



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

Case Reference : **LON/00BE/LAM/2014/0012**

Property : **241 Underhill Road, East Dulwich,
London, SE22 OPB**

Applicant : **Mr Charles Gardner**

Representative : **In person**

Respondent : **Ms B Allen**

Representative : **In Person**

Type of Application : **Application under s24 Landlord
and Tenant Act 1987, Appointment
of a manager**

Tribunal Members : **Judge E Samupfonda
Mr S Mason BSc FRICS FCI Arb
Mr L Packer**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **10 September 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal appoints Mr Scott C Buchanan, BSc (Hons) MRICS MCMI RMaPS, Director of Sqaurepoint Chartered Surveyors, manager of the building at 214 Underhill Road, East Dulwich, London SE22 OPB ('the building') for a period of 3 years starting from 1st October 2014, on terms of the fee and Order attached to this decision.
- (2) The tribunal determines that the Respondent must pay the sum of £190 to the Applicant being 50% of the hearing and application fees paid by the Applicant in this application to the tribunal. The said sum must be paid within 28 days from the date of issue of this decision.
- (3) The tribunal declines to make an order for costs.

The application

1. The Applicant seeks an order appointing Mr Scott Buchanan of Sqaurepoint Chartered Surveyors as a manager of the building pursuant to s.24 of the Landlord and Tenant Act 1987 ('the Act').
2. A case management conference was held on 17th June 2014 and directions for the future conduct of this case were given. In accordance with those directions, the Respondent made a statement of case and the Applicant lodged a bundle comprising two lever arch files.

The background

3. The tribunal was informed that the building, which is the subject of this application, is a two-storey late Victorian terraced house sub divided into two flats with a shared entrance and no side access.
4. The tribunal did not consider that an inspection would be helpful given the nature of the complaints raised in the Notice under s22 of the Act
5. The Applicant holds a long lease of the first floor flat at the property. He purchased the long leasehold in June 2000.
6. The Respondent is the freehold owner of the building.
7. The Applicant sent a preliminary notice ('the Notice') dated 2nd April 2014 to the Respondent pursuant to s22 of the Act. The Notice gave grounds for the appointment of a manager as follows: -

- (a) The landlord has made unreasonable insurance charges,
- (b) The landlord is in breach of the Code of Practice approved by the Secretary of State under section 87, Leasehold Reform, Housing and Urban Development Act 1993 and
- (c) That other circumstances exist which make it just and convenient to appoint a manager”

The hearing

8. Both the Applicant and Respondent represented themselves at the hearing that took place on 8th September 2014. Mr Gardner was accompanied by his father. Mr Buchanan was also in attendance and was questioned by Ms Allen and the tribunal.

The issues

9. Essentially there were two issues before the tribunal, namely the need for a management order under section 24 of the Act and the suitability of Mr Buchanan, the Applicant’s proposed manager to fulfil the role of manager of the building.

The need for a management Order under section 24 of the Act

10. The Applicant submitted a large bundle of documents in support of his application. The tribunal did not consider it necessary to repeat the very detailed chronology of events and incidents going back a number of years. Rather the tribunal focussed on the salient points as outlined in the s22 Notice and bore in mind the documentary evidence that had been submitted. The tribunal was also aware from the Applicant’s statement of case that he raised other matters, which he considered amounted to be other circumstances which make it just and convenient to appoint a manager. Essentially, these matters were his examples of the Respondent’s conduct, which he described as “consistent and unreasonable behaviour of Mrs Allen over the period of many years [that] has rendered it impossible for the affairs of the property to be dealt with in an effective manner.”
11. With regards to the insurance, the Applicant was concerned that the Respondent had failed to obtain competitive quotes over the years and therefore the insurance premium was excessive. He stated that the sum for this year was £1,424.79 plus £227.97 for payment by direct debit. The Respondent explained that the insurance was high because the Applicant had previously sublet his flat to students. At the time of renewal she was not able to obtain information from the Applicant as to

the status of the occupiers and she obtained the insurance through Swinton's insurance brokers whom she provided with the information that she had. The Applicant produced an alternative quote of £225,63 with City Landlord insurance and submitted that this was indicative of how excessive the landlord's insurers were.

