



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

Case Reference : CHI/21UD/LAM/2019/0007

Property : 22 Bohemia Road, St Leonards-on-Sea,
East Sussex

Applicant : Daniel Wilkes

Representative : Bate & Albon Solicitors

Respondents : Lynne Sonia Allison

Representative : Ms N. Bennett

Type of Application : Appointment of a manager

Tribunal Member(s) : Judge D. R. Whitney
Mr B. H. R. Simms FRICS

**Date and Venue of
Hearing** : 20th September 2019 at Havant Justice
Centre

Date of Decision : 11th October 2019

DECISION

The Application

1. The Applicant is the owner of the leasehold interest in the Basement flat, 22 Bohemia Road, St Leonards-on-Sea. The Respondent is the freeholder and occupier of the remainder of 22 Bohemia Road, St Leonards-on-Sea.
2. By application dated 1st April 2019 the Applicant sought the appointment of a manager pursuant to Section 24 of the Landlord and Tenant Act 1987. He proposed that Mr Gary Pickard should be appointed by the tribunal as a manager.
3. Directions were issued on 30th May 2019 which were subsequently amended. Both parties did file a statement of case although the Respondents statement dated 12th September 2019 was served late following applications being made by the Applicant.
4. A bundle of papers was filed and references in [] are to pages within that bundle.
5. Both parties attended the hearing. The Applicant was represented by Mr Jeremy Donegan, solicitor, of Bate & Albon. The Respondent was represented by her friend Ms. N. Bennett. Mr Gary Pickard was also in attendance for the whole of the hearing.

The Law

6. The relevant law to this application may be found in section 24 of the Landlord and Tenant Act 1987 (“the 1987 Act”).

Hearing

7. The below is a record of the most salient points of the hearing. It is not a verbatim record of everything said at the hearing.
8. Ms Bennett confirmed she was representing the Respondent as a friend and to support her in respect of the Application.
9. At the start of the hearing Mr Donegan sought leave to introduce an additional bundle of documents consisting predominantly of emails between the parties and their legal advisers. These had been sent the day before to the Respondent and her representative. Essentially these were to reply to matters raised in the late statement of the Respondent. Ms Bennett confirmed she did not object to the same being included and these were added to the bundle [Tab5].
10. Mr Donegan had also supplied a skeleton argument of the points he wished to make. This had been supplied to the Respondent.

11. Mr Donegan confirmed two points of his client's case were withdrawn. Firstly his client accepted there was no breach of the RICS code in respect of fire assessment as the Property did not have any communal areas. Secondly his client was not pursuing the allegation that the Respondent had trespassed on the patio area to the rear of the Applicants flat.
12. Mr Donegan referred to the lease [Tab 2 pages 10-32]. The flat was defined by reference to a plan [Tab 2 page 32]. This showed that the gas meter was within a lobby demised with the Applicants flat. Everything not demised was "the Retained Parts" [Tab2 page 12].
13. Mr Donegan took the tribunal through the various covenants contained within the lease paying particular regard to those raised by both parties for their respective cases.
14. Mr Donegan contends that whilst there is no express covenant of quiet enjoyment as a matter of common law this is implied into the lease.
15. Ms Bennett wished to refer to a pdf of a document she had on her telephone relating to an HMO licensing scheme for Hastings. She did not have hard copies. The tribunal refused at this stage to allow an adjournment for her to obtain hard copies. It explained she could ask the Applicant questions if she so wished.
16. The Applicant then gave oral evidence. He confirmed that his witness statement and exhibits [Tab 2 pages A to 101] was true and accurate.
17. Mr Wilkes confirmed he believed messages and calls he received [40-42] were from Mr Elliot Allison, the Respondent's son. He had reported these to the police as he was concerned as to the safety of his parents whose address was known to the Respondent.
18. Mr Wilkes explained that in a telephone call he received from Elliot Allison, Mr Allison admitted kicking in the front door to Mr Wilkes' flat and made threats towards Mr Wilkes and his family.
19. Mr Wilkes explained he had lived in Australia for the past 10 years. He had not visited the flat personally for many years using letting agents to sub-let the same on his behalf. He denied having ever being asked to provide access to the gas meter. He confirmed he had refused to provide a key.
20. Mr Wilkes stated he had never been given quotes for any works or had received any consultation notices.
21. In 2004 he had undertaken works to the bathroom including installing new lights. He had also installed a new kitchen. In or about 2011/2013 he had installed new windows for which he had a FENSA certificate. He accepted he could not recall discussions with the Respondent over

this but the wooden windows were rotten and had tried to replace with a similar style of window.

