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

Case Reference : LON/00AG/LVM/2016/0009

Property : 18 Bartholemew Villas
London NW5 2LL

Applicants : Carolyn Porretta – leaseholder
Darren Powell MRICS – manager

Respondent : Victoria Keri-Nagy

Proposed Manager : Martin Kingsley MRIPM MRICS

Type of Application : Replacement of appointed manager

Tribunal Members : Judge Nicol
Mr H Geddes RIBA

Date and venue of Hearing : 8th August 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 8th August 2016

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the order of 3rd September 2015 shall be varied as follows:-
- (a) Mr Martin Kingsley MRIPM MRICS shall replace Mr Darren Powell MRICS as the Tribunal's manager for the subject property;
 - (b) The period of the Order shall be extended to three years from 8th August 2016.
- The amended order, including the terms of Mr Kingsley's remuneration, is set out in the first Appendix to this decision.
- (2) There shall be no order as to costs.

Tribunal's reasons

1. On 3rd September 2015 the Tribunal appointed Mr Darren Powell MRICS, then of Ringleys, as its manager of the subject property under section 24 of the Landlord and Tenant Act 1987 (which is set out in the second Appendix to this decision). The application for the appointment had been made by Ms Carolyn Porretta, lessee of one of the three flats at the subject property, which was not opposed.
2. Since that time, Mr Powell has had difficulty obtaining the information he needs from the Respondent's agents, Salter Rex. According to Mr Chris Keri-Nagy, representing his sister, the Respondent, Salter Rex refused to hand over material to him – this is mystifying to the Tribunal, given that the Respondent employed them, but may explain at least part of Mr Powell's problem. Mr Powell also moved to work in a different role at HML Andertons in Kent. It is clear that he cannot carry on as the Tribunal's appointee and so the original order must be varied.
3. The order of 3rd September 2015 was made by consent, since when the concerns which prompted the Applicant to come to the Tribunal have grown. She has been deeply dissatisfied with Mr Powell's performance, particularly his lack of communication, which she feels exacerbated the poor service she had been getting from the Respondent's agents. Therefore, she applied for Mr Powell to be replaced by varying the order appointing him. In her application, she proposed Matthew Young BSc AIRPM, but she has since changed that to Mr Martin Kingsley MRIPM MRICS.
4. The Tribunal heard the variation application on 8th August 2016. The Applicant attended on her own behalf and Mr Keri-Nagy for the Respondent. Both Mr Powell and Mr Kingsley also attended.
5. Mr Powell's former principal, Ms Miriam Bowring, also of Ringleys, had prepared a schedule showing what action had been and should be taken, including by the Tribunal. The Applicant also sought orders which she thought would address the management problems which arose under both Mr Powell and the Respondent. However, the Tribunal's jurisdiction is limited, providing no power to do much of what was sought. Moreover, the Applicant asked for some things of which Mr Powell had not been given any notice and for other things which would be premature unless and until his replacement had been appointed and had had time to start their management of the property. Therefore, this decision is limited to the issue of Mr Kingsley's appointment and the Applicant's costs application referred to further below.
6. Mr Kingsley provided a two-page management plan which gave details of his background and experience and how he intended to take management of the subject property forward. In particular, he has

previously been appointed as manager by the Tribunal four times and has experience of coming back to the Tribunal to ask for further direction.

7. The Tribunal was concerned that some of his proposed additional charges would be calculated in an open-ended way, potentially resulting in a large and/or unpredictable bill. In the light of this, and having heard some of the history of disputes at the property from both parties, he amended his remuneration proposals, increasing his annual fee, inclusive of VAT, from £2,100 to £3,100 and introducing a one-off handover fee of £1,500 (inclusive of VAT), in exchange for removing some items from his list of additional charges. In particular, the preparation of accounts for 2015, covering the last full year before his appointment, would be included within the annual and handover fees.
8. Both the Applicant and Mr Keri-Nagy were concerned at these unanticipated changes but, having taken time to consider the alternatives, they both decided they would continue to support Mr Kingsley's appointment, albeit on the revised terms.
9. The Tribunal is satisfied that it is just and convenient to make the order sought. The reasons behind the original order have not gone away. Rather, some necessary management steps have simply been delayed during Mr Powell's term of appointment. Mr Kingsley is an appropriate appointee and his fees are reasonable for the work he is likely to have to do in relation to the subject property.
10. The Applicant sought reimbursement of her fees and payment of her costs in these proceedings from Mr Powell under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal rejects this application. The Applicant's frustration at the lack of progress under Mr Powell is entirely understandable but he was a paid employee of Ringleys – it is not appropriate that he should be personally responsible for the Applicant's costs. Moreover, in relation to the Applicant's costs other than the Tribunal fees, the Tribunal is not satisfied that he has a case to answer that his behaviour was so reprehensible as to be regarded as unreasonable within the meaning of rule 13(1)(b).

