



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

Case reference : LON/00BK/LAM/2018/0009

Property : 77 Abbey Road, London NW8 0AE

Applicants : Rekha Ghosh (Flat A), Neil Hutchinson (Flat B) and Robert Chard (Flat D)

Representative : Robert Chard in person

Respondent : Irfan Sadeeq

Representative : Not present and not represented

Also present : Rekha Ghosh (leaseholder of Flat A) and Matthew Stylianou (proposed manager)

Type of application : Appointment of Manager

Tribunal members : Judge P Korn
Mr M Cairns MCIEH
Mr C Piarroux JP CQSW

Hearing Date and Venue : 7th September 2018 at 10 Alfred Place, London WC1E 7LR

Date of decision : 10th October 2018

DECISION

Decision

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Matthew Stylianou of Westways Estate Agents Limited ("**the Manager**") is appointed as manager of the property at 77 Abbey Road, London NW8 0AE ("**the Property**").

2. The order shall continue for a period of 2 years from 10th October 2018. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
3. The Manager shall manage the Property in accordance with:
 - (a) the directions and schedule of functions and services attached to this order;
 - (b) the respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and in particular with regard to repair, decoration, provision of services and insurance of the Property; and
 - (c) the duties of a manager set out in the Service Charge Residential Management Code ("**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 Leasehold Reform Housing and Urban Development Act 1993.
4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
5. An order is hereby made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs (if any) before the Tribunal shall not be added to the service charges.

Background

6. The Applicants seek an order appointing Matthew Stylianou of Westway Estate Agents Limited as a Manager in relation to the Property under section 24 of the Landlord and Tenant Act 1987 ("**the Act**"). They also seek an order preventing the Respondent from recovering his costs (if any) in connection with these proceedings through the service charge.
7. A preliminary notice under section 22 of the Act was served on the Respondent on 16th May 2018.
8. The building is a purpose-built block with a commercial unit on the ground floor and 4 residential flats above. The Applicants are 3 of the 4 residential leaseholders. At the hearing Mr Chard said that the other leaseholder, Mr Andrew Green of Flat C, is frequently away for long periods and has not been involved with, or opposed, this application.

Applicant's case

9. The Applicants rely in part on a previous decision of the Tribunal dated 23rd April 2018 on an application by Robert Chard and Rekha Ghosh for the determination of liability to pay service charges. In that decision the Tribunal determined that a large number of service charge items which had been demanded were not payable. The Tribunal in

that case also determined that certain work had not been carried out by (or on behalf of) the Respondent to a reasonable standard and also criticised the Respondent's lack of documentation and invoices. One particular charge was described by the Tribunal as "clearly extortionate". The Tribunal also described as well-founded (based on the evidence) the complaint by Mr Chard and Ms Ghosh that the Respondent had been very aggressive and caused significant stress to the residents of the building.

10. At the hearing Mr Chard said that the Respondent had virtually ignored the previous Tribunal decision and had made aggressive demands which directly contradicted the findings contained in the previous Tribunal decision. The Respondent had been abusive and very hard to deal with, and the police had become involved and warned him not to come to the building. Any work carried out on behalf of the Respondent had been carried out by people without appropriate qualifications. The building was uninsured for a year.
11. Mr Chard referred the Tribunal to relevant documents in the hearing bundle, including evidence of service of the preliminary notice, examples of abusive correspondence and a demand for a sum which the Tribunal had already declared not to be payable. Mr Chard confirmed that the leaseholder of Flat C was aware of this application.

Respondent's position

12. The Respondent has made no written submissions whatsoever in response to the application for the appointment of a manager or in response to the Applicants' own submissions. He was not present or represented at the hearing. The case officer telephoned him on the morning of the hearing and established that he was aware that the hearing was taking place that morning.

The proposed Manager

13. The Tribunal asked Mr Stylianos a number of questions in order to establish whether he would be a suitable manager in the event that the Tribunal decided that a manager should be appointed. Mr Stylianos said that he had been a director of a full-service estate agency since November 2014 and that he oversees the whole business. The agency has a portfolio of 28 blocks, ranging from 4 to 32 units and it has a 24-hour emergency maintenance helpline. Mr Stylianos is an Associate of the Institute of Property Managers. Various other points were also discussed.

Reasons for decision

14. Under section 22(1) of the Act, *"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)) 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.". We are satisfied that this sub-section has been complied with, and the Respondent has not contested this point.

15. The relevant parts of section 24 of the Act provide as follows:-

"(1) A 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 property, or (b) such functions of a receiver, or both, as the tribunal thinks fit.

(2) A tribunal may only make an order under this section ... (a) where the tribunal is satisfied ... that any relevant person is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises ... and that it is just and convenient to make the order in all the circumstances of the case; (ab) where the tribunal is satisfied that unreasonable service charges have been made, or are proposed or likely to be made and that it is just and convenient to make the order in all the circumstances of the case ... (ac) where the tribunal is satisfied that any relevant person has failed to comply with any relevant provision of a code of practice ... and 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."

