



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

Case Reference : **LON/OOAU/LAM/2016/0003**

Property : **18 Almeida Street, London N1 1TB**

Applicant : **Mr A. Winford (leaseholder)**

Respondent : **Almeida Residents Limited (landlord)**

Type of Application : **An application for the appointment of a manager under the provisions in Part II of the Landlord and Tenant Act 1987 (the '1987 Act')**

Tribunal Members : **Professor James Driscoll (Judge) and Mr Peter Roberts DipArch RIBA (Member)**

Date and venue of Determination : **16 May, 2016 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 June, 2016**

DECISION

Decision of the Tribunal

The application for a manager to be appointed under Part II of the 1987 Act is dismissed. We announced this decision at the close of the hearing held on 16 May 2016 to those who attended it.

The application

1. This application relates to the management of the subject property which is building that has been divided into four flats each one held on a long lease. The freehold is held by Almeida Residents Limited a company in which each of the leaseholder (or leaseholders) holds 25% of the shares. Each leaseholder is also a director as well as a shareholder of the company. Thus the landlord is a leaseholder-controlled company.
2. The owners of the basement flat are Adam Smith and Rochelle Gyer; the ground floor flat is owned by Andrew Winford; the first floor flat is owned by Dorothy Stannard and the lease of the fourth flat which is on the second and third floors is Saffron Burrows. Ms Burrows lives in the United States but we were told that she is aware of the application.
3. Mr Winford has made this application for a manager to be appointed under the provisions in Part II of the Landlord and Tenant Act 1987. He had also made an application seeking a determination that there have been breaches of the lease of the basement flat (under section 168 of the Commonhold and Leasehold Reform Act 2002) but at a case management conference held on 11 February, 2016, after hearing submissions from Mr Winford and from the leaseholders of the basement and first floor flats, the tribunal rejected the application. This was because it was clear that the proper applicant should be the landlord. Mr Winford has not sought to challenge that decision. This leaves his application under the 1987 Act to be determined.
4. Directions were also given at the case management conference on the application for a manager to be appointed. A large bundle of documents was produced totalling 650 pages.

The hearing

5. A hearing took place on 16 May 2016. Neither party was represented. Mr Winford presented his case for appointing a manager and the other leaseholders who attended made it clear that they were opposed to a manager being appointed. The hearing was attended by Adam Smith and Rochelle Gyer and Dorothy Stannard as well as Mr Winford.

6. We raised a preliminary issue namely, that the proposed manager, a Mr Peter Bigg of Town and City Management, was not present. No explanation was offered by Mr Winford. We reminded him that Mr Bigg had attended the case management conference when the hearing date was fixed. It was the responsibility of Mr Winford to ensure that his proposed manager attended the hearing.
7. We adjourned to allow Mr Winford to attempt to contact Mr Bigg but he told us that he could not obtain an answer to calls and emails and so concluded that he was probably on holiday. Later he informed us that he had received a message that Mr Bigg is away on holiday.
8. In these circumstances we informed those present that it is not possible for the tribunal to appoint a manager as we would have to be satisfied not only that the applicant has established that there are grounds for making such an appointment, but also that it is just and equitable to do so, and that the proposed manager is suitable for the appointment. Without the opportunity of asking questions of Mr Bigg it was impossible to consider appointing him as a manager.
9. Nor did we consider it fair to the other leaseholders or proportionate in terms of the tribunal's resources for us to adjourn the hearing to another date for a proposed manager to attend.
10. At the close of the hearing, and after a brief adjournment, we informed the parties that as the proposed manager failed to attend the hearing that we could not consider ordering the appointment of a manager. The application was therefore dismissed. We added that we would produce a short written decision to confirm this. This is that written decision.
11. We heard from all the parties present. It is clear that the dispute relates to works carried out to the basement flat. These works were carried out without the consent of the landlord. The leaseholders concerned (Adam Smith and Rochelle Gyer) have sought a retrospective consent to the works from the landlord.
12. Those leaseholders as members of the landlord company are (not surprisingly) in favour of the consent being granted. Ms Stannard as a member of the landlord company also supports the giving of a retrospective consent. Ms Burrows has also indicated that she supports the application for a retrospective consent being given. These leaseholders are opposed to the application for a manager to be appointed.

13. Thus only Mr Winford is against a consent being granted and he is the only leaseholder who supports the application for a manager to be appointed.
14. As no prospective manager was put forward at the hearing we could not make an order. For this reason we do not consider it necessary to make any determination other than to reject the application. However, we would add the following comments as this may guide the parties who we hope will now agree on the terms of the retrospective consent or, as members of the landlord company, will vote on these terms.
15. Our first comment is that we consider that Mr Winford's complaints about the terms of the proposed retrospective consent to have little or no justification. Second, we consider that the extensive documentation produced for the hearing (which we read and considered) is out of all proportion to the issues involved. The documentation includes copies of emails, minutes of company meetings which only serves to reinforce the conclusion that this is a dispute on a simple matter, that is the terms on which the landlord company should grant a retrospective consent to the works carried out by the leaseholders of the basement flat.
16. Third, it is far from clear what would be achieved by the appointment of a manager. No manager can resolve the difference of opinion on the terms of the proposed consent without securing the agreement of the leaseholders.
17. Fourth, it is clear that the application for a manager to be appointed is opposed by most of the leaseholders/members. For these reasons we do not think that the tribunal could find it just and equitable to appoint a manager even if there were grounds for doing so.
18. Ms Stannard suggested that what has prompted the application was an email proposing that the landlord company members/directors vote on the terms of the proposed retrospective consent. Mr Winford did not contradict this and the documentary evidence shows that no sooner than he realised that the company was going to vote he instigated the application by service of the preliminary notice required by section 22 of the 1987 Act.
19. The application for a manager to be appointed under the 1987 Act is dismissed.

James Driscoll and Peter Roberts, 17 June 2016