Name: NK Nicol

Date: 8th August 2016

Appendix 1 – Management Order

On the application made on 16th May 2016 under Part II of the Landlord and Tenant Act 1987 for the variation of the order of 3rd September 2015 appointing a manager in respect of 18 Bartholomew Villas, London NW5 2LL (“the Premises”)

IT IS ORDERED THAT

1. Mr Martin Kingsley of K&M Property Management (UK) Ltd, the Studio, 63 Darlands Drive, Barnet EN5 2DE (“the Manager”) be appointed manager and receiver of the Premises with effect from 8th August 2016.
2. The Manager shall manage the Premises in accordance with:
 - (1) The respective obligations of Mrs Victoria Keri-Nagy living at 18C Bartholomew Villas, London NW5 2LL and her successors in title (“the Landlord”) as landlord under the leases of the three flats in the Premises (“the Flats”) with regard to the management of the Premises, more particularly set out in clause 5(5) of the leases of the Flats; and
 - (2) ~~In accordance with the duties of a manager set out in the Service Charge Residential Management Code published by the Royal Institute of Chartered Surveyors, approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.~~
3. The Manager shall be entitled to receive all service charges due to the Landlord pursuant to the Leases and shall collect such service charges from the lessees of the Flats (including the Respondent as lessee) subject to and in accordance with clause 4(4) of and the Fifth Schedule to the leases of the Flats.
4. The Manager shall apply all service charges and/or other sums received pursuant to the leases of the Flats (other than those representing his fees hereby specified) in the performance of the Landlord’s covenants contained in the Leases.
5. Within 14 days of the date of this order Darren Powell and the Landlord shall provide to the Manager and/or procure that Ringleys or Salter Rex LLP respectively will provide to the Manager:
 - (1) All books and records relating to the Premises in the possession of Darren Powell, Ringleys, the Landlord or Salter Rex LLP;
 - (2) The balance of any service charge monies held by Darren Powell, Ringleys, the Landlord or Salter Rex LLP, including any reserve funds, together with up-to-date accounts;
 - (3) A schedule of all existing contracts relating to the Premises to which Darren Powell or the Landlord is a party or in respect of which Darren Powell or the Landlord has any rights and liabilities, which schedule shall state the terms of each contract, the terms of any variation thereof, the extent to which such contracts have been performed, and

particulars of any claims which have been made or, so far as Darren Powell or the Landlord is aware, are likely to be made under each such contract.

6. The rights and liabilities arising under any such contracts to which the Manager is not a party shall become rights and liabilities of the Manager, subject to the Manager satisfying himself that they are proper and reasonable contracts. If he is not so satisfied, he shall serve a notice to that effect on the Landlord within one month of his appointment as Manager.

7. The Manager shall be entitled to prosecute claims in respect of causes of action vesting in the Landlord under the Leases before or after the date of his appointment.

8. The Manager shall be entitled to appoint an accountant to prepare the service charge accounts and/or such other surveyor, architect, engineer or other professional as he reasonably requires to assist him in carrying out his duties as manager and receiver of the Premises in accordance with this Order and the cost of any such appointments shall be apportioned pursuant to the service charge provisions in the leases of the Flats.

9. The Manager shall be entitled to remuneration in the annual sum of £3,100 (inclusive of VAT), subject to annual increases at the rate of no more than 5% and include additional fees as follows:

- A one-off handover fee of £1,500 (inclusive of VAT);
- £150 for each consultation procedure under section 20 of the Landlord and Tenant Act 1985;
- £150 for obtaining professional advice if required;
- 8% of the cost of supervising and contract administration for any major works project;
- £100 for chasing arrears and pursuing any debt with solicitors, to be charged to the lessee concerned if applicable;
- £150 for the process of any insurance claim or valuation.

10. The Manager shall in the performance of his functions and duties and in the exercise of his powers under this Order exercise all the reasonable care and skill to be expected of a manager experienced in the carrying out of the functions and duties and the exercise of the said powers and shall indemnify the Respondent in respect of any loss occasioned by any negligent act or omission of himself, his servants or agents.

11. The appointment of the Manager shall be for a period of three years from 8th August 2016.

12. The Manager, the Applicant and the Landlord shall have leave to apply to the Tribunal for further or other orders and/or directions.

Appendix 2 – relevant legislation

Landlord and Tenant Act 1987

Section 24

- (1) The appropriate tribunal may, on an 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) The appropriate 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 obligation owed by him to the 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) ...
 - (iii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ab) where the tribunal is satisfied--
 - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (aba) where the tribunal is satisfied--
 - (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (abb) where the tribunal is satisfied--
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ac) where the tribunal is satisfied--
 - (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;

or

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

(2ZA) In this section "relevant person" means a person—

- (a) on whom a notice has been served under section 22, or
- (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

- (a) if the amount is unreasonable having regard to the items for which it is payable,
- (b) if the items for which it is payable are of an unnecessarily high standard, or
- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) 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.

(4) An order under this section may make provision with respect to—

- (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters,
- as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
- (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—
 - (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) The appropriate 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 by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any 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) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.