12. The tribunal considered that the Respondent acted reasonably by obtaining the insurance using the services of a reputable broker using the information that she had at the time. She explained the difficulties that she had experienced in trying to get information from the Applicant regarding the status of the occupiers of the flat. And given the uncertainty of the nature of the occupiers, it was in our view reasonable for her to adopt the insurance premium that she had been quoted. The tribunal concluded that in the circumstances, the statutory criteria for making an order under this ground was not met as there was no breach.
13. The Applicant's next ground was that the Respondent had failed to comply with the statutory consultation procedures under section 20 of the Landlord and Tenant Act 1985 and that the Respondent habitually failed to follow the guidance set out in the RICS Service Charge Residential Management Code ('the Code') in her management of the property. In summary he gave examples of what he said amounted to delayed responses to the issues that he had raised regarding the disrepair to the roof, external decorations and hallway. He said that these were reported in 2000 but repairs were not carried out until 2007 all without complying with the consultation requirements.
14. It was clear to the tribunal from the correspondence and from the Respondent's answers to the tribunal's questions that, whilst she had responded to the Applicant's queries in the best way that she could, as a private landlord and non professional manager, she had not and could not comply with the Code and statutory requirements as she was not familiar with them. Nor had the Respondent complied with the statutory consultation requirements on a series of works.
15. As to the other circumstances which make it just and convenient to appoint a manager that the Applicant relied upon in the Notice and in his statement of case, it was clear to the tribunal from the tone of the verbal and written communication between the parties that there is a long history of mutual mistrust and that there is a complete breakdown in relationship that appears to have begun soon after the Applicant acquired the lease. Examples were given relating to dated county court proceedings, disagreements over an invoice for drain clearance, and copious amount of correspondence regarding insurance. Indeed the only common ground between the parties was that both parties repeatedly said, "they had had enough " of the present arrangements for managing the building, and both of them indicated the need to appoint an independent manager.

16. The Respondent initially did not oppose the application to appoint a manager, but this was on the mistaken belief that such an appointment would be in respect of the Applicant's flat only and at his own cost. The tribunal explained in some detail that the appointment would be in respect of managing the whole building, being both flats; and that the cost would be shared as under the lease. Once she understood this, whilst it was not clear that she continued to support the appointment of a manager in principle, nonetheless she stated that she " had had enough of managing the property", from which the tribunal took to be an indication of her acknowledgment that a professional independent manager would be welcomed.

The Proposed Manager

17. After considering Mr Buchanan's proposed management plan and having heard from him in the hearing, the tribunal was satisfied that he had demonstrated a sufficient level of competence and experience of surveying and building maintenance issues to be capable of being appointed a manager of this relatively small building. He stated that he was a chartered building surveyor, qualified in 2005 and has worked as a surveyor for the Metropolitan Police, for a Housing Association and for a large private practice. He set up his own firm, Squarepoint 8 months ago. He acknowledged that he had no experience of managing private residential properties and that he was not familiar with the provisions of the Landlord and Tenant Act 1985. He was however, conversant with the Code. He also said that he had been approached by the Applicant for advice when the Applicant could not find any other manager at a remotely reasonable cost, and he had put himself forward. He told the tribunal that whilst they were school friends, he understood his professional duties and would not allow his private relationship to impact on his professional obligations. The tribunal was reassured by his candour and by the fact that he said, were he to be appointed, he would ensure that he familiarised himself with the relevant management Codes and statutory requirements.
18. There was no suggestion from the Respondent that Mr Buchanan was not capable of managing the Building indeed she said that she had no dispute with his professional capability. Nonetheless she did not regard him as a "neutral" person because he was a school friend and continuing friend of the Applicant's.
19. The tribunal gave the parties and Mr Buchanan a draft copy of its standard management order and invited their comments. Following a short adjournment, neither party wished to make any observations. Mr Buchanan had initially proposed a time charge of £50 per hour. Having reconsidered, he proposed a flat fee of £450 per annum plus VAT per flat on the basis of £1,000,000 professional indemnity insurance and a fee of 10% for major works. He did offer to reduce the flat fee to £400

plus VAT per flat per annum, if the professional indemnity insurance limit was reduced to £500,000.

20. Mr Buchanan said that he did not wish to hold clients' money, in the interest of keeping management simple, commendably in the tribunal's view. Instead he proposed that in an emergency situation he was happy to engage a contractor and pay for the services himself and later recoup the money from the parties. For major works he proposed that he would obtain estimates and after any necessary statutory consultation with the parties would arrange for them to lodge cheques with him drawn in the name of the contractor undertaking the works and that these cheques would subsequently be released to the contractor on satisfactory completion of the works.

The tribunal's decision

21. The tribunal was satisfied that the statutory grounds for appointing a manager had been met. The Respondent has clearly been in breach of the statutory requirements and the Code particularly in respect of her failure to comply with the s20 consultation requirements in respect of the major works.
22. The tribunal is of the view that the Respondent cannot effectively manage the building given her lack of management knowledge and experience and because of this, the breaches and failures may occur again in the future
23. From our observations of the tone of the verbal and written communication, it is clear that there has been a complete breakdown of relationship, which is liable to prejudice the upkeep and maintenance of the building.
24. Both parties acknowledged the need to appoint an independent manager as they have both "had enough." Indeed the Respondent had indicated in some of her correspondence the fact that she herself had given some consideration to appointing a manager.
25. The tribunal is very conscious of the fact that this appointment was at the instigation of the Applicant and that Mr Buchanan was his personal friend. However it noted that the Applicant had extensively sought alternative managers and some had agreed at absurd prices. One manager that he had engaged had agreed but then withdrew. The Respondent had also obtained an alternative quote from Stapleton Long but it appears that this was on the basis of her then understanding that the manager would be appointed to manage the Applicant's flat only and at his own cost. Stapleton Long quoted £200 plus VAT per annum per flat to manage both flats or £250 plus VAT per annum to

manage the upper flat. There was also a 15% commission on the collection of ground rents.