16. On the basis of the information provided by the Applicants, which has not been contested by the Respondent, we are satisfied that the Respondent is in breach of obligations owed by him to the Applicants, in particular by failing to maintain the communal areas to a satisfactory standard and failing to manage the Property generally to an acceptable standard. He has also made unreasonable service charge demands and has dealt incompetently with accounting issues. He has also failed to follow correct procedures when carrying out works and has used people without suitable qualifications to carry out work. He has also ignored some of the findings of a previous Tribunal and has engaged with the Applicants in an aggressive and – at times – abusive manner. We are also satisfied that the Respondent's failings and behaviour make it just and convenient in all the circumstances of the case to make an order appointing a manager over the Property.
17. The Tribunal also needs to be satisfied that the manager proposed by the Applicants would be a suitable person to perform the role of manager as the purpose of the Tribunal's power is to try to ensure that the building is properly managed. Having cross-examined Mr Stylianou we are satisfied that he would be a suitable person. Whilst this would be his first appointment as a manager and there are aspects of the role with which he would need to become slightly more familiar, we consider that his property management experience to date coupled with

his positive attitude should lead to major improvements in the way in which the Property is managed.

18. As regards the length of the appointment, the Applicants and Mr Stylianou suggested just 1 year for the initial appointment, but our concern is that this may well not be long enough for Mr Stylianou to turn things around, and they accepted at the hearing that 2 years might be more appropriate.
19. In relation to costs, it is unlikely that the Respondent has incurred any as he has not engaged with the process. However, if and to the extent that he has incurred any costs these should not be added to the service charge. The Applicants were fully justified in bringing this application and they have conducted themselves well, whilst the Respondent has simply not dealt with or even commented on the serious management failings identified by the Applicants.

Name: Judge P Korn

Date: 10th October 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including, without limitation, any service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 10th October 2018 become rights and liabilities of the Manager.
4. The Manager shall account to the Respondent for the payment of any ground rent received by him (if it is in fact paid to him) and shall apply the remaining amounts received by him by (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
5. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
6. Within 28 days of the conclusion of the management order, the Manager shall prepare and submit a brief written report for the Tribunal, on the progress and outcome of the management of the property up to that date, to include final closing accounts. The Manager shall also serve copies of the report and accounts on the lessor and lessees, who may raise queries on them within 14 days. The Manager shall answer such queries within a further 14 days. Thereafter, the Manager shall reimburse any unexpended monies to the paying parties or, if it be the case, to any new tribunal-appointed manager, or, in the case of dispute, as decided by the Tribunal upon application by any interested party.
7. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Set, demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) Instruct solicitors to recover unpaid service charges and any other monies due to the Respondent other than ground rents.
- (iv) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager.
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.
- (iii) Maintain on trust an interest-bearing account at such bank or building society as the Manager shall from time to time decide, into which service charge contributions and all other monies arising under the leases shall be paid.
- (iv) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.

- (iii) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- (i) Fees for the above-mentioned management services will be a basic fee of £300 plus VAT per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Fees in relation to other services/matters to be as per the details set out under the heading "Pricing" in the attached "Block Management Proposal".

Complaints procedure

The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.

Generally

Services to be in accordance with the attached "Block Management Proposal" insofar as it does not conflict with the remainder of this Schedule of Functions and Services or the Directions above.

Block Management Proposal
for 77 Abbey Road,
London NW8 0AE
Westways Estate Agents

14th September 2018

Matthew Stylianou (Director)
Rebecca Batista (Block Manager)

Westways Estate Agents Limited
20 Great Western Road
London W9 3NN

Proposal for the management of 77 Abbey Road, London NW8 0AE

Executive Summary

The leaseholder(s) of 77 Abbey Road, London NW8 0AE have applied to the First-tier Tribunal to appoint a managing agent to oversee the day to day block management of this property, which comprises 4 residential flats and 1 commercial unit across 5 storeys. The appointed agent will be expected to take a proactive approach to the overall management of the building and maintenance of its high-quality appearance. This proposal addresses the requirements and general duties discussed during the hearing of the First-tier Tribunal which took place on 7th September 2018 and will form the basis of the agreement should the Tribunal appoint Westways Estate Agents Limited as a manager.

Background

77 Abbey Road, London NW8 0AE

The building is arranged as 4 residential flats and 1 commercial unit across 5 storeys. The ownership structure is as follows:

Freeholder: Irfan Sadeeq

Leaseholders: Flat A – Rekha Ghosh
 Flat B – Neil Hutchinson
 Flat C – Andrew Green
 Flat D – Robert Chard

Over several years, the relationship between leaseholders and freeholder has deteriorated to the extent that 3 of the above leaseholders have applied to the FTT to appoint a manager. Leaseholders feel that the landlord is unable to resolve the ongoing disputes and maintain the building and therefore they have applied to appoint Westways Estate Agents as manager.

In addition to the roles and responsibilities listed in this document, as a priority Westways will seek to establish a communicative and proactive working relationship between all parties with Westways acting as a buffer between leaseholder and freeholder.