22. In respect of the satellite dish Mr Wilkes confirmed he had discussed with the Respondent [Tab 5 page 14] was a letter of consent signed by the Respondent dated February 2011.
23. Mr Wilkes believed Ms Allison had a key for the flat provided by tenants as supported by an email from the Respondent [Tab 5 page 15].
24. Mr Wilkes confirmed that in his opinion prior to 2015 paid everything the Respondent requested. Since that date he had paid all amounts which had been validly demanded relying on the advice of his solicitor. He confirmed he had never been provided with service charge accounts.
25. Mr Wilkes explained currently he was in limbo as felt unable to let the flat and had been unable to sell the same as the Property was not being managed.
26. Ms Bennett began her cross examination.
27. Mr Wilkes stated that when he changed his windows these matched those in Ms Allison's part of the Property. Subsequently she had changed her windows so that they did not match.
28. At this point the tribunal adjourned for 10 minutes to allow Ms Bennett time to prepare her cross examination and to look at what documents she would wish to refer Mr Wilkes to.
29. Ms Bennett referred Mr Wilkes to the lease plan [Tab 2 page 32]. Ms Bennett tried to imply the trellis on the wall forming the boundary of the rear patio area was not within Mr Wilkes demise.
30. Mr Wilkes confirmed in his opinion the trellis was sitting on top of the wall.
31. Mr Wilkes confirmed he had only seen the letter from Mr Champion [Tab 4 page 10] when he received the Respondent's statement. In his opinion this was not a quote.
32. Mr Wilkes confirmed he had addressed various issues with his tenants and even asked one tenant to leave following complaints from the Respondent.
33. Ms Bennett challenged Mr Wilkes over his suggestion messages were from Mr Allison. Mr Wilkes stated he believed these were from Mr Allison as on same day as he had a call from him and language in messages similar to that used on the telephone.

34. Mr Wilkes confirmed his UK address for the landlord to use had always been the same address she was provided with when he first purchased the flat being that of his parents. His email address had also never changed. He denied that he had been hiding from the Respondent.
35. Mr Wilkes confirmed he paid all amounts demanded upto 2015 including those set out in an email [Tab 4 page 36]. After 2015 he has followed his solicitor's advice and only paid amounts properly demanded in accordance with the lease and statute.
36. I respect of the bathroom lights first put in in 2004. She asked me to change the original lights to closed LED's and he did this. His evidence was that such lights do not emit heat. He believed he had verbal consent.
37. He was not aware of any damage and in fact had the whole flat decorated in or about 2016/2017. His recollection was that the last time he visited the flat was in 2010. Since then he has only visited the UK once before this trip in 2016 and he did not believe he visited the flat then.
38. Mr Wilkes confirmed he received a complaint that his agent was using the driveway. He said he spoke to his agent and told them they could not use the driveway.
39. Ms Bennett asked various questions of Mr Wilkes as to his various tenants. Mr Wilkes explained he had always used managing agents to deal with the lettings. He said the majority of his tenants had complained about the actions of the Respondent.
40. Before finishing the cross examination the tribunal reminded Ms Bennett that she would not have a further opportunity to question Mr Wilkes.
41. Ms Bennett then opened the case for the Respondent and called Ms Allison. Ms Allison confirmed her statement and exhibits [Tab 4] was true and accurate.
42. Ms Allison stated she was selling her Property. She did not feel safe in her home.
43. Turning to access for the gas meter she stated that certain of Mr Wilkes' tenants did provide access. Others would not and caused problems.
44. She believed Mr Wilkes was the problem. She could not afford to undertake works on her own and was not prepared to pay out for Mr Wilke's share.
45. Turning to the proposed agent she believes if he wants a managing agent he should pay and that it should be someone more local. She accepted it would be good to have someone managing.

46. Mr Donegan then cross examined the Respondent.
47. She confirmed she works in housing support for the over 65's. She managed this Property but no others. She confirmed she was not familiar with the RICS code. Ms Allison did suggest she was familiar with the Landlord and Tenant Act 1985.
48. Ms Allison stated that the Property involves only two people and for her it is not a business but her home. She lives there with her son.
49. Ms Allison stated that there was no evidence from her son as no one had asked for this. Her son has no regard for Mr Wilkes or his tenants. Her son is ill and has his own problems.
50. Ms Allison stated that she did not read any emails, letters or documents which Mr Donegan sent to her. She suggested this was because Mr Donegan had been rude to her (this was denied by Mr Donegan). She said she had left everything to Ms Bennett.
51. Ms Allison explained she could not afford to appoint a solicitor. She stated this is part of the reason she had never taken action to forfeit in respect of the breaches.
52. Ms Allison suggests she pays for everything as Mr Wilkes argues about everything and she can not bear dealing with matters. She stated she did send quotes for redecoration in or about 2015.
53. On being questioned as to Mr Champion's statement [Tab 4 page 10] she stated she asked Mr Champion to write his statement and she told him she had received no contributions. She accepted there were no other quotes within her bundle of evidence but suggested Mr Wilkes would have these.
54. Ms Allison denied she was lying. She was fed up with the whole situation and decided it was better to not communicate with Mr Wilkes or anyone on his behalf.
55. Mr Donegan asked her about the insurance. She felt there was no need for Mr Wilkes name to be included on the insurance. She said she had read the lease but did not notice the requirement to include Mr Wilkes' interest.
56. Ms Bennett stated that the respondent was hampered because Mr Wilkes was neglectful of his own flat. If he had looked after his flat then he and Ms Allison could work together. She stated Ms Allison does not object to a manager but does not think she should have to pay anything towards the costs associated with the same. The Respondent had previously undertaken works at her own expense.

