



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

Case reference	:	LON/00AP/LAM/2019/0010
Property	:	Marc Court, 56-58 West Green Road, London N15 5NR
Applicant	:	Ms Louise Denington
Representative	:	In person
Respondent	:	Rubycroft Limited
Representative	:	Not present and not represented at hearing
Type of application	:	Appointment of Manager
Tribunal members	:	Judge P Korn Mr P Roberts DipArch RIBA Mr C Piarroux JP CQSW
Date of hearing and venue	:	4th and 25th July 2019 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	31st July 2019

DECISION

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Howard Green of Duncan Phillips Ltd (“the Manager”) is appointed as manager of the property at Marc Court, 56-58 West Green Road, London N15 5NR (“the Property”).
2. The order shall continue for a period of 3 years from 31st July 2019. 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. The Tribunal makes an order under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal (if any) shall not be added to the service charge.
6. The Tribunal also makes an order under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requiring the Respondent to reimburse to the Applicant the application fee of £100.00 and the hearing fee of £200.00 paid by her in respect of this application.

Background

7. On 25th April 2019 the Applicant made an application to the Tribunal for the appointment of a manager in relation to the Property under section 24 of the Landlord and Tenant Act 1987 ("the Act"). A preliminary notice under section 22 of the Act had been served on the Respondent on 15th November 2018.
8. The Property is a block of 7 flats.

Applicant's case

9. The grounds for the application against the Respondent can briefly be summarised as follows:-
 - Failure to insure the Property for the period of (at least) 19th September 2017 to 4th October 2018.
 - Charging for services not provided.
 - Failure to fulfil certain duties in relation to repair and health & safety.
 - Charging leaseholders the wrong proportion of the cost of services (where services have been provided).

10. Contrary to the point made in the Respondent's written submissions (see below) that the Applicant only had the support of Mr Ehrenzweig in respect of this application, the Applicant states in written submissions that there was much consultation amongst all leaseholders other than the leaseholder of Flat 3, whose contacts details the Applicant has never had.
11. Sufi Miah, the leaseholder of Flat 1, has provided a written witness statement in support of the application, confirming a lack of confidence in the management of the Property including concerns about insurance of the building, accounting irregularities, inability to deal with requests in a timely manner, a failure to carry out works and a failure to make site visits. Flora Fricker, the leaseholder of Flat 4, has also provided a written witness statement in support of the application, citing similar concerns. Max Burr, the leaseholder of Flat 5, has also provided a written witness statement citing similar concerns and mentioning other concerns.
12. Anthony Ehrenzweig has also provided a written witness statement in support of the application. He, together with his wife, is the leaseholder of Flat 60a West Green Road. His flat is not technically part of Marc Court, but he has nevertheless received service charge demands from the Respondent's managing agents. It was he who discovered that the Property had not been insured for the 2017/18 year.
13. The Applicant has made a complaint about the management of the Property to the Property Redress Scheme, and the Respondent's managing agents have failed to comply with the final decision of the Property Redress Scheme and have been issued with a warning. Both the Property Redress Scheme and the Leasehold Advisory Service have advised the Applicant to apply for the appointment of a manager.
14. At the hearing the Applicant explained that although the leases of the individual flats within the Property were originally three-party leases they have since been varied and are now just two-party leases between the Respondent and the relevant leaseholder.
15. The Applicant said that the managing agents' accounts department was incompetent and slow, and she referred the Tribunal to a number of invoices which she described as seriously defective. As regards the Respondent's failure to insure the Property, the Applicant discovered this by accident. As regards any suggestion that the failure to insure was due to a lack of funds, leaseholders had paid enough by way of service charge contributions to put the Respondent in funds to insure the building. As regards the suggestion (see below) that leaseholders had rejected most services being offered, this was not true; only minor services had been rejected, and on the basis that they were unnecessary. There was no basis for claiming that leaseholders did not want the building to be insured or health & safety issues attended to.

