11562

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AK/LAM/2016/0001**
Property	:	**Arnos Grove Court,**
Applicants	:	**Mr J. Fitzgerald and Mrs M. Fitzgerald (Flat 9 and Garage 1)**
Representative	:	**Mr S. Simon, Solicitor; Integrity Management Limited**
Respondent	:	**Edlington Limited (Landlord)**
Representative	:	**Mr G. Kingham (Director)**
Type of Application	:	**Appointment of Manager – Section 24 Landlord and Tenant Act 1987; also Costs - Section 20c Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge Lancelot Robson** **Mr S. A. Manson FRICS**
Date of Hearing and Decision without reasons	:	**22nd February 2016**
Date of Reasoned Decision	:	**9th] March 2016**

DECISION

Decision Summary

A. Order to dispense with the requirement to serve a notice under Section 22 (3) of the Landlord and Tenant Act 1987 (the Act) granted.

B. Order for the appointment of Mr Matthew Young BSC (Open) MIRPM as Manager of the Property made under Section 24 of the Act in the terms of the Management Order (with appendices thereto) attached to this decision as Appendix 1 below with effect from 22nd February 2016, the Tribunal being satisfied that grounds specified in Section 24(2) of the Act exist, and that Mr Matthew Young is a suitable appointee, and further in view of the Respondent's agreement to such order. The terms of the Order are varied in one respect, as noted in C below.

C. The Order shall have effect for a period of two years, but that period may be extended to three years by a further application and the production of satisfactory written evidence to the Tribunal that a shorter period is likely to result in a service charge of more than £2,000 per unit per annum being charged.

D. No Order under Section 20c of the Landlord and Tenant Act 1985 was deemed necessary, in view of the unusual circumstances of this case.

Preliminary

1. By an Application dated 30th November 2015 the Applicant seeks a determination under Section 24 of the LANDLORD AND TENANT ACT 1987 (as amended) (the Act) for the appointment of a manager. An order for dispensation relating non-service of a notice under Section 22 of the Act, and an order under Section 20C of the Landlord & Tenant Act 1985 (limiting the landlord's costs of the application) was also made.

2. Directions were given by the Tribunal on the 16th January 2016, and amended Directions were given on 5th February to bring the date of the hearing forward, as the property since the Lease appointed manager had been struck off the Register of Companies, and no other person was responsible for, or obliged to the manage the property. The Respondent was served with a copy of the application, directions and notice of the hearing date, but took no part in the proceedings until the morning of the hearing.

3. The Tribunal was informed at the hearing that the property is a block of 26 flats and 12 garages plus one other storage unit attached to the garages. Most, but not all the garages are let to leaseholders. There are two forms of lease; described for ease of reference as "Phase 1" leases, following the form of the Applicants' lease, and "Phase 2" leases, which follow a different form. Ten of the residential leases and all the garage leases are Phase 1 leases, and sixteen residential leases are "Phase 2" leases. Phase 1 leases placed the responsibility for managing the block on a lease appointed management company (Arnos Grove (Management) Limited) controlled by the leaseholders, with no right for the landlord to enforce the lease covenants

for payment of the service charge against the leaseholders. Phase 2 leases were mostly in the same form, but a seventh schedule had been added, providing that the leaseholder could enter into a Deed of Variation, which effectively transferred the power and responsibility to manage to the landlord. To date it appeared that only three leaseholders had entered into such a Deed. At the hearing the Respondent confirmed the Applicants' submission that those Deeds had been entered into irregularly. Mr Kingham stated that although the Respondent was the landlord at that time, he was adamant that he had no knowledge of these Deeds. The relevant signatures purporting to be his were in fact not his signatures.

Hearing

Respondent's Case on Preliminary Issue

4. The hearing was originally intended as an undefended application, the main item of business being to interview Mr Young, the proposed Manager. Mr Kingham, a director of the Respondent, appeared unexpectedly and stated that he had come because he was not sure whether to object to the order being sought, or not. He had several major concerns;

a) The Respondent had been managing the property successfully for many years, firstly by Mr Kingham personally and later through its agent Oakpower Ltd. It was only when the appointed manager wished to retire and invited Integrity Management Ltd to take over as his sub-agent that the question of entitlement had been raised. Integrity had asked him to sign a management agreement in April 2014. In his view, Integrity was his agent.

b) The proposed Manager was an employee of Integrity and he queried whether it had a conflict of interest if he became the Manager under Section 24.

c) The letter from the Tribunal giving notice of the application had not contained the attachments stated to be there, so he had not had time to properly consider the application. He produced the envelope, which the Tribunal agreed was too small to have contained the documents concerned.

d) He had briefly taken legal advice, and had been advised that the leases gave the Respondent the right to manage.

Applicant's Case

5. In response, Mr Simon, for the Applicants, submitted that the Respondent had never signed or replied to the management agreement offered on 16th April 2014. It had then managed the property as sub-agent for Oakpower Ltd. In June 2015, a lessee of one of the garages had queried the landlord's right to collect the service charge. Mr Simon had been asked to review the leases. He concluded that although the landlord was entitled (but not obliged) to carry out work and manage

the property, it had no right to be paid for doing so. He believed that the advice Mr Kingham had received was erroneous, in that the lease which had been examined was a Phase 2 lease, and in any event the terms of Phase 2 leases were a breach of the covenants given by the landlord in the Phase 1 leases to only grant leases in substantially the same form.

6. He further discovered that Arnos Grove (Management) Limited had been struck off the Register of Companies and was dissolved on 27th June 2006. While there was a saving provision for the company to be reinstated on application, there was a final time limit for doing so, which in this case was before 1st October 2015. He had contacted Mr Kingham in July 2015, after doing some research to find his address, and explained the position to him in a telephone call on or about 22nd July 2015. He requested instructions to make the application to reinstate Arnos Grove (Management) Limited to the Companies Register before the deadline. Mr Kingham had failed to make any substantive reply. Integrity then gave notice to the parties that it had ceased to manage the property.

7. Several lessees then contacted Integrity to discover why management had ceased. The situation had been explained, and also Mr Simon's view that only a Section 24 application could effectively deal with the situation. However only the Applicants came forward to authorise an application. When the application had been served, it had been sent to the Respondent's registered office, as it should have been. A copy was also sent by email to Mr Kingham's email address by the Applicants. Apparently the papers sent to the registered office had taken some time to reach Mr Kingham, but the first time he had made contact was on the morning of the hearing.

8. The Tribunal then adjourned to decide whether there was a material conflict of interest for the Manager, and whether the Respondent had had sufficient time to make its case. The Tribunal decided that there was no material conflict of interest for Mr Young, as his company had ceased to manage the property before the application, and that Mr Kingham had in fact been sufficiently informed of the application.

9. At this point, Mr Simon informed the Tribunal that there had been discussions during the adjournment, and that Mr Kingham had now accepted the necessity and urgency of the application. Mr Kingham confirmed his agreement on behalf of the Respondent.

10. The Tribunal then interviewed Mr Young as to his suitability to manage the property. The parties also had the opportunity to examine him, and did so. Mr Matthew Young BSc MIRPM is the founder of Integrity Property Management Limited. Currently Integrity manages more than 50 buildings with over 1,000 flats in London and Aylesbury. He has been appointed as a Manager by the Tribunal relating to another building, which he still manages. The company currently has professional indemnity insurance for £1,000,000. Asked about works needed at the property, he noted that cyclical redecoration and repairs works required

by the Lease were overdue, and he would instruct a specialist surveyor to report on its condition. The leases all needed variation and he would instruct Counsel to advise him. He would be consulting with all parties as matters progressed. He considered that he would need two to three years to complete the work. He confirmed to Mr Kingham that any premium relating to a lease extension would be paid to the Respondent as freeholder.

