

12184



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

Case reference : **LON/00AH/LAM/2017/0006**

Property : **Dagnall Court Dagnall Park South
Norwood London SE25 5PJ**

Applicant : **Caroline Maxwell**

Representative : **In person**

Respondent : **E King Limited**

Representative : **Mr W Beetson of counsel**

Type of application : **Application in relation to the
appointment of a manager**

Tribunal member(s) : **Mrs E Flint FRICS
Mr O N Miller BSc**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **18 May 2017**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes an order in the terms attached appointing Mr Paul Cleaver 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 landlords' costs of the Tribunal proceedings may be passed to the applicant through any service charge.

BACKGROUND

- A. The tribunal has received an application under section 24 of the Landlord and Tenant Act 1987 ("the Act") for the appointment of Mr Paul Cleaver of Urang Property Management Limited as manager of Dagnall Court Dagnall Park London SE25 5PJ ("the premises").
- B. The applicant also made an application under section 20c of the Landlord and Tenant Act 1985.
- C. A preliminary notice under section 22 of the Act dated 18th August 2016 was served on the respondent.
- D. The tribunal identified the following items for determination:
 - a. Is the preliminary notice compliant with section 22 of the Act and if not should the tribunal make an order in exercise of its powers under section 24(7) of the Act
 - b. Do the applicant's grounds satisfy section 24(2) of the Act
 - c. Is it just and convenient to make the order.
 - d. The suitability of the proposed manager, the terms and any appointment.
 - e. Should the tribunal make an order under section 20C of the landlord and tenant act 1985 to limit the landlord's costs that may be recoverable through the service charge and/or order the reimbursement of any fees paid by the applicant.

THE LEASES

1. The four flats within the block are subject to leases which each demise a maisonette, part of the garden and a garage for a term of 99 years from 25th March 1963, the term of each was subsequently extended to 149 years from the same date.
2. The lessee covenants to pay ground rent and "*by way of further rent a sum or sums of money equal to the amount which the Lessor may*

expend in effecting ...insurance of the building". By clause 2(i) the lessee covenants to "at all reasonable times permit the lessor and its lessees with workmen ... to enter into and upon the demised premises ... for the purpose of repairing maintaining rebuilding cleansing lighting and keeping in good order all sewers drains pipes cables watercourses gutters wires party structures or other conveniences belonging to or serving or used for the same and any adjoining premises"

3. By clause 4 the lessee also covenants to repair and maintain and decorate the interior and exterior of the demised premises.
4. The lessee further covenants at 4(v) to contribute a proportion to the expense of repairing and maintaining the common parts, including the gutters and pay one quarter of the cost of roof repairs. The clause requires the lessee to "*keep the landlord indemnified against all costs and expenses aforesaid.*"
5. Under the Second Schedule the lessee is entitled to use the entrance door and stairway used in common between No.s 2 and 3 subject to paying half of the costs of maintenance and repair and the electric lighting.

THE HEARING

6. Miss Maxwell appeared and gave evidence on her own behalf. Mr Beetson of counsel called Mr Brian Turner of E King Ltd to give evidence on behalf of the respondent.
7. After the evidence of both witnesses there was a short adjournment during which the parties agreed to ask the Tribunal to appoint Mr Paul Cleaver as manager on the terms set out in the draft management order which they presented to the Tribunal.
8. Mr Cleaver gave evidence and was questioned by the Tribunal.

THE DETERMINATION

9. The Tribunal is satisfied having heard from the parties and the proposed manager that it is just and convenient to make the order, the minor adjustments as agreed between the parties appear in the attached order.

APPLICATION UNDER S.20C

10. Miss Maxwell asked the Tribunal to make an order under section 20c. The grounds for her application were that the lease does not provide for the costs to be recovered, her case was not unreasonable, she had tried to resolve the problems without success and consequently had no choice but to make the application.

11. Mr Beetson agreed that there did not appear to be any provision in the lease for the recovery of the landlord's costs but nevertheless asked the Tribunal not to make the order.

THE TRIBUNAL'S DETERMINATION

12. Having considered the submissions from the parties and taking into account the determination 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 respondents may not pass any of their costs incurred in connection with the proceedings before the Tribunal to the applicant through the service charge.

REASONS FOR THE DETERMINATION

13. On the evidence presented during the substantive hearing it was clear that no one was managing the property, that items of repair had been identified several years earlier but no action taken to carry out any work. The applicant had no choice but to make the application owing to a lack of communication by the landlord.

Name: Evelyn Flint

Date: 26 May 2017

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

Landlord and Tenant Act 1937

Section 22

22.- Preliminary notice by tenant.

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—

(i) the landlord, and
(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which [any person on whom the notice is served] may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with ;

(c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

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.

PROPERTY: DAGNALL COURT, DAGNALL PARK, LONDON SE25 5PJ

MS CAROLINE MAXWELL

Applicant

And

E KING LTD

Respondent

MANAGEMENT ORDER

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Paul Cleaver of Urang Property Management Ltd ('the Manager') is appointed as manager of the property Dagnall Court, Dagnall Park, London SE25 5PJ ("the Property").
2. The order shall continue for a period of 3 years from 1 July 2017, to be extendable by a further two years following approval by the Tribunal. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
3. 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 leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('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 Leasehold Reform Housing and Urban Development Act 1993.
4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks 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 Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1 July 2017 become rights of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
6. The Manager shall be entitled to collect a sinking fund for the property in order to be able to carry out necessary repair works across several years if appropriate. The Manager shall be entitled to collect funds from lessees and arrange major works directly rather than carrying them out jointly with the lessees as specified in the leases, and to pay collect funds to cover all professional fees related to such works or to assist its management functions
7. The percentages payable by each flat/maisonette for all works shall be set at 25% each on the understanding that each unit is roughly the same size (the lease says to use rateable value or due proportion). Service charges will be payable yearly in advance on the 1st July
8. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts at year end to the lessees.
- (ii) Set demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Set demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Manager.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external accountant, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.

Maintenance

- (i) 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 Property. Comply with all relevant health and safety law and regulations from time to time.

- (ii) 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 Respondent and the lessees.
- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.
- (iv) Appoint Surveyors as soon as practicable after the appointment, to (a) provide a full survey of the building, (b) identify any structural or other damage or issues to the building.

Fees

- (i) Fees for the above management services will be a basic fee of £325 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS. Such fee may increase year to year based on inflation.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost (subject to a minimum fee of £500), excluding the cost of the specification. This is in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis. Time will be charged at £125 per hour for a property manager, £150 per hour for a senior property manager or head of finance or legal and £200 per hour for the director of Urang. This will include for time spent on any issues that do not constitute normal day to day management and/or that pre-date this appointment, including fees charged to the Applicant for preparing for this appointment

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Association of Residential Managing Agents.

