



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

Case Reference : CHI/21UD/LAM/2016/0013

Property : 32 West Hill Road. St Leonards TN38 0NB

Applicant : Mr Peter Simpson and Mr David Banks

Respondent : Mr Christopher Roe represented by Mr John Nixon, Solicitor, Gurney Harding Solicitors.
Mr Markham in attendance

Type of Application : Application by a tenant for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987

Tribunal Member(s) : Judge S. Lal LLM
Mr Richard Athow FRICS MIRPM

Date of Inspection : Thursday 22nd June 2017

Date of Decision : Friday 23rd June 2017

DECISION

The Application

1. This is an application under Section 24 of the Landlord and Tenant Act 1987 (the 'Act') by the Applicant Mr Peter Simpson for the appointment of himself as a Manager. The Applicants also seeks an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985.

2. The Tribunal inspected the Property on 22nd June 2017 and considered the Bundle provided jointly by the parties in accordance with the Tribunal directions.

3. The property is situated in the residential district of St Leonards, part of Hastings town. It is situated just back from the seafront and the A259 trunk road. Local shops and facilities are within easy reach.

4. The property is mid-terraced and was built in the mid 1800's and is of substantial size over five floors. The exterior is rendered and colour washed under a concrete tiled roof. There is a two storey extension at the rear of similar construction but with a flat roof. Windows are a mix of wood sliding sashes and uPVC double glazed units. There is a large dormer on the top floor visible from the rear garden. Its construction was not inspected.

5. The property is set on sloping hillside and the layout gives a flat in what was described as the basement level (road level). This flat has its own entrance, separate from the other flats. There are external steps leading up to the entrance floor where there is an entrance door giving access to the communal hall and staircase and this is used by the other three flats. There is one flat on the entrance floor, another on the next floor and a maisonette on the top two floors. The front garden has been concreted over to provide off-street parking. The rear garden is steeply sloping and overgrown.

6. The Tribunal noted at the inspection that there was only one battery operated smoke detector which was situated in the communal hallway of the entrance floor. Whilst the front of the building has been decorated in recent years, the rear has not been decorated for many years, and this is long overdue. The communal areas that were inspected by the Tribunal were in reasonable decorative condition although there was some damage to the walls.

The Case for the Applicant

7. The Tribunal had regard to the Statement of Truth supplied by Mr Simpson as well as the supporting documentation in the Bundle. In summary, he described how he became a leaseholder in 1986 and Mr Banks in 1990. He states that Mr Banks has been the unofficial manager for the last 27 years. He described a history of difficulties in trying to recover monies from Mr Roe and a settlement reached following action in the County Court in 2015. Mr Simpson also highlighted what he says are difficulties encountered when dealing with HAS, the current manager and the demands for service charges. The current application was served in the basis of what is described as uncertainty of the status of accumulated money from HAS service charges. He claimed that in January 2017 Mr Roe agreed to Mr Simpson managing the building providing that no management fees were charged which Mr Simpson rejected. Some service charges remain unpaid pending the outcome of this application.

8. In response to questions from the Tribunal he confirmed he was not a professional manager and had no relevant qualifications but asked the Tribunal to note that he had experience in respect of another block and also a six flat unit, one of which was owned by his sister. He was in full time employment and he described the main duties were he to be appointed to be to the leaseholders and freeholder and the subject premises. The latter was his main concern.

The Case for the Respondent

9. In his Defence Statement, Mr Roe confirmed that he is the freeholder of 32 West Hill Road and Leaseholder of Flats A and C. In summary, he confirms that Mr Banks was the unofficial caretaker of the building as Mr Banks lived on site. He states that he only charged the insurance premium and ground rent and that he had to chase Mr Simpson. He stated that he in fact asked Mr Banks to carry out the works to the communal areas. He raised the issue that Mr Banks may well be responsible for some of the work not being done to the chimney stack area as he was overseeing it. He denied ever refusing to pay monies and states that the 2015 judgement was because he was unaware of the court case. He says that his dealings with HAS have been very good and that they were brought in because he did not trust Mr Simpson following the earlier court proceedings. He relied on the formal HAS management proposal which is set out in the witness statement of Mr Barry Markham, the Proprietor of HAS Property management which was contained in the Respondent's response to Directions.

10. In his submission, Mr Nixon stated that the appointment of Mr Simpson was neither just nor convenient because it would perpetuate the conflict of recent years.