57. Mr Donegan relied upon his skeleton argument. He suggested there was a complete failure to demand monies or produce accounts.
58. If had been done properly works could have been undertaken. The lower part of the building comprising his clients flat had not been decorated since 2004. His client denied receiving any quotes. Further he suggested his client had been subject to abuse and harassment. He suggested the failure of Mr E. Allison to attend or give any witness evidence was telling.
59. The relationship has in his submission clearly broken down. The appointment of an independent person will be for the benefit of both parties. He submits the Respondent is not capable of managing the building.
60. Mr Gary Pickard gave evidence. His curriculum vitae and management plan was in the bundle [Tab 2 pages 92-101].
61. Mr Pickard confirmed he was willing to be appointed by the tribunal. He currently has 8 appointments plus an additional recent appointment. He would look to work co-operatively with the parties.
62. Currently he and his firm manage in excess of 100 blocks consisting of about 750 units of property.
63. On questioning by the tribunal over the length of his appointment he confirmed he does not currently have any plans to retire or dispose of his business. It was his intention that whilst he was appointed day to day work would be undertaken by his firm Jacksons.
64. On questioning by Ms Bennett he confirmed that he understood he was answerable to the tribunal. He had visited and viewed the outside of the property. He has seen a lease and the draft order and was content with the same.
65. The tribunal questioned the parties over the draft order whether it should include reference to the proportions payable by each given ms Allison did not have a lease over her part of the building being everything else not demised to Mr Wilkes.
66. Mr Donegan agreed this may be sensible. Mrs Allison said she understood she was responsible for 75% of the costs (being the balance not recoverable from Mr Wilkes) but she can't afford to pay anything. She stated Mr Pickard would have to take her to court.

Determination

67. After a short adjournment the tribunal confirmed orally to the parties that it was satisfied that it should appoint Mr Pickard from the date of

the hearing to manage the Property for a term of 3 years essentially in line with the draft management order.

68. In reaching its determination the tribunal had regard to all of the oral evidence given and the documents within the hearing bundle.
69. The tribunal was satisfied that a Notice pursuant to section 22 of the 1987 Act had been served by Mr Wilkes upon the Respondent [Tab 2 pages 56-66]. The Respondent in her oral evidence accepted she had not dealt with various of the matters raised.
70. In particular the tribunal finds that no valid service charge demands have been issued. Recently certain valid demands for payment of insurance and ground rent have been received. No accounts have ever been produced. The tribunal finds that the respondent was not aware of her obligations under the lease or the RICS Service Charge Residential Management Code 3rd Edition.
71. It was plain there was animosity between the parties. This is amply demonstrated by the issue involving Mr E. Allison. The tribunal finds on a balance of probabilities that it was Mr E. Allison who was attempting to telephone Mr Wilkes repeatedly on 9th December 2018 and who sent the text messages [Tab 2 pages 41-42].
72. Ms Allison appears to have little understanding of her responsibilities and obligations as a freeholder. She admitted she did not realise she had to include Mr Wilkes' interest on the insurance. Her emails within the bundle demonstrated she was not aware of the need to undertake statutory consultations and obtain proper quotes and estimates. Whilst the tribunal accepts the remainder of the building not occupied by Mr Wilkes' flat it was she who had granted this lease and as such should be aware of the need to comply with the lease and the various statutory requirements.
73. The tribunal was satisfied that the lack of proper management of the Building as a whole and in particular in respect of repairs and maintenance was causing a significant adverse effect on Mr Wilkes' ability to sell or let the flat. In particular the tribunal relied on various documents notably the totality of Tab 5.
74. The tribunal is satisfied that there is little prospect of the two parties to this application being able to work together to ensure that repairs and maintenance are undertaken in accordance with the lease and the Property is adequately managed. To that end in accordance with section 24 of the 1987 Act the tribunal is satisfied that it is just and convenient for a manager to be appointed.
75. Mr Pickard presented to the tribunal as a knowledgeable professional with many years' experience including acting as a tribunal appointed manager. He understood his principal duty would be to the tribunal and to manage in accordance with the Order.

76. The tribunal considered carefully his fees and determined that those proposed by him for the subject Property were reasonable. The tribunal noted that he held appropriate insurance for himself personally and his firm.
77. The tribunal was satisfied that Mr Pickard was an appropriate person to be appointed by the tribunal.
78. Turning to the draft order in general terms the tribunal was happy with the same. The tribunal determines that the order should record the proportions by which any and all charges levied by Mr Pickard are payable. The order has been amended to include such provision.
79. The tribunal attaches to this determination the Order made appoint Mr Pickard for three years from the date of the hearing.
80. The tribunal reminds both parties that Mr Pickard is an independent individual whose primary responsibility is to answer to the tribunal. The parties are urged to work with him for the benefit of them both individually and the Property as a whole.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking