



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00MS/LAM/2013/0018

Property : Flats 9, 10 & 11 Tate Court, Tate Road, Redbridge,
Southampton SO15 0NL

Applicant : Ms Ann Boothby
Mrs Tracy Johnson
Mr Andrew Pack (the Tenants)

Representative : Mrs Tracy Johnson

Respondent : Mrs Ashton (the Landlord)

Representative : ---

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

Tribunal Members : Judge P J Barber
Mr P D Turner-Powell FRICS Surveyor Member

Date and venue of Hearing : 2nd June 2014
1st Floor, Midland House, 1 Market Avenue,
Chichester, West Sussex PO19 1JU

Date of Decision : 13th June 2014

DECISION

Decision

1. The Tribunal determines in accordance with the provisions of Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") that a manager, namely Mr John Mortimer, be appointed to carry on in relation to the Block functions in connection with the management thereof in accordance with the management order appended to this decision.
2. The Tribunal further determines in accordance with the provisions of Section 20C Landlord and Tenant Act 1985 that none of the costs incurred by the Respondent / landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees.

Reasons

BACKGROUND

3. The application for the appointment of a manager under Section 24(1) of the 1987 Act was made by the Applicants, being 3 of the 4 residential leaseholders, in respect of the block comprising 4 residential maisonettes situate at and known as 9-12 Tate Court, Tate Road, Redbridge, Southampton SO15 0NL ("the Block"). The Block comprises a purpose built two storey building containing 4 residential maisonettes, each with its own front door at ground level.
4. As required by Section 22 of the 1987 Act, the Applicants had served a notice on the Respondent dated 27th August 2013, setting out the grounds for the application which in broad terms were that the landlord had made unreasonable service charges; that the landlord was in breach of obligations in the leases and that it would be just and convenient for an order to be made. The notice gave the Respondent warning of the Applicants' intention to make an application to the LVT for the appointment of a manager, unless the remedial action and/or steps set out in the notice were satisfactorily resolved within a period of six weeks from the date of the notice. It is the Applicants' case that none of the remedial action and/or steps set out in the notice have been taken by the Respondent.

THE LAW

5. Section 24 of the 1987 Act provides that the LVT may, on an application for an order under that section, appoint a manager to carry out in relation to the relevant premises, (a) such functions in connection with the management of the premises, or (b) such functions of a receiver, or both as the LVT thinks fit.

By virtue of Section 21(2) of the 1987 Act, the premises in respect of which an order may be made consist of the whole or part of a building, if the building or part contains two or more flats. In addition, Section 24(3) of the 1987 Act provides that :

"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."

In brief summary, by virtue of Section 24(2) of the 1987 Act the LVT may only make an order in one or more of the following circumstances :

1. Where the LVT is satisfied that :

The landlord is in breach of any obligations owed by him to the tenant under his/her tenancy and relating to the management of the premises in question or any part of them and that it is just and convenient to make the order in all the circumstances of the case.

- (b) Where the LVT is satisfied that :

Unreasonable service charges have been made, or are proposed or likely to be made, and that it is just and convenient to make the order in all the circumstances of the case.

- (c) Where the LVT is satisfied that :

The landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 and that it is just and convenient to make the order in all the circumstances of the case.

- (d) Where the LVT is satisfied that :

Other circumstances exist which make it just and convenient for the order to be made.

INSPECTION

6. The Tribunal inspected the property prior to the hearing; the Block comprises 4 maisonettes identifiable for postal purposes as 9-12 Tate Court, Tate Road, Redbridge, Southampton SO15 0NL, although a small sign was attached referring to the Block as "9-12 Tate Road". Tate Road is unmade up and also led to a row of much older railway cottages to the north and, further west, another development of flats or maisonettes apparently of a similar age to 9-12 Tate Court and being known as 1-8 Tate Court. The Block was constructed in or about 1990 of brick under a pitched and tiled roof. External inspection only, was carried out; some of the fascia board showed signs of disrepair and the guttering appeared to be in need of cleaning; most of the windows appeared to be of UPVC construction.
7. The Tribunal noted that there was a medium size rear garden, greatly overgrown with long grass which was untended and excessively long; there were two small timber sheds in the rear garden and a sun lounge at the rear of one of the ground floor maisonettes. The Tribunal noted a relatively new metal fence which had been erected around the outside edge of a verge which appeared to form the eastern side boundary of the Block and there was also an older brick wall standing a short distance within such metal fence. It was noted that each of the 4 maisonettes has its own front door at ground floor level, at the front or western side of the Block, where there was also some parking provision and a rather untidy small area of garden.
8. There was a strip of garden to the south side of the Block enclosed by metal fencing. The main railway line adjoins the Block further to the south. None of the parties was present at the external inspection.

HEARING AND REPRESENTATIONS

9. Mrs Johnson attended and spoke on behalf of herself and her two neighbours Mrs Ann Boothby and Mr Andrew Pack who were also present; in addition Mr Nigel Johnson and Mr Cox also attended and Mr John Mortimer the proposed manager. The Respondent did not attend the hearing and was not represented.
10. Mrs Johnson presented evidence for the Applicants as set out in the Applicants' bundle, and also gave the Tribunal a summary of what she considered to be the Respondent's management shortcomings as detailed in the Section 22 notice. Mrs Johnson confirmed that none of the remedial action or steps as requested in the Section 22 notice had been taken by the Respondent landlord.
11. Mr Mortimer, the proposed manager, gave evidence to the Tribunal in regard to his experience and qualifications; he said that he is managing director of his firm, John Mortimer Property Management Ltd, which he established in 1990 and which is a member of ARMA. Mr Mortimer explained that it is a family business with some 45 staff and with considerable experience of managing property and referred to similar other appointments in respect of other properties under Section 24 of the 1987 Act. Mr Mortimer indicated that he was aware that the appointment if confirmed, would be of him personally, rather than of his firm. Mr Mortimer said that he would expect to attempt liaison with the freeholder, but would need access to the communal gardens which would be one of the first areas in need of urgent maintenance. Mr Mortimer confirmed that his firm carries £2M professional indemnity insurance and has arrangements for separate bank accounts in respect of the funds administered for all the properties and blocks with which they are concerned. Mr Mortimer requested an order of two years in duration which he considered should be sufficient in the first instance.
12. So far as was relevant to its consideration and decision, the Tribunal noted all the case papers and the evidence and submissions, which are commented upon so far as may be appropriate, below.
13. Copies of the Leases respectively of Flat 9 (dated 3rd August 1990); Flat 10 (dated 26th July 1990) and Flat 11 (dated 31st August 1990) had been provided by the Applicants to the Tribunal with their bundle.
14. In regard to the Applicants' application in regard to the landlord's costs under Section 20C of the 1985 Act, Mrs Johnson submitted that the application had been necessary owing to the failure by the Respondent to manage the Block properly and that unreasonable and illogical service charges had been demanded, resulting in considerable anguish and concern amongst the lessees.

CONSIDERATION

15. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of both parties.
16. The Tribunal is satisfied that the Respondent is in continuing breach of obligations owed by it under the leases for the Block, relating to the management thereof and that such breaches may be likely to continue. The Tribunal is further satisfied that unreasonable service charges have been made and that accordingly, it would be just and convenient in all the circumstances of this case to make a management order. In summary, the Tribunal is satisfied that the Applicants have established

the grounds required in Section 24 of the 1987 Act for the appointment of a manager.

17. The issues which are of particular concern to the Tribunal are the Respondent's issuing of demands for wholly inappropriate sums for rental for visitors, animal and shed, as well as the purported imposition of fines not provided for in the leases. The Respondent had prevented access by the Applicants to the communal gardens, which they were entitled to under their leases, since January 2010 and had allowed the gardens to deteriorate considerably. The Respondent had also raised inappropriate service charges for signage and rail fencing and had failed to carry out Section 20 consultation in regards to the latter. The Respondent had also failed to attach a summary of tenant rights and obligation notice to service charge demands issued after October 2007, in breach of the requirements of Section 21B of the Landlord and Tenant Act 1985. Accordingly the Tribunal considers it appropriate that a manager should be appointed.
18. The Tribunal considers that the proposed manager Mr John Mortimer is appropriately qualified and experienced, and that his firm has sufficient resources to enable him to be a robust and effective manager of the Block. For the reasons stated above the Tribunal makes a management order in the terms of the draft set out in the schedule hereto.
19. The Applicants also applied for an order under Section 20C of the Landlord and Tenant Act 1985 that the Respondent should not be able to recover any of her costs incurred in relation to these proceedings by way of service charge. In the circumstances as we found them, we decided to make an order that none of the costs incurred by the Respondent are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees of the Block
20. We made our decisions accordingly.

Judge P J Barber

Appeals :

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

SCHEDULE
FIRST-TIER PROPERTY TRIBUNAL
MANAGEMENT ORDER

CASE REFERENCE: CHI/00MS/LIS/2013/0118

PROPERTY: 9-12 Tate Court, Tate Road, Redbridge, Southampton, SO15 0NL

BETWEEN:

APPLICANTS: Tracy Johnson
Anne Boothby
Andrew Pack

RESPONDENT: Mrs Ashton

1. In this Order
 - (a) “the Property” means **9-12 Tate Court, Tate Road, Redbridge, Southampton, SO15 0NL**
 - (b) “the Respondent” includes the landlord and any successors in title to the Respondent
 - (c) “the Lessee” means a person holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1997 (“the Act”)

2. It is ordered that:

In accordance with Section 24(1) of the Landlord and Tenant Act 1997 (“the Act”) Mr John Mortimer of John Mortimer Property Management Ltd (“the Manager”) be appointed manager of the Property for a period of two years from 29th June 2014 (“the Period”).