26. The tribunal carefully considered the Respondent's concern that Mr Buchanan was not suitably "neutral", but given his professional qualifications, his awareness of his professional responsibilities, and his responses to the tribunal's questioning, the tribunal considered that his acquaintanceship with the Applicant did not make him unsuitable. The tribunal reminded the parties that a manager appointed by the tribunal has an obligation to carry out the duties required of him by the tribunal, to act independently and not to favour one party.
27. Accordingly, the tribunal makes the order attached to this decision.

Application for costs and refund of fees

28. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application and hearing¹ amounting to £280. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the Applicant £190, being half the hearing and application fees paid, within 28 days of the date of this decision. Although the Applicant was successful in this application, the tribunal heard that the application was made without prior discussion with the Respondent and that it was only after proceedings had begun that the Applicant offered to resolve matters without the need for the tribunal's intervention, which would have been desirable notwithstanding the history of unfruitful relation between the parties. The Respondent was clear that she was not given any opportunity to consider the request prior to the application being made.
29. The Applicant also made an application for costs and produced a schedule of his costs. This was not given to the Respondent prior to the hearing. The rules that now govern the procedures of the First tier Tribunal are the Tribunal Procedures (First-tier Tribunal)(Property Chamber) Rules 2013. In determining costs, Rule 13 (1)(a) provides that the tribunal may make an order for costs only under section 29(4) of the 2007 Act (wasted costs); 13(1)(b) if a person has acted unreasonably in bringing, defending or conducting proceedings. Having heard the Applicant's submissions, the tribunal was not satisfied that the grounds for making an order were made out and therefore declined to make the order.
30. There was no application made under section s20C of the Landlord and Tenant Act 1985.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

31. The Respondent did not make an application for costs but stated that she had been denied the opportunity of doing so in a previous hearing.

Name: Judge E Samupfonda

Date: 10 September 2014



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London, SE22 OPB**

Applicant : **Mr C Gardner**

Respondent : **Ms B Allen**

The manager : **Mr S Buchanan**

Tribunal members : **Judge E Samupfonda
Mr S Mason BSc FRICS FCI Arb
Mr L Packer**

Date of order : **10 September 2014**

MANAGEMENT ORDER

1. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the Act”) the manager is appointed as manager [and receiver] of the property.
2. The appointment shall start on 1st October 2014 (“the start date”) and shall end on 29 September 2017 (“the end date”).
3. The manager shall fulfil the landlord’s management obligations contained in the residential leases of the flats in the property.
4. In managing the property the manager shall comply with the 2nd edition of the RICS Service Charge Residential Management Code (“the RICS Code”).
5. The manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors.

6. The manager shall comply with the statutory management obligations imposed on landlords and in particular those contained in the Landlord and Tenant Act 1985 and the Act.
7. The manager shall not collect the ground rents payable under the residential leases.
8. The manager shall collect all service charges and insurance premium contributions payable under the residential leases.
9. The manager may prosecute or defend court or tribunal proceedings relating to the management of the property and may continue to prosecute or defend proceedings commenced during the appointment after the end date.
10. The manager shall carry out the landlord's functions in the residential leases with regard to approvals and permissions including those for sublettings, assignments, alterations and improvements.
11. The manager shall by 3 November 2014 draw up a planned maintenance programme for the period of the appointment and shall send a copy to every lessee and to the respondent.
12. The rights and liabilities of the respondent under any contract of insurance for the property or for the provision of goods or services to the property shall become the rights and liabilities of the manager from the start date.
13. The manager shall be entitled to the following remuneration:-
 - a. An annual fee of £300 per flat for performing the duties set out in paragraph 2.4 of the RICS Code; and
 - b. 10 % of the net cost of any major works over £1,000 that are subject to statutory consultation.
 - c. Any additional fees contained in a schedule to this order for the duties set out in paragraph 2.5 of the RICS Code.
 - d. VAT on the above fees.
14. During the period of the appointment the manager must hold appropriate professional indemnity insurance cover of at least £500,000 (Five Hundred Thousand Pounds).
15. The manager shall register this order against the registered title to the property in accordance with section 24(8) of the Act.
16. The manager or any other interested person may apply to vary or discharge this order pursuant to the provisions of section 24(9) of the Act.

17. Any application to extend or renew this order should be made at least 3 months before the end date and must include a detailed report of the management of the property during the period of the appointment to the date of the application.

Name: Judge E Samupfonda **Date:** 10 September 2014