11. Mr Simon urged us to appoint Mr Young for three years or more, as if the appointment was for a shorter period, it would be difficult to phase the works so as to be reasonably affordable by the leaseholders.

12. The terms of the Management Order and management agreement were discussed and agreed at the hearing, with the Tribunal reserving its decision relating to the actual period for appointment for further consideration prior to its detailed decision.

Decision

13. The Tribunal considered the evidence and submissions. Mr Simon had addressed it briefly on the need for the Section 22 notice, which was not disputed by the Respondent. He had taken the view that serving a Section 22 notice would have little effect. The landlord had no contractual right or duty to comply with any aspect of the service charge provisions under the Phase 1 leases. The Applicants were Phase 1 leaseholders. Serving a notice on the Respondent requiring it to cure defaults would be pointless. Although it may be arguable on another occasion that a section 22 notice should have been served in any event, the Tribunal was persuaded that in the unusual circumstances of this case that it was not practicable to serve the notice, because there was nothing or little the Respondent could be obliged to do. The Order was by consent, and the appointment was urgent.

14. The Order to dispense with the requirement to serve a notice under Section 22 (3) of the Landlord and Tenant Act 1987 (the Act) was thus granted.

15. Following from the above, the Order for the appointment of Mr Matthew Young BSC (Open) MIRPM as Manager of the Property was then made under Section 24 of the Act in the terms of the Management Order (with appendices thereto) attached to this decision as Appendix 1 below, with effect from 22nd February 2016. The Tribunal was satisfied that grounds specified in Section 24(2) (b) of the Act exist, and that Mr Matthew Young is a suitable appointee. Also the Respondent agreed to the order. The terms of the Order are varied in one respect, as noted below.

16. The Tribunal considered both Mr Young's view, and that of Mr Simon. It also took into account the Respondent's position. The parties and the Tribunal had very little information on the works likely to be needed or the costs involved. Mr Simon was correct to raise the issue of affordability when considering the terms of the Order. However, an order under Section 24 is intended to be curative, and once the necessary

physical works have been completed and legal procedures necessary to ensure that all parties have satisfactory enforceable covenants relating to repairs, insurance and service charges, then the Order should lapse. Control of the management should then normally revert to the freeholder. The Tribunal thus decided that the Order shall have effect for a period of two years, but that period may be extended to three years by a further application and the production of satisfactory written evidence to the Tribunal that a shorter period is likely to result in a service charge of more than £2,000 per unit per annum being charged.

17. The Tribunal also notes that any party concerned is entitled to apply for a variation of the Management Order, if circumstances change.

Costs

18. The application contained an application for a Section 20c Order. However the Applicants did not proceed with that application, as it appeared that there was no provision in the Lease to allow the Respondent to charge its costs to the service charge. The Tribunal decided that NO Order under Section 20c of the Landlord and Tenant Act 1985 to limit the landlord's costs of the application chargeable to the service charge was necessary, in view of the terms of the Lease, and the unusual circumstances of this case.

Judge Lancelot Robson 9th March 2016

Appendix 1

(See attached Management Order approved at the hearing in consultation with the parties)

Appendix 2

Landlord & Tenant Act 1987; Section 22

"(1) Before an application for an order under Section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection 3(3)) be served by the tenant on-

(i) the landlord and

(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy

(2) A notice under this section must-

a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices including notices in proceedings, on him in connection with this Part;

b) state that the tenant intends to make an application for an order under section 24 to be made by a leasehold valuation tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;
c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
d) where those matters are capable of being remedied by any person on whom the notice is served, require him within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and
e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) A leasehold valuation tribunal may (whether on the hearing of an application for an order under Section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) ..."

Landlord & Tenant Act 1987 Section 24

(1) A leasehold valuation 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) 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 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 to be made...
....
ac) where the tribunal is satisfied-

(i) that any relevant person has failed to comply with any 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.

(3) – (6)...

(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)

Tenant Act 1985 Section 20C

"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

(2).....

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances."