



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

Case Reference : **LON/OOAM/LAM/2013/0032**

Property : **Various Flats, 89 Downs Park Road, London E5 8JE**

Applicant : **Ms Helen Martyn**

Representative : **In person**

Respondent : **(1)89 Downs Park Road (Freehold) Limited**
(2) Mr M Webb & Mr M A Lawlor (basement flat) *
(3)Ms Lissa Chapman (first floor flat)
(3)Ms A Sheriff (second floor flat)

Representative : **Mr A Lawlor & Ms L Chapman**

Types of Application : **Application to appoint a Manager**

Tribunal Members : **Judge Tagliavini**
Mr P Tobin, Valuer Member
Mr A Ring, Lay Member

Date and venue of Hearing : **14 April 2014 @ 10 Alfred Place, London WC1E 7LE**

Decisions of the tribunal

1. The Tribunal determines, with the agreement of the parties that it appropriate to appoint a Manager for the management of the subject property in accordance with the Management Order and Schedule attached herein.

The premises

2. A Victorian terraced property converted into 4 flats.

Preliminary matters

3. The Tribunal was satisfied that despite the delayed service of documents by both parties, by the time of the hearing all parties had received all the documents presented to the Tribunal for the hearing. The Tribunal noted that the Freeholder of the property had not been joined as a Respondent to these proceedings and determined that it was appropriate to do so. The Tribunal noted that Ms Martyn seemed unaware of the sale of the Freehold despite being a long lessee and denied having received any invitation to join the purchase of the freehold or notification of its subsequent purchase.

**The Tribunal was informed that the lessees of the Basement and Ground Floor Flat had recently exchanged on a sale if this flat and that the new owners were aware of this application*

4. It was accepted by all parties that the leases did not make provision for the collection of service charges by the landlord or require the landlord to provide services for the benefit of the lessees. However, it was agreed by all that there should be some regularisation of the current situation, where various tenants undertook various works of repair/maintenance and each lessee was responsible for their own building insurance for their own flat.

The hearing and evidence

5. The Tribunal was provided with a lever arch file of documents and photographs relied upon by the parties and heard oral evidence from the proposed manager, Mr Simon P. Wainwright. The parties themselves, were substantively in agreement that a Manager should be appointed and therefore the Tribunal was able to rely extensively on the largely unchallenged documentary evidence provided.

Reasons for the decisions of the tribunal

6. The Tribunal accepts and finds that in the absence of any service charge obligations in the leases on the part of the landlord to keep in repair the structure, exterior and communal parts of the building, and a corresponding lack of any obligation on the part of the lessees to pay to any service charge reserve charge fund, the subject premises have been subject to a longstanding lack of repair. Having heard oral evidence from Mr Wainwright who was also subjected to extensive questioning by the Tribunal, the Tribunal is satisfied that it is appropriate to appoint Mr Wainwright as a Manager of the subject premises in accordance with *section 24 of the Landlord and Tenant Act 1987*.
7. The Tribunal therefore appoints Mr Simon P. Wainwright BSc (Hons) FRICS of J Peiser Wainwright, Chartered Surveyors as the Manager of the subject property for a period of three years commencing on the date of the Order in accordance with the terms of the Management Order and Schedule attached herein.

Reimbursement of fees

8. The Tribunal determines that it is appropriate for each of four flats lessees to contribute equally to the cost of the application and hearing fee. The Tribunal therefore, directs that Ms Martyn should be reimbursed the appropriate shares by the other flats' lessees leaving her paying a fourth share.

Signed: Judge Tagliavini

Dated: 28 April 2014

Section 24(9) of the Landlord and Tenant Act 1987 (excerpts)

(1) A leasehold valuation tribunal may, on the 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) A leasehold valuation 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 obligations owed by him to 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

(ii)

(b) where the tribunal is satisfied that other circumstances exist which it make it just and convenient for the order to be made.

(9) A leasehold valuation 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 direct that the order be cancelled.

[9A] The tribunal shall not vary or discharge an order under subsection (9) on the application of a 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)

In the First Tier Property Tribunal**Case Ref: LON/00AM/LAM//2013/0032****Premises: 89 Downs Park Road, London E5 8JE**

MANAGEMENT ORDER

1. In this Management Order, the Directions and the Schedule of Rights, Functions and Services attached to this Management Order the following expressions shall have the meanings set out below:
 - (a) “the Property” shall mean and include the buildings, outhouses, gardens, amenity space, drives, pathways, roads, parking spaces, landscaped areas, passages, bin-stores, attics, common parts and all other parts of the property known as and situate at 89 Downs Park Road, London E5 8JE.
 - (b) “the Landlord” shall mean 89 Downs Park Road (Freehold) Limited the Respondent to this Application, or in the event of the vesting of the reversion of the residential under-leases of the property in another, the Landlord’s successors in title
 - (c) “the Leases” shall mean the long leases and/or underleases of flats in the Property and “Lease” shall be construed accordingly
 - (d) “the Tenants” shall mean the proprietors for the time being of the Leases whether as lessee or under-lessee and “Tenant” shall be construed accordingly
 - (e) “The Manager” shall mean Mr Simon P Wainwright BSc(Hons FRICS).

2. It is hereby ordered that:
 - (a) In accordance with s.24(1) of the Landlord and Tenant Act 1987 the Manager shall be appointed as manager of the Property.
 - (b) The order in paragraph 2(a) above shall continue for a period years of three years commencing with the date of this Order.
 - (c) The Manager shall manage the Property in accordance with:
 - (i) the Directions and Schedule of Rights, Functions and Services attached to this Management Order;

- (ii) the respective obligations of the Landlord under the Leases by which the flats at the property are demised by the Landlord. Further, the Manager shall have the power to repair, maintain and decorate the structure, exterior and common parts of the premises and the power to appoint, renew and provide services to and for the insurance of the Property; and
- (iii) the duties of managers set out in the Service Charge Residential Management Code (2009) (“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 of the Leasehold Reform Housing and Urban Development Act 1993.

Signed: Judge Tagliavini

Dated: 28 April 2014

SCHEDULE OF RIGHTS AND DUTIES OF THE MANAGER

1. That from the date of appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,500,000 and shall provide copies of the current cover note upon request being made by the Tenants, the Landlord or the Tribunal.
2. That the Manager in the performance of his functions and duties, and in the exercise of his powers under this Management Order, shall exercise all the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and duties and the exercise of the said powers and shall indemnify the Landlord in respect of any loss occasioned by any negligent act or omission of himself, his servants or agents.
3. That not later than 4 weeks after the date of this Management Order the Landlord and the tenants shall make available to the Manager all such books, papers, memoranda, records, computer records, minutes, correspondence, facsimile correspondence, electronic mail and all other documents and records as are necessary for the management of the Property and are within its custody, power or control or the custody, power or control of any of its servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.
4. That the Landlord shall not later than 4 weeks after the date of this Management Order give full details to the Manager of all sums of money it holds or which are held by its servants or agents (if any) in relation to the Property and including giving copies of any relevant bank statements, and shall by that date pay any such sums to the Manager. In the case, where any sums are held by the Landlord's servants or agents the Landlord shall take all reasonable steps to procure the giving of such information and documents and the making of such payment to the Manager. If the Landlord or its servants or agents shall thereafter receive any sums under the Leases, it shall forthwith pay or take all reasonable steps to procure payment of such sums to the Manager.
5. That the Landlord and its servants and agents shall give reasonable assistance and co-operation to the Manager in pursuance of his functions, rights, duties and powers under this Management Order and shall not interfere or attempt to interfere with the exercise of any of his said rights, duties or powers by due process of law.
6. That the Landlord shall allow the Manager all reasonable access to those parts of the Property retained by it in order that the Manager might conveniently perform his functions and duties, and exercise his powers under this Management Order.

7. That the Landlord, its servants and agents shall permit the Manager and assist him as he reasonably requires to serve upon any Tenants any notice pursuant to section 146 of the Law of Property Act 1925.
8. That the Landlord shall deliver to the Manager forthwith copies of all specifications, tenders, planning permissions and all other consents, permissions, documents and instruments which the Landlord has, or which come into the power, control or custody of the Landlord after the date of this Management Order, concerning or arising out of the Landlord's construction of additional flats at the Property or which are in the power, control or custody of any of the Landlord's servants or agents, in which last case it shall take all reasonable steps to procure such delivery from its servants or agents.
9. That the rights and liabilities of the Landlord and/or the former managing agent arising under any contracts of insurance, and/or any contract for the provision of any services to the property shall upon the date 4 weeks from the date of this Management Order become rights and liabilities of the Manager.
10. That the Manager shall account forthwith to the Landlord 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 Landlord's covenants contained in the Leases.
11. That the Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges under the Leases of the Property) in accordance with the Schedule of Functions and Services attached.
NB: The lease makes no provision for service charges
12. That the Manager shall be entitled to apply to the Tribunal for further directions in accordance with section 24(4) of the Landlord and Tenant Act 1987, with particular regard (but not limited) to the following events:
 - (a) any failure by any party to comply with paragraph 2 of these directions and/or;
 - (b) (if so advised) upon the service of the report in paragraph 6 of these directions, and/or;
 - (c) in the event that there are insufficient sums held by him to pay the Manager's remuneration.

SCHEDULE OF RIGHTS, FUNCTIONS AND SERVICES

A. SERVICE CHARGES

- 1.1 The Manager shall have the right to treat the service charge financial year for the Property as commencing on the date of this Order for one year and thereafter from year to year.
- 1.2 The Manager shall have the right to demand and receive from the Tenants, as the proprietors of any flats in the Property, and their successors in title to any flats in the Property, service charge contributions in such reasonable and proper proportions to be determined by the Manager.
- 1.3 The Manager shall have the right to demand and receive from the Tenants half-yearly payments of service charges in advance on account of actual expenditure to be incurred by the Manager on the first date of this Order in such sum as the Manager shall reasonably determine having regard to the likely costs to be incurred and in respect of which service charges are payable during the relevant financial year and for avoidance of doubt shall have the same right in respect of each subsequent service charge financial year.
- 1.4 The Manager shall have the right to establish and maintain a reserve fund ("the Reserve Fund") to make provision for any maintenance, repair and renewal of the Property, which shall not be carried out in the service charge financial year during which any contribution towards the Reserve Fund is demanded.
- 1.5 The Manager shall, in his discretion and having regard to any reasonably necessary anticipated repair, maintenance and renewal works required at the Property, be entitled to demand from the Tenants a reasonable contribution towards the Reserve Fund as part of the service charges for works of maintenance, repair and renewal of the Property which will not be carried out within the service charge financial year during which the demand for payment is made and for avoidance of doubt all references to "service charges" or "service charge" within this Management Order shall include such contribution to the Reserve Fund.
- 1.6 The Manager shall have the right to demand and collect ground rents, insurance rents and any other payments due from the Tenants.
- 1.7 The Manager shall prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Tenants as per the percentage share of under the terms of their respective Leases.
- 1.8 The Manager shall have the power and the duty to carry out the obligations as contained in the terms of this Management Order), and in particular, and without prejudice to the generality of the foregoing shall have:

- (a) the obligation to provide services;
- (b) repairing, maintenance and renewal obligations; and
- (c) the obligation to arrange insurance of the buildings on the Property (“the Buildings”) with a reputable insurer.

1.9 The Manager shall have the power in his own name on behalf of the Landlord to bring and defend any action or other legal proceedings in connections with the Leases or the Property including but not limited to proceedings against any Tenants in respect of arrears of rent, service charges or other moneys due under the Leases, and to make any arrangements or compromise on behalf of the Landlord, save that the Manager shall not have the right to continue any such action or other legal proceedings or to make any arrangements or compromise on behalf of the Landlord in relation thereto, as shall have been commenced before the date of his appointment and which the Landlord shall be at liberty to pursue.

1.10 In the event that the Tenants shall be in breach of their covenants in the Leases and/or their obligations as provided in this Management Order, the Manager shall be entitled to recover from any such Tenant on a full indemnity basis any costs, fees, charges, expenses and/or disbursements incurred or occasioned by him in the appointment of any solicitors, counsel, surveyors or any other professional reasonably retained by the Manager for the purposes of enforcing such covenants or obligations whether or not the Manager brings any proceedings in court or before any tribunal

PROVIDED THAT in default of recovery of the same from the particular Tenant in breach of the covenants in the Leases and/or the obligations as provided in this Management Order, the Manager shall be entitled to recover the same through the service charges

1.11 The Manager shall place, supervise and administer contracts and check demands for payment for goods, services and equipment supplied for the benefit of the Property within the service charge budget.

1.12 The Manager shall have the power to appoint solicitors, accountants, architects, surveyors, and such other professionally qualified persons as may reasonably be required to assist him in the performance of his functions.

