

Inspect and overhaul communal porch roof

18. This is item 4 on the mediation schedule. The Applicant maintains that there has been a cracked roof tile on the porch since 2013. Mr Simmons says he has inspected the roof tiles and cannot see one (p96) nor could he find any evidence of damp to the porch ceiling. He says he has complied with item 4. The Applicant produced a photograph of a fungal growth in skirting in the porch which she claimed was evidence of damp (p97) but on questioning accepted that she did not bring it to anyone's attention, it disappeared after a couple of days, and has not returned. Again, it would be hard to see how one example of fungal growth discovered before the Applicant produced her witness statement (10th March 2016) evidences a breach of item 4 of the mediation agreement requiring action by June 2013, and there is no probative evidence to suggest that it is indicative of further repair issues.

Clause 4 of the mediation agreement

19. This provided that within 12 months of the agreement (March 2014), Mr Simmons would prepare a 10 year maintenance plan

which would be agreed by the directors. This is part of the agreement he had in mind when referring to the effect of a long day's mediation, as he frankly admitted this had not been done. He said he discussed it with the directors who said they did not require one; the terms of the lease are sufficient. For her part the Applicant contended that if there was a plan at least she would know where her service charge is going: this however is undermined by the clear evidence (which also relates to the next point) that despite the fact that she has received clear income and expenditure accounts, clear estimated invoices on account, and regular quarterly service charge demands, she is not interested in being up to date. There is a balance of around £4000 held on account which would be around £7000 if she paid her arrears. At the moment, the evidence is that the property is being maintained at the expense of the other leaseholders and it is hard to see how the failure to produce a long term maintenance plan would prompt her to pay her arrears. In these circumstances, even if there is a breach of clause 4 of the mediation agreement, it is hard to see why it would be just and convenient to make the order sought.

Clause 5 of the mediation agreement

20. This requires future service charge expenditure to be accompanied by a breakdown of repairs and maintenance expenditure. On the basis of the comprehensive documentation produced by Mr Simmons (as to which he was able to answer questions promptly and with some familiarity), there is no breach of this requirement.

21. For the above reasons, the Applicant has failed to bring her application within the provisions of *s24(a)* or *(b)*.

22. For the avoidance of doubt, the Tribunal raised a number of inquiries of Mr Simmons and Mr Kingsley respectively. Whilst it is the case that Mr Simmons has no professional qualifications and is not a member of any professional body (1) he has been managing property since 1998 (2) has three employees (3) manages over 2400 individual units (4) does not advertise but obtains work by recommendation (5) is familiar with the RICS code (6) personally visits properties (6) holds money in client accounts (7) is insured to 2.5m euros (8) charges the Respondent £1390 including VAT pa (9) takes 20% commission on the building insurance (10) but does not charge extra for s20 notices/out of hours meetings/major works/claiming arrears.

23. By contrast Mr Kingsley is a member of MIRPM and is ARICS qualified. See p64-65. He has his own business. He has been appointed as a manager by the Tribunal in other cases. He would charge £2500 plus VAT pa, and £250 for s20 notices, though passes commission for building insurance back to the lessees. His standing charge is therefore higher, as was his estimate for repairing Garage 4. He thought the property, which he had visited 2 months ago,

required some repair but had no particular matters to draw to the Tribunal's attention. He described a robust procedure he would follow in chasing service charge arrears was not aware that the Applicant was in arrears with her service charge payments and was not familiar with the state of her balcony doors. He has a smaller number of employees but manages an out of hours system. As we indicated, this decision does not reflect on his professionalism, though his estimate of the cost of the repairs to the garage seems high to say the least, but is due to the Applicant's failure to make out her case.

24. In considering what is just and convenient, in addition to the points made above, we take account of the strong support for Mr Simmons from the other leaseholders and directors, none of whom are in arrears with their service charge. Their position deserves to be accorded real weight when compared with the Applicant's complaints which are either unsubstantiated in several cases (including her construction of the repairing covenants for Garage 4) or too trivial to justify the appointment of a more expensive alternative. In particular the Applicant has failed to show the Tribunal why the appointment of Mr Kingsley would be convenient in the light of the evidence given by Mr Simmons as to his own practices and 8 years worth of experience managing the Building. Having heard him give evidence we were impressed by his attention to detail: his oral evidence more than compensated for his written evidence, which was not sufficiently detailed.

Judge Hargreaves

M.Cairns MCIEH

15th April 2016

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).