



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

Case Reference : LON/00AK/LAM/2015/0001

Property : 5 and 5A St Georges Road, London
N13 4AT

Applicant : Mr D M Greenwood (flat 5A)

Representative : In person

Respondent : Ms C Power (flat 5)

Representative : Maunder Taylor, Chartered
Surveyors

Type of Application : Appointment of a manager

Tribunal Members : Tribunal Judge L Rahman
Mr Alan Manson FRICS

**Date and venue of
determination** : 15.5.15 at 10 Alfred Place, London
WC1E 7LR

Date of Decision : 6.7.15

DECISION

Decision of the tribunal

- (1) The tribunal appoints Mr Martin Kingsley of K & M Group, The Studio, 63 Darlands Drive, Barnet, Hertfordshire EN5 2DE as the manager of 5 and 5A St Georges Road, London N13 4AT for a period of three years from the date of the Order (6.7.15) on the terms set out in the order annexed hereto.

The application

1. The applicant seeks an order appointing Mr Stephen Melia of AEM Properties as a manager under section 24 of the Landlord and Tenant Act 1987 (the "Act").

The hearing

2. The applicant appeared in person and the respondent was represented by Mr Maunder Taylor. Also in attendance were Mr Stephen Melia (the applicants proposed manager), Mr Martin Kingsley (the respondents proposed manager), the respondent, and the respondents father.

The background

3. The property which is the subject of this application consists of two flats and both the parties jointly own the freehold reversionary interest in the property. Jointly as freeholders the parties are required by their leases to maintain the exterior and common parts of the property and to consider applications for relevant consents under the terms of those leases.
4. The parties have never used a managing agent and over the years various issues have arisen which have resulted in the parties being unable to find any common ground.

The issues

5. The respondent wished to be joined as a party to the application as she was concerned that the applicant may withdraw his application. However, the applicant was not happy for the respondent to be joined as a party. Given that the parties were unable to agree on a single manager, the tribunal determined at the hearing as a preliminary issue that the respondent would not be allowed to join as a party, as two competing managers cannot be proposed in the same application. In any event, the respondents concern that the application may be withdrawn did not materialise and therefore her reason for wanting to be joined as a party was not required.

6. The respondent agrees that it is just and convenient to appoint a manager but disagrees with the appointment of Mr Melia. She proposed the appointment of Mr Kingsley, which the applicant disagrees with.
7. The parties agreed at the hearing that if Mr Melia were not appointed as manager then Mr Kingsley should be considered in the alternative.
8. Both parties also agreed that the appointed manager should have the power to grant or refuse consent regarding the proposed loft conversion by the applicant. Both parties also agreed that the issue of consent would only arise if the applicant had the right to the loft space under the terms of the lease. Whether or not the applicant had the right to the loft space was not a matter to be determined by the manager. The parties were informed that the tribunal would not consider the terms of the lease concerning the demise of the property as it was not relevant to the application before the tribunal.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal makes the following findings.

Appointment of Mr Stephen Melia as manager

10. After a lengthy and detailed cross examination, when asked by Mr Maunder Taylor whether Mr Melia still wanted the job, Mr Melia stated that he would like to think about it. The tribunal allowed a short adjournment for the applicant and Mr Melia to consider their position. Having considered the matter, Mr Melia stated that he wished to withdraw. Accordingly, the tribunal does not appoint Mr Melia as manager.

Appointment of Mr Martin Kingsley as manager

11. Mr Kingsley stated in oral evidence that he had inspected the relevant property and the relevant leases. He had seen the proposed management order and was happy with it. He had set out his management plan (page 211 of the bundle). He stated he was competent to take on this order and deal with the problems he had heard about. He was appointed manager for two other properties which also had large problems. One was a large high profile estate and the other was a small building. He stated that he would be impartial. He has managed a thousand properties and has been in business over the last 30 years.
12. After a detailed and lengthy cross examination by the applicant, and having considered the matter for a few minutes outside the hearing room, the applicant stated that he accepts that Mr Kingsley was impartial and in principle he agreed to Mr Kingsley's appointment as

manager. He stated he agreed with Mr Kingsleys fees except the following; the £250 charge for each consultation procedure under section 20 of the Landlord and Tenant Act 1985, the £150 charge for each additional consultation if it concerned very simple matters, and the £150 charge for carrying out a fire risk and health and safety assessment which he felt was optional.