1.13 The Manager shall have the power to appoint any agent or servant to carry out such functions or obligations which the Manager is unable to perform himself or which can be more conveniently be done by an agent or servant and the power to dismiss such agent or servant.

1.14 The Manager shall have the power to open and operate bank accounts in his own name in relation to the management of the Property and to invest moneys received pursuant to his appointment in any manner

specified in parts I and II of the First Schedule of the Trustee Investment Act 1961 and to hold those funds received from the Tenants of the flats in the Property pursuant to section 42 of the Landlord and Tenant Act 1987

PROVIDED THAT the Manager shall deal separately with and shall distinguish between moneys paid as contribution towards the Reserve Fund and all other moneys received pursuant to his appointment.

- 1.15 The Manager shall have the power to claim in the bankruptcy, insolvency, sequestration or liquidation of any Tenant owing moneys due under his, her or its Lease.
- 1.16 The Manager shall have the power to receive, consider, refuse, grant or otherwise deal with application for consents or licences of whatever nature as to dealings, alterations or any other matters requiring the consent of the Landlord under the Leases which relate to the Tenants or as to their flat(s). In relation to such applications the Manager shall where applicable use his best endeavours to secure a reasonable open market premium and shall account to the Landlord therefore. Where the Manager has confirmed that such consent or licence shall be granted the Landlord shall execute all necessary documents to give effect thereto without delay or request for payment

PROVIDED THAT the provisions of this paragraph shall be subject to an obligation on the part of the Manager to give reasonable notice to the Landlord of any such applications received by him and the terms thereof which he proposes to grant, with the intent that the Landlord shall have the opportunity of making observations to the Manager on such applications and proposed consents.

- 1.17 The Manager shall have the power to borrow at the best available rates reasonably available, all sums reasonably required by the Manager for the performance of his functions and duties and the exercise of this powers under this Management Order in event of there being:
- (a) arrears or other shortfalls of service charge contributions due from the Tenants; or
 - (b) arrears, or other shortfalls of other sums due from the Tenants, such borrowing to be secured (if necessary) on the interest of the Landlord in the Property or any part thereof

PROVIDED THAT the Manager shall not secure any such borrowing without the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed), or in default of the Landlord's consent, without further Order of the Tribunal.

B. ACCOUNTS

- 2.1 The Manager shall prepare and submit to the Landlord an annual statement of account detailing all monies received and expended on its

behalf. The accounts may be certified by an external auditor if required, by the Manager.

- 2.2 The Manager shall upon request produce for inspection receipts or other evidence of expenditure.
- 2.3 All monies collected on the Landlord's behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution for Chartered Surveyors, subject to the manager receiving interest on the monies whilst they are in his client account. Any reserve fund monies to be held in a separate client account with interest accruing to the landlord.

C. MAINTENANCE

- 3.1 The Manager shall deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. The Manager shall deal with all building maintenance relating to the services and structure of the building.
- 3.2 The Manager shall give consideration to works to be carried out to the Property in the interest of good estate management and make the appropriate recommendations to the Landlord and the Tenants.
- 3.3 The Manager shall set up a planned maintenance, repair and renewal programme to allow for (amongst other matters and without imposing any limitation) the periodic re-decoration of the exterior and interior common parts and such other periodic maintenance, repair and renewal as may be required at the Property.

D. FEES

- 4.1 Fees for the above mentioned management services would be a basic fee of £225.00 per annum per unit for the flats within the Property, reviewable annually. Those services shall include the services set out in paragraph 2.4 of the Service Charge Residential Management Code (2009) published by the RICS.
- 4.2 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 informing them of the works and supervising the works) will be subject to a charge of 10% of the cost. The professional fees of any architect, surveyor, or other appropriate person in the administration of a contract for such works will be charged separately.
- 4.3 The Manager shall be entitled to recover all costs, fees, expenses and disbursements properly and reasonably incurred in employing any solicitors, counsel, surveyors, architects, accountants or any other professional.

- 4.4 An additional charge for dealing with solicitors enquiries on transfer will be made on a time related basis payable by the outgoing lessee.
- 4.5 VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- 4.6 The preparation of insurance valuations and the undertaking of other tasks which, fall outside those duties described at 4.1 above, are to be charged for on a fee basis to be agreed.

E. COMPLAINTS PROCEDURE

- 5.1 The Manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors. Details of the procedure are available from the Institution upon request.
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