11. The Tribunal heard from Mr Markham who spoke of his own experience as a Manager Agent and he also set out the reasons behind the service charge demand that had provoked the application, namely that sum demanded was an estimate for works that were in fact never carried out and that this was refunded in any event. He submitted that he hoped that HAS would carry on managing the premises after their first year.

The Reply

12. Mr Simpson prepared a Reply in which he questioned the accounts prepared by Mr Roe as well as asking the Tribunal to note that any suggestion that he cannot manage money is without substance. In oral submission he accepted that the explanation for the service charge was adequate.

The Law

13. The Tribunal had regard to the provisions of Section 24 of the 1987 Act which gives the Tribunal a discretion to appoint a manager to carry out such functions in connection with the management of the premises. The exercise of such discretion is demarcated by the following considerations

- that the landlord is in breach of an obligation owed to the tenant, under the terms of the lease, in the management of the building; or
- that the landlord has demanded, or is likely to demand, unreasonable service charges; or
- that the landlord has failed to comply with any relevant provision of an approved code of management practice (e.g. the Royal Institution of Chartered Surveyors' Residential Management Code); or

- that unreasonable variable administration charges have been made, or are proposed or are likely to be made; or
- that such other circumstances exist for it to be just and convenient for an order to be made; *and*
- That it is just and convenient for the order to be made in all the circumstances

Decision

14. Having considered the evidence with care the Tribunal is satisfied that the premises had been managed on an ad hoc basis by Mr Roe and Mr Banks for very many years. Mr Banks appears to have arranged much of the remedial work on an as and when required basis and he was able to do this either by carrying out the work himself or by using contractors. This relationship appears to have broken down in 2015 and consequently Mr Roe appointed professional managers, HAS.

15. The Tribunal finds that matters were not communicated as well as they could be and that this has led to conflict with Mr Simpson and Mr Banks as to what they perceive to be a lack of financial transparency. The Tribunal finds that the formalisation of management functions away from the Freeholder involved all parties becoming used to processes that hitherto had been informal.

16. The Tribunal found telling the submission by Mr Banks (who now finds himself allied with Mr Simpson) that he could get things done cheaper than HAS. Mr Banks has historically charged nothing for acting as the Manager. The Tribunal is satisfied that the relationship between Mr Roe and Mr Simpson is now one of mutual suspicion although it also noted that Mr Simpson quite properly accepted that he has now had satisfactory answers to the service charge demand that had prompted his application. The Tribunal is satisfied that much of the suspicion is due to poor communication.

17. Turning to the issue of whether Mr Simpson can succeed in his application to be appointed the Manager of this troubled block, the Tribunal is satisfied that he cannot. The Tribunal is satisfied that although maybe well intentioned the application is misguided. Formal qualification is not a prerequisite for appointment but the Tribunal is satisfied that Mr Simpson is not fully aware of the duties, rights and responsibilities of being appointed to this role by the Tribunal. He did not seem to be aware that this is a Tribunal appointment, and that his primary responsibility would be to the Tribunal.

18. Further although there is no prohibition for a leaseholder being appointed a Manager, in the particular circumstances of this case, the Tribunal is satisfied that it would not be just or convenient for Mr Simpson to be the Manager. It would not be just because it would perpetuate the animosity between leaseholder and freeholder/leaseholder. Mr Roe, rightly or wrongly would not view Mr Simpson as an “honest broker” in the role as a Manager.

19. The Tribunal is satisfied that it would not be convenient either as it would perpetuate the existing conflict as neither side trusts the other to perform their respective duties. The Tribunal is satisfied that it would be only a matter of time that Mr Roe, either as Freeholder or leaseholder would question the ability of Mr Simpson to adhere to the duties of a Manager. The Tribunal is satisfied that the current application is misconceived and Mr Simpson has not discharged the legal and evidential burden upon him. The Application is accordingly refused.

20. The Tribunal notes that all parties appear to be engaging with Mr Markham and HAS as the current Managing Agent and ultimately they may prove to be an effective vehicle through which to manage the best interests of the subject premises.

21. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicant, although failing in his attempt to be appointed a Manager, has succeeded in obtaining disclosure of documents that go some way to explain concerns that he may have had and therefore it would be appropriate to make such an order.

22. Finally the Tribunal notes that both parties seem to want the best for the subject premises and the Tribunal hopes that following this Decision, both sides can move forward in a constructive way rather than having to resort to litigation in the future.

23. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

24. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

25. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S.Lal.....