13. Mr Maunder Taylor stated on behalf of the respondent that the £250 charge for the consultation procedure covered all three notices and required a lot of work and was reasonable. The £150 charge for further consultations with lessees was reasonable. Mr Kingsley stated the charge was payable by the party requesting consent for a particular matter, as requests for consent do not always turn out to be simple. If the request was simple, for example consent to replace the windows with exactly the same windows except they were double glazed instead of being single glazed, he would agree to not make an additional charge as his fixed fee would cover it. The fire risk and health and safety assessment was not optional as there was a shared entrance and therefore it was mandatory. The charge of £150 reflected the cost of arranging and following up the reports. The cost of the report itself would be separate and dependent on what the author of the report charged.
14. The tribunal finds Mr Kingsley is suitable to be appointed manager in view of his extensive experience, he has been appointed manager by the tribunal in two other cases, and the applicant accepts that he is impartial and did not object to his appointment in principle.
15. The tribunal finds Mr Kingsley's proposed fees reasonable. At present there is no management of the property, there is no reserve fund, no collection of service charges, no co-operation between the parties, and both parties accept the building is in need of attention. Given the current set up and the existing problems, we find the fees reasonable.

Amendments to the proposed management order / Directions / Schedule ?

16. The applicant wanted to include in the respondents proposed management order paragraph 4 of his own draft management order, namely, that *"The responsibilities of the manager will include installation and maintenance of all boundary fences to the rear of the property with payment for such maintenance being divided equally between the two co-freeholders"*.
17. The respondent objected to the addition of this clause as it involved property rights and the tribunal had no jurisdiction to deal with the matter.

18. Both parties agreed that the lease did not state anything about the boundary fence.
19. The tribunal finds that this clause cannot be included in the Order as it deals with property rights and is not relevant to the application before the tribunal.
20. Both parties agreed that the tribunals "Decision" was to note that at the moment there was no need for an insurance valuation but if the parties disagreed, the manager shall determine the matter.
21. Various other amendments were agreed between the parties and have been reflected in the amended Directions and Schedule annexed hereto.

L Rahman
Tribunal Judge

6.7.15

**IN THE FIRST-TIER TRIBUNAL
LON/00AK/LAM/2015/0001**

CASE NO:

BETWEEN:

MR D M GREENWOOD (FLAT 5A)

Applicant

AND

MR D M GREENWOOD AND MS C POWER JOINTLY AS LANDLORDS

Respondents

IN THE MATTER OF:

5/5A ST GEORGES ROAD, LONDON N13 4AT

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, parking spaces, passages, bin-stores, attic, common parts and all other parts of the property known as 5 and 5A St Georges Road, London N13 4AT.
 - b) "the Landlord" shall mean Mr D M Greenwood and Ms C Power jointly, the Respondents to this application, or in the event of the vesting of the reversion of the residential underleases of the property in another, the Landlords' 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 Martin Kingsley of K & M Group, The Studio, 63 Darlands Drive, Barnet, Hertfordshire EN52DE

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 3 years.
- 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 and in particular with regard to repair, maintenance, decoration, renewal and provision of services to and 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.

Tribunal Judge L Rahman

6th July 2015

DIRECTIONS

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 £2,000,000 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 managers 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 themselves, their servants or agents.
3. That not later than 2 weeks after the date of this Management Order the Landlords and the Applicants 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 Landlords shall not later than 2 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 in the service charge fund and the reserve fund (if relevant and however described) 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 such sums are held by the Landlords' servants or agents, the Landlords 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 Landlords or their servants or agents shall thereafter receive any sums under the Leases, they shall forthwith pay or take all reasonable steps to procure payment of such sums to the Manger.
5. That the Landlords and their 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 Landlords 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 Landlords, their servants and agents shall permit the Manager and assist him as he reasonably requires to serve upon any Tenants any Notice pursuant to S.146 of the Law of Property Act 1925.
8. That the Landlords shall deliver to the Manager forthwith copies of all specifications, tenders, planning permissions and all other consents, permissions, documents and instruments which the Landlords have, or which come into the power, control or custody of the Landlords after the date of this Management Order, concerning or arising out of Mr Greenwood's intention to construct an extension to his first-floor flat at the Property or which are in the power, control or custody of any of the parties' servants or agents, in which last case they shall take all reasonable steps to procure such delivery from their servants or agents.
9. That the rights and liabilities of the Landlords and/or any 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 2 weeks from the date of this Management Order become rights and liabilities of the Manager.
10. That the Manager shall account at due time to both parties for payments received by him and shall apply those amounts (other than those representing his fees) in the performance of the Landlords' 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.