Westways Estate Agents Limited

Westways Estate Agents Limited (Company #2810684 VAT #626466818) is an independent, privately owned estate agency and property management company which was founded in 1993 by managing director Andy Stylianou. Headquartered at 20 Great Western Road, London W9 3NN, Westways employs 10 full time and 2 part-time staff and offers sales, lettings and property management services for residential and commercial property across West and Central London.

Westways currently acts as block manager for 26 buildings which are primarily period conversions in W9 and surrounding postcodes. The average number of units per property is 8. Block management references and PI insurance on request. Additionally, we have a large portfolio of over 350 managed lettings properties with many landlords entrusting the management of their properties and property portfolios to us for more than two decades.

Management Proposal

Administration

- Preparation of yearly budget for discussion by freeholder/leaseholder before agreed date.
- Issuing of service charge accounts and demands to lessees.
- Collection of service charges and ground rent, chasing arrears and communicating arrears to the freeholder.
- Westways to manage the payment of salaries to staff and regular contractors where applicable (cleaner, window cleaner, etc) as well as make prompt unscheduled payments to contractors as required.
- Ensure that the property meets current legislation including, but not limited to, The Regulatory Reform (Fire Safety) Order 2005 and The Management of Health & Safety at Work Regulations 1999.
- Ensure that the ground rent demands (where applicable) are served to lessees in accordance with Section 166 of the Commonhold and Leasehold Reform Act 2002 and ensure prompt collection of monies.
- Westways to oversee applications to carry out alterations, apply the agreed guidelines and as required liaise with freeholder, leaseholder and building surveyors. Additionally, to do our utmost to ensure that owners and occupiers comply with the terms of the lease with respect to floor coverings, decorations, quiet enjoyment etc.
- Westways to respond to enquiries from prospective buyers and solicitors for matters concerning the sale of flats within the property.

Management

- Westways to work closely and communicate clearly and promptly with the freeholder/leaseholders on all matters regarding the management of the property.
- As a priority to maintain the high standards of the appearance of the external and internal common areas to ensure that the rental flats appear in the best light to current and prospective tenants.
- Westways to provide emergency cover for urgent issues which may occur at any time.
- Meet with the freeholder/leaseholders at a frequency to be determined to inspect the communal areas, grounds and external condition of the property.

Insurance

- Obtain competitive insurance quotations, settle insurance premiums after collecting same in service charge accounts.
- Liaise with insurers regarding any claims which may arise and handle reimbursements.

Banking and Accounts

- Open and maintain a separate bank account with Barclays Bank PLC, Fleet Street titled "Westways Estate Agents Clients Account Re. 77 Abbey Road". This will be an interest-bearing account at the current Barclays bank rate for such accounts and the interest earned will be added to the building fund and not individual lessees.
- Circulate to freeholder/leaseholders the Westways Block Management Excel spreadsheet on a quarterly basis detailing all income and expenditure, current balance per flat and any arrears as well as the reserve fund for the building if applicable.
- Maintain banking accounts and detailed records of all income and expenditure and liaise as applicable with accountants/auditors with the annual audit and deal with any enquiries.
- Manage and work closely with the freeholder/leaseholders in the planning and usage of the sinking fund if applicable.

Major Works

- Assess the condition of the property and take the lead in agreeing the schedule for major works with the freeholders.
- Appoint building surveyors and liaise with them in the preparation of specifications in connection with planned major works, obtain three competitive quotes from contractors and submit same to the directors and all lessees by way of notices in accordance with the provisions of the Section 20 of the Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002).
- Appoint building contractors, oversee and organise payments for such works. Items of expenditure above £250 for any individual leaseholder will be classified as Section 20* major works and will carry an administration charge of 10% + VAT at the prevailing rate in addition to the Westways' management fees. It will be at the discretion of the directors whether to appoint Westways to oversee major works, however failure to carry out works deemed necessary by the managing agent or local authority may impact our ability to effectively manage the building.

Meetings

- Schedule, plan and set the agenda for periodic freeholder/leaseholders' meetings and the AGM. Report on the day to day management of the block.

Pricing

- Westways' fees for the management of the property would be £300 + VAT at the prevailing rate per unit, per annum.
- As detailed above, Westways' fees for the administration and overseeing of Section 20* major works would be 10% + VAT at the prevailing rate.
- If necessary, instructing solicitors to act on unpaid service charges. Westways' time in any litigation proceedings will be charged at £80 per hour + VAT at the prevailing rate.
- Hourly rate for work not included in basic block management duties: £80 + VAT.

- Late payment administration fee: £25 + VAT.

Summary

Thank you for including Westways in Tribunal application to appoint your new managing agent. I hope that the above proposal has demonstrated a clear understanding of the duties, responsibilities and standards you require from your chosen manager.

*Section 20 of the Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002) sets out the three-stage consultation procedure with which to follow when carrying out qualifying works to your building where the contribution from any one lessee exceeds £250, or a qualifying long-term agreement where the contribution from any one lessee exceeds £100 in one financial year.