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

Case Reference : CAM/11UC/LAM/2010/0003

Property : 2 & 4 Harding Road, Chesham,
Bucks, HP5 3BB

Applicant : Miss J. Robinson
Mrs. D. Byrne

Unrepresented

Respondents : Lynden House RTM Co. Ltd
H & D Property Services Limited
Ms. Foskett,
Mr. & Mrs. Lee,
Mr. Cholerton,
Mr. & Mrs. White

Date of Application : 20 July 2010

Type of Application : Application for an Appointment of a
Manager pursuant to section 24 of the
Landlord and Tenant Act 1987 ("the
Act")

Tribunal : Judge J. Oxlade
Ms. M. Krisko BSc. (EST MAN) FRICS
Mr. A. Kapur

**Date and venue of
Hearing** : 23rd October 2013
Bobsleigh Hotel, Hempstead Road,
Bovingdon, Herts, HP3 0DS

Attendees :

<u>Applicant</u>	<u>Respondent</u>
Miss J. Robinson	no attendance
Mrs. D. Byrne	Mr. Keith Thompson FRICS

DECISION

For the following reasons, the Tribunal varies the date of expiry of the appointment of Mr. Keith Thompson FRICS as manager of the premises by

extending it to 23rd January 2017, but otherwise on the same terms and directions as contained in the Order and Directions dated 24th January 2011.

REASONS FOR DECISION

Background

1. On 24th January 2011 the Tribunal appointed as manager of the premises, Keith Thompson FRICS, from Thompson Wilson Chartered Surveyors, pursuant to section 24 of the Act. The reasons for doing so were set out in detailed reasons dated 26th January 2011. The appointment was to expire on 23rd January 2014.

2. In early July 2013 the Tribunal received from Miss Robinson, one of the Applicants, three pieces of correspondence in which she raised various issues, of which the most important were as follows:

- (i) suspected subsidence affecting her flat, caused by a Scots Pine, which she had arranged to be felled (and paid for),
- (ii) whether an insurance excess of £1000 was payable from the service charge account, to progress a claim made by Miss Robinson in respect of the subsidence,
- (iii) the quality of roof works done by BP Bennett Roofing Contractors, whether works had been done in accordance with the specification provided, and whether the costs was in accordance with the quote,
- (iv) whether all of the works recommended in the improvement notice dated 19th July 2010 had been completed,
- (v) whether the Manager should have undertaken any gardening, and whether it was of sufficient quality to justify the costs,
- (vi) there were extensive shrubs and trees which needed management,
- (vii) she had asked Mr. Thompson for, but not received, copies of various documents.

3. The Tribunal treated the correspondence as an application to vary or discharge the Order, pursuant to section 24(9) of the Act and considered that it was an appropriate time to review how the Order for appointment of the Manager was proceeding, what works had been done to meet the improvement notice, and to have an eye to a programme or works for the next 18 months to include forecasting of likely future service charges. Further, to consider whether or not the appointment of manager should be extended beyond the original term, if Mr. Thompson was willing to do so.

4. The application was listed for hearing on 23rd October 2013, and the lessees were notified of the hearing. Some of the lessees indicated in

correspondence to the Tribunal that they would wish for the Order to be discharged: Ms. Byrne, Ms. Foskett, Mr. Cholerton, and Mr. & Mrs. White.

5. The lease of flat 6 had recently been sold by Mr. Taylor to Mr and Mrs. Lee. The Tribunal notified Mr and Mrs Lee of the hearing, sent them copies of the decision of 26th January 2011, the Order of 24th January 2011, and reasons for decision. They were invited to make comment on the application, but did not do so.

Inspection

6. Prior to the hearing the Tribunal inspected the common parts of the premises in the company of Mr. Thompson, Mrs. Byrne, and Miss Robinson; the Tribunal additionally inspected the internal stairwell of flat 4. The relevant aspects of the inspection are noted elsewhere in these reasons.

The Hearing

7. The Applicants, Miss Robinson and Mrs. Byrne, attended the oral hearing; Miss. Robinson was accompanied by Mr. Anglemou. Though he had lead Mrs. Byrne to believe that he would do so, Mr. Cholerton did not attend the hearing.

8. Mr. Thompson attended the hearing. He had filed a resume of the works which had been undertaken during his appointment.

9. The hearing proceeded on an informal basis, with each attendee being asked questions by the Tribunal, and in turn asking questions; each attendee was able to advance the points of importance to them.

Mr. Thompson's continued involvement

10. Miss Robinson said that she did not necessarily seek a discharge of the Order nor did she object to the continued appointment of Mr. Thompson, though she wanted greater frugality and made it clear that there were aspects of management (or the absence of it) with which she did not agree. She had considered whether or not the lessees could form a Committee to resume control, but did not consider that this was realistic, as many would not want to be actively involved. She had pondered whether she and Mrs. Byrne could take over; however, Mrs. Byrne was not agreeable to this suggestion, which was not practical.

11. Mrs. Byrne had initially supported Mr. Cholerton's suggestion that the RTM Company resume managing the building, and had written to say that she would support a discharge of the Order. This was not because she was in any way unhappy with how Mr. Thompson was managing it - quite the reverse, as she liked the way that he worked. However, Mr. Cholerton had spoken to her with some enthusiasm about resuming the role and specifically about getting her windows replaced - though without discussing how it would be financed.

However, having said that he would attend the hearing but had not done so (without explanation) had left her "high and dry", and did not quite know what to think. She would like him to have attended to explain how, if he resumed the role, he would work towards harmony in the building which was lacking.

12. Mr. Thompson said that he had discussed with Mr. Cholerton whether he (Mr. Thompson) should ask for the Order to be discharged, with him then being appointed as the managing agent. However, he considered that the only reason that his management currently works is because he had the Tribunal's backing, and so some "clout". It was worth noting that all of the service charges which had been demanded had been paid.

Specific Items

Improvement notice

13. The Tribunal considered the terms of the improvement notice. Mr. Thompson had not received any communication from Chiltern District Council for some considerable time, and did not know whether or not the notice had been discharged. This he would check *. All of the works recommended had been attended to, save in respect of clips which needed to be replaced to hold a down pipe fast, and this would be done in the next few weeks *.

14. Although the Private Sector Housing Officer had identified as a defect the un-insulated cavities under the hazard "damp and mould", there was no remedial action specified. However, Mr. Thompson would investigate the costs of getting cavity wall insulation done at the premises *; he thought that there may be a grant available to cover some or all of the work, and would make enquiries *; if there were costs involved he would ask the lessees if they wished to proceed with this. Similarly, he would investigate the costs of insulating the loft spaces at the same time *, and propose this to the lessees. As the leases appeared in the First Schedule to demise to the top flats the roof spaces, recovery of costs from the service charge account appeared to be excluded and so the Manager would have to seek recovery from any lessee under separate arrangement.

Defects in the stairwell of Flat 4

15. Miss Robinson explained that the insurance company had monitored the internal cracking in the stairwell in her flat, and the insurance company had indicated that there was no currently no movement. This accorded with the Tribunal's inspection of the cracks on the day of the hearing and our recollection of the extent of the cracking from the inspection in 2010, which did not appear to have worsened.

16. Miss Robinson said that the insurance company asked for an excess of £1000 before processing her claim. There was general discussion about whether this was a policy in place at a time when all lessees were contributors or whether it was when she and Mrs. Byrne had been forced to insure Beechcroft House caused by Mr. Cholerton's deliberate act of renewing the insurance of only part of the building, namely flats 5-8 and not 2 and 4. Both

Miss Robinson and Mrs. Byrne were firmly of the view that this was during the RTM Co tenure, and this reinforced Miss Robinson's view that the service charge account should bear the costs of the £1000 excess. Miss. Robinson anticipated that the insurance company would re-point the external cracks of the stairwell, then decorate the stairwell and three rooms, along with the chimney breast.

17. The Tribunal explored with those present, the wisdom of meeting the excess of £1000 from the service charge account in view of (a) the limited costs of re-pointing the cracked mortar, (b) the internal decorations of the flat being the responsibility of the lessee, Miss Robinson, and (c) the likelihood of the policy also then having a further policy excess. Mr. Thompson agreed that he would obtain several quotes* for the re-pointing of the external cracks and when scaffolding was erected for other purposes, to examine the reasons for damp around the chimney breast * in Miss Robinson's flat to establish if it was the responsibility of the lessor. There is an external movement tie, which had been put in place at Mr. Thompson's contractors, and would be removed *.

18. The Tribunal had noted damp staining in the internal stairwell of flat 4. Mr. Thompson said that if cavity wall insulation was installed this may also eradicate the reasons for the damp staining - but it was not guaranteed. Sometimes damp staining is caused by the occupant's usage, though he was not suggesting that it was a factor in this particular case. His point was that it was difficult to predict what the position would be if one factor had changed. Miss Robinson had obtained quotes to remove the roof tiles, the batons, and the lead flashing, and to insulate the roof against the cold, which would be approximately £900 plus vat. However, the Tribunal expressed the view that the roof was not in disrepair, and so the work would not fall within the lessor's obligations under the lease; nor would it be recoverable as a service charge item. Accordingly, Mr. Thompson was not to undertake this task.

19. Mr. Thompson said that he had completed an assessment of the rebuilding costs of the premises, as promised, so that the insurance terms were appropriate.

Porch

20. Miss Robison had been concerned with the finishing of the roof over the porch; the contractors had used small stones which had either blown off or been washed in the down pipes. Mr. Thompson agreed that the contractors had used the wrong grade of stones, and he would now recall them to remedy this *.

Electrical Works

21. The communal entrance and stairwell of Lynton House had been subject to recent electrical works and which had been recommended by a health and safety report; Mr. Thompson awaited the final bill. At the inspection he noted, as did the Tribunal, that the sensor switch was not well located - being half way up the stairwell - and that ideally it should be triggered by a person entering through the front door. More importantly, the sensor did not appear

to be working - as the lights did not come on at all, and the Tribunal passed a hand directly over the sensor but without any reaction. Mr. Thompson said that immediately get onto the contractors to resolve this problem*.

Future Proposed Works

22. Subject to the electrical costs, if there was a credit to the service charge account he would proceed to take down the sycamore outside flat 4, and reduce the crown of the walnut next to it*; it was preferable to attend to this sooner rather than later. Miss Robinson wanted the sycamore to be kept; Mrs. Byrne did not, seeing the value of having extra light and a reduction in future costs; Mr. Thompson said that none of the other lessees had commented on this proposed work. The Tribunal indicated that it was for the Manager – standing in the shoes of the lessor - to make that decision. He had two quotes and would get a third from Bartletts. These trees overhung the gutters and encouraged moss on the roof. Once the trees were dealt with, he would arrange for the gutters cleaned out and moss (where accessible without scaffolding) removed*.

23. There was a lot of other vegetation, which needed attention: a buddleia at the front, an apple and conifers at the rear, an ash at the side. None had grown rapidly, but all would require attention*. This would all be done in the longer term, once there were sufficient funds. To date Mr. Thompson had been concentrating on the really material matters, whilst limiting expenditure.

24. There were external decorations which were needed: to soffit boards, which also needed repair and a section of which Miss Robinson complained had been botched by Bennet's. He would approach the lessees with alternative costs of replacing with plastic fascias, over repairing and repainting, and leave the lessees to decide*. Whilst scaffolding was up he would arrange to change the awkward connection* between the gutter and the down pipe outside the front window of flat 4.

25. The Tribunal had noted that two of Mrs. Byrne's windows were in a very poor state of repair and decoration. Miss Robinson said that two were aluminium, and so did not need redecoration nor replacing. Mr. Thompson is to undertake a proper inspection, and would do so without delay*. Mrs. Byrne was relaxed about when the work was done, although the Tribunal was concerned by the appearance of two of them adjacent to the car park. The Tribunal considered the terms of the lease of flat 2, which did not refer to the windows as part of the demise; by the First Schedule, the glass of the windows was specifically excluded from the demise. Clause 3 (5) provided that the lessor would keep the main structure of the building in good and substantial repair and order, in the absence of any specific obligation on the lessee to do so there was no specific obligation on the Lessee to maintain the windows (save internal decorative parts). The Tribunal's view was expressed: namely, that the case law tended to view windows as part of the structure in the absence of anything clearly stated in the lease, and in the absence of specific provision the liability rested with the lessor. Mr. Thompson would consider what needed to be done, and then make a proposal for replacement or repair*; he would be mindful of the costs and whether section 20 consultation was

required. It may be that this would require more of a contingency (currently £1000 p.a.) and could wait until the summer. It was a judgement call, which Mr. Thompson would have to make. This may well take precedence over the works to the trees.

Gardening

26. Gardening was a contentious issue, as historically Miss Robinson had generally taken charge of this. She would cut the grass and then periodically remove sacks to the dump. Her view of what was worth saving did not entirely accord with others. Mr. Thompson had hired contractors in the summer as the garden was looking very untidy, and Miss Robinson was incensed by this; this had resulted in the cutting of some areas of good grass that she was cultivating, and some nettles which she liked to see.

27. Mr. Thompson was anxious not to spend money unnecessarily, but the garden was very untidy. The Tribunal did not have the benefit of before and after photographs, and noted that the matter was very subjective.

28. Mrs. Byrne said that most people did not bother with the garden. Miss Robinson dismissed the idea of having a garden waste disposal bin, as a waste of money, though Mr. Thompson thought this would get rid of the detritus, and so cause less of a problem.

29. The Tribunal reminded the parties of the terms of the lease, and particularly clause 3(5)(iii) which provides that the lessor shall “keep all grounds parking areas access roads forming part of the lessor’s property and used by the lessee in common with other tenants of flats in the building neat tidy well maintained and where appropriate all grass regularly mowed and beds planted”. The effect of this is that it is for the lessor to decide what to do and what not to do, and it is not for the lessee to interfere or influence. It was for Mr. Thompson to ensure that it was tidy, and weed free. It was not for Miss Robinson to decide what should remain and not. The Tribunal proposed that Mr. Thompson would write to all lessees *, with a quote for annual grounds maintenance and a schedule of works to the garden; and leave it to lessees collectively to decide if they wished to go down this route or for Miss Robinson to have a free hand over the matter. Mr. and Mrs. Lee had expressed an interest in doing some gardening, and so perhaps this might lead to some resolution.

Future Costs

30. Mr. Thompson provided a service charge account in past years, and a budget for the current year. The actual costs had been £4620.15 for 2011/12, £3296 in 2012/13, and forecast as £2975 in 2013/14. The costs had been between £500 and £770 per flat. Mr. Thompson thought that with the works discussed above the costs would be in the region of £800 p.a. per flat, with his costs at £80 plus vat per unit for the current year.

Additional matters

31. Mr. Thompson agreed to send to Miss Robinson a copy of the following documents: fire inspection report, the cover sheet for the insurance policy, and the 10-year guarantee for the works to the porch *.

32. The Tribunal approved reimbursement by Mr. Thompson from the service charge account to Miss Robinson, the sum of £300 as reimbursement of the sum paid by her to fell the Scots pine located outside the front of flats 2 and 4. This is to be reflected in the end of year account; any objecting tenant can make an application under section 27A of the Landlord and Tenant Act 1985. The Tribunal agreed to do so as the obligation rests with the lessor to maintain the common areas, and this was clearly a tree inappropriately situated which should have been controlled.

33. However, the Tribunal wishes to point out that the lessees must not (a) treat as their own, the common areas (b) take it upon themselves to neither do works nor (c) anticipate reimbursement. Indeed the Tribunal would not require Mr. Thompson to reimburse anyone in the future, unless he had agreed in writing to do so, and prior to any costs being expended. There was some reference in the papers to Miss Robinson saying that she had not paid her service charge contribution and if this is indeed the case then clearly reimbursement will not take place. Mr. Thompson must undertake a review of what has been demanded of and paid by Miss Robinson *, and only reimburse where she is full paid up.

34. Miss Robinson asked to be notified as to which contractor was coming onto the property, when and for what purpose. Mr. Thompson objected to this, as it was not practical in such a small development, which he is running at low cost, and cannot expect a contractor to commit to a time and stick to it. Further, he said that Miss Robinson has ruffled the feathers of contractors, by questioning them about what they are doing and telling them what they should and should not do, and how. Ms. Robinson was told by the Tribunal that she was not to do so; this point had been made before; all that could concern her was whether the lessor was complying with the terms of the lease, and whether service charges were reasonable and payable. If there was any dispute then it would be resolved by the Tribunal on application pursuant to section 27A of the 1985 Act. If Miss Robinson does not take heed of this, then Mr. Thompson would have licence to apply to the County Court for an injunction against harassment.

35. Mr Thompson had to charge the service charge with his time today and asked for £150 plus vat. This covered the 3 hours of the inspection and hearing and travel. His usual fee was £125 plus vat an hour, but he was prepared to keep costs to a minimum. The Tribunal considered paragraph 7 of the Directions Order which allowed for recovery of costs and further, said that it considered the sum referred to as reasonable.

36. Currently, Mr Thompson attends the premises each month, though it varies when he goes past - which he does frequently - and he will check the works done on an ad hoc basis.

Re-appointment

37. Section 24(9A) of the Act provides that the Tribunal shall not vary or discharge the Order unless satisfied that “(a) the variation or discharge of an Order will not result in a recurrence of the circumstances which lead to the Order being made, and that it is (b) just and convenient in all the circumstances of the case to vary or discharge the Order”.

38. In light of the history of this matter and the currently (still) poor interpersonal relationships of the lessees in the premises, the Tribunal considers it wholly unrealistic for the Order to be discharged. The Tribunal heard no detailed or constructive plan from the lessees seeking the discharge of the Order quite how they would approach management; they did not advance anything to assuage the Tribunal’s concerns that the management could take place other than through a professional manager. The Tribunal recognises that there are many matters which need attention at the premises, but this arises not from the failure of Mr. Thompson, but rather the sensitive balance between necessary works and manageable costs. The Tribunal has explored the management to date and the catalogue of what needs to be done; the decision marks with an asterisk (*) those matters which need attention.

39. The Tribunal finds that the only way that management can realistically proceed is by the continued appointment of Mr. Thompson, a professional manager who is independent of both parties. Accordingly, the Tribunal re-appoints as Manager, Mr. Thompson, on the same terms as before up to and including 23rd January 2017.

Judge Oxlade

Judge of the First tier Tribunal Property Chamber (Residential Property)

3rd November 2013

Residential Property
Received
04 NOV 2011
System Section