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 charge" or "service charges" within this Management Order shall include such contribution to the Reserve Fund.
- 1.6 The Manager shall have the right to demand and collect 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 their percentage share under the terms of their respective Leases, and shall have the right to amend such service charge budget during the course of any particular financial year if the Manager finds it appropriate or necessary to do so for the proper management of the Property.
- 1.8 The Manager shall have the power and the duty to carry out the obligations of the Landlords contained in the Leases (save as varied by the terms of this Management Order), and in particular, and without prejudice to the generality of the foregoing shall have:
- a) the Landlords' obligation to provide services;
 - b) the Landlords' repairing, maintenance and renewal obligations;
 - c) the Landlords' obligation to arrange insurance of the buildings on the Property ("the Buildings") with a reputable insurer; and
 - d) the Tribunal recognises that the Landlords' covenants are currently in breach and that the Manager's plan requires some considerable time before all such breaches can be remedied, during which, the Manager has no liability for pre-existing breaches.
- 1.9.1 The Manager shall have the power in their own name to bring and defend any action or other legal proceedings in connection with the Leases or the Property including but not limited to proceedings against any of the Tenants in respect of arrears of rent, service charges or other monies due under the Leases, and to make any arrangements or compromise, 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 Landlords in relation thereto, as shall have been commenced before the date of his appointment and which the Landlords shall be at liberty to pursue.
- 1.9.2 For clarification, such action or other legal proceedings to include the power in his own name to seek a Charging Order and Order for Sale against any Tenant or the Landlords in the event of non-payment of sums due.
- 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 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 or their appointed managing agent 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 a managing agent, solicitors, accountants, architects, surveyors, and such other professionally qualified persons as may reasonably be required to assist them 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 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 monies 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 monies paid as contribution towards the Reserve Fund and all other monies 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 or the Landlords owing monies due under his, her or its Lease.
- 1.16 The Manager, acting reasonably, shall have the power to receive, consider, refuse, grant or otherwise deal with applications for consents or licences of whatever nature as to

dealings, alterations or any other matters requiring the consent of the Landlords under the Leases which relate to the Tenants or as to their flat. 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 Landlords therefore. Where the Manager has confirmed that such consent or licence shall be granted the Landlords 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 Landlords of any such applications received by him and the terms thereof which he proposes to grant, with the intent that the Landlords(each of them) 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 his powers under this Management Order in the 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 Landlords in the Property or any part thereof.

B. Accounts

- 2.1 The Manager shall prepare and submit to the Landlords an annual statement of account detailing all monies received and expended on their 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 Landlords' behalf will be accounted for in accordance with the Accounts Regulations as issued by the Royal Institution of 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 Landlords.

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. The Manager shall proceed with due diligence, but subject to receipt of funds from the Tenants and/or the Landlords, with a programme of major restoration works in order to restore reasonable repair over a reasonable period of time.
- 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 Landlords 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 redecoration 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 £1,200 plus VAT p.a. for both flats.
- 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 £250 plus VAT (for the Manager's involvement) as well as the professional fees of any architect, surveyor, or other appropriate person in the administration of a contract for such works to be charged separately (whether the Manager carries out that work himself or instructs outside professional advisers) limited to 7% plus VAT.
- 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 on a fee basis of the fees as set out in Paragraph 6 of Mr Kingsley's plan.

These fee rates to be reviewed annually.

E. Complaints Procedure

- 5.1 The Manager shall operate a complaints procedure in accordance with the requirements of the Royal Institution of Chartered Surveyors and the Association of Residential Managing Agents. Details of the procedure are to be made available from the Manager on request by either of the parties.