3. The Manager shall during the Period manage the Property in accordance with:

- (i) the Directions and Schedule of Functions and Services set out below;
- (ii) the rights and obligations of the Landlord under the leases demising the flats at the Property and in accordance with all relevant statutory requirements and in compliance with the requirements of the service charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State of England and Wales under Section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

DIRECTIONS

1. From the date of appointment, and throughout his appointment, the Manager shall maintain a policy of professional indemnity insurance to cover his obligations and liabilities as Manager.
2. The Parties to this application shall, not later than 28 days from the date of this Order, provide all necessary information to the Manager and arrange an orderly transfer of responsibilities. All accounts, books, records, survey reports and funds shall be transferred within 28 days to the Manager.
3. The Manager is entitled to such disclosure of documents as held by the Respondent, their advisors or agents as is reasonably required for the proper management of the Property.
4. 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 in 28 days from the date of this Order become the rights and liabilities of the Manager.
5. The Manager and the parties shall be entitled to apply to the Tribunal for further directions if so advised and/or in the event that the circumstances necessitate such an application.
6. The Manager shall be entitled to remuneration as set out below.
7. The Respondent Mrs Ashton shall allow access to the communal gardens at the Property by the Manager and/or any contractor appointed by him pursuant to the terms and provisions of this Order, to enable work and maintenance to be carried out, and also to allow exercise by the Lessees of the rights granted to them in their respective leases.

SCHEDULE OF FUNCTIONS AND SERVICES

Service Charges

- 1.1 Prepare an annual service charge budget, administer the service charge and prepare appropriate accounts in accordance with the relevant leases and any relevant Code of Practice.
- 1.2 Demand and collect service charges, insurance premiums and any other payments arising under the relevant leases as appropriate.
- 1.3 Hold all monies received pursuant to this Order and/or pursuant to the lease provisions as a trustee, in an interest bearing account (if appropriate), pending such monies being defrayed.
- 1.4 The Manager shall be entitled to take such action and Court or Tribunals proceedings as may be necessary to collect the service charges or rent arrears and to take such action in the Courts or Tribunals as may be necessary or desirable to secure compliance with the Lessees' obligations under the leases relating to the flats in the Property.

Accounts

- 2.1 Prepare an annual statement of account for the Lessees, detailing all monies received and expended and held over or held by way of reserve fund.
- 2.2 Produce for inspection by the Lessees, receipts or other evidence of expenditure.
- 2.3 All monies collected on the Lessee's behalf will be accounted for in accordance with any relevant RICS Code of Practice.

Maintenance and Management

- 3.1 Arrange, manage and where appropriate supervise all repair and maintenance, building work and service contracts application to the Property and instruct contractors to attend to the same, as appropriate.
- 3.2 If applicable, the Manager is to obtain quotations from an RICS surveyor to carry out the following:-
 - (a) A survey of the Property
 - (b) Prepare a specification of works
 - (c) Prioritise the repairs with a view to spreading the costs over a period of time

- (d) Prepare an estimate of costs for the works to be prioritised
- 3.3 Based on the information supplied by the RICS surveyor, the Manager is to prepare a report for discussion with the Lessees
- 3.4 The Manager will instruct the surveyor to obtain quotations for the works as set out in the specification of works and time frame and the Manager will, as appropriate, prepare and enter into the S20 consultation process.
- 3.5 Notwithstanding the terms of the leases of the flats, the Manager will, and as a condition precedent to carrying out the works to the Property, be entitled to demand from the Lessees the necessary funds in order to carry out the works including professions and supervision fees plus VAT and the Lessees will place the Manager in funds within 28 days of the demand.

Fees

The Manager shall be entitled to charge the following management fees:

- 4.1 During the first year of this Order:-
 - (a) A fee not exceeding £150 per annum plus VAT per unit for the basic management duties listed (i) to (xiii) below :
 - (i) Collection of service charges
 - (iii) Payment of all invoices
 - (iv) Maintain service charge accounts up to Trial Balance and handover to an accountant for review and producing year end accounts
 - (v) Managing day to day repair issues
 - (a) Arrange a contractor to carry out repairs
 - (b) Cost of repairs to be paid for from service charges
 - (vi) Provide a telephone number for emergency out of hours calls of a maintenance nature
 - (vii) Regular on site inspections
 - (viii) Communicate with Lessees and Landlord
 - (a) Any on site meetings to be in business hours
 - (ix) Provide point of contact for maintenance issues
 - (x) Provide a point of contact for accounts issues
 - (xi) Website with a dedicated client area
 - (xii) Annual Report to Lessees and Landlord

(xiii) Oversight of Health and Safety compliance by in house Compliance Manager

(b) Reasonable fees for work outside of basic management duties at an hourly rate not exceeding £100 plus VAT

- Attending court cases
- Evening meetings

(c) Works later identified, either by a surveyor or in future inspections, and subject to a Section 20 consultation, are not included in the Basic Management fee will be subject to 10% Supervision Fee of the contract plus vat.

4.2 In the second year of this Order the basic fee referred to in paragraph 4.1(a) above shall be increased to £155 per annum plus VAT per unit.