16. The Applicant referred the Tribunal to a series of email exchanges in the hearing bundle by way of evidence that the problems with the management of the Property were ongoing and that the managing agents had not responded to emails and had not dealt with the issues raised (for example faulty gate locks). The managing agents had claimed that the Applicant's emails were very confrontational, but she did not accept that this was the case.
17. The Applicant was using the appointment of manager application as a last resort, having already been through the Property Redress Scheme. It was not true that she had failed to pay her service charges; only the last demand remained outstanding.
18. Ms Fricker and Mr Ehrenzweig also attended the hearing in support of the application.

Respondent's position

19. The Respondent wrote to the Tribunal on 31st May 2019 stating that it had instructed a reputable company to manage the Property but that due to the unwillingness of the leaseholders most services offered had been rejected. The managing agents had engaged reasonably with the leaseholders to get matters resolved and had managed to reach common ground on how to move forward with all leaseholders other than the Applicant and Mr Ehrenzweig, who had objected to the managing agents' proposals without the consent of the other leaseholders.
20. The Respondent went on to state, in that same letter, that it had no objection to transferring the management. However, it commented that the Applicant had not consulted with any of the other leaseholders apart from Mr Ehrenzweig who was not actually a leaseholder of Marc Court itself.
21. Save for sending the letter referred to above, the Respondent has not made any other written submissions and did not attend the hearing.

Reasons for the decision

Grounds for making an order

22. 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.
23. The relevant parts of section 24 of the Act provide as follows:-

“(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 property, 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 ... (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 – (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; ... (ac) where the tribunal is satisfied – (i) that any relevant person has failed to comply with any relevant provision of a code of 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.”

24. On the basis of the information provided by the Applicant, which has been supported by the leaseholders of Flats 1, 4 and 5 and by Mr Ehrenzweig and has not been contested by the Respondent in a credible manner, we are satisfied (i) that the Respondent has committed breaches of management obligations owed by it to the Applicant and to other leaseholders and that it is just and convenient to make a management order, (ii) that unreasonable service charges have been made and that it is just and convenient to make a management order and (iii) that other circumstances exist which make it just and convenient for a management order to be made.

The identity of the manager

25. The Tribunal also needs to be satisfied that the manager proposed by the Applicant 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 Property is properly managed.
26. Having cross-examined Mr Green, we are satisfied that he would be a suitable person. Whilst he does not have any formal qualifications, he has 30 years of experience and came across well when questioned. He now specialises in smaller blocks and has a credible system in place whereby he brings in specialists when needed to supplement his own skills and those of his in-house team numbering 8 members of staff. He is on top of the relevant legislation, is comfortable being in charge of the tendering process, has an emergency out-of-hours service and is local to the Property. His basic fee is competitive.

The terms of the Order

27. We have considered the Applicant's submissions on the terms of the Order, the Respondent not having made any submissions on the terms. We consider that the Order should last for 3 years to give Mr Green sufficient time to ensure that the management of the Property is on a sensible and secure footing. It is open to any party to make an application to extend or vary the term or to discharge the Manager if they consider that the circumstances warrant it.
28. As regards the other terms of the Order, the First-tier Tribunal's standard form of Order was discussed with the Applicant and Mr Green (in the Respondent's absence) and their comments were taken on board. The terms are set out at the end of this decision under the headings 'DIRECTIONS' and 'SCHEDULE OF FUNCTIONS AND SERVICES'.

Cost applications

29. The Applicant has applied under section 20C of the Landlord and Tenant Act 1985 for an order that none of the costs incurred by the Respondent in connection with these proceedings can be put through the service charge. She has also applied for an order under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requiring the Respondent to reimburse the application fee (£100.00) and the hearing fee (£200.00) paid by her in respect of this application.
30. It seems highly unlikely that the Respondent has incurred any costs to which section 20C would apply, but for the avoidance of doubt we are satisfied that it is appropriate to make a section 20C order as – if there are any such costs – the Respondent should not be entitled to recover them through the service charge. We are also satisfied that it is appropriate to make an order requiring the Respondent to reimburse the Applicant in respect of the application fee and the hearing fee.
31. The Respondent has barely engaged with this process. The evidence indicates that the Applicant made this application as a last resort, having made a series of perfectly proper complaints to the Respondent's managing agents and also used the Property Redress Scheme. In our view the Applicant has taken a proportionate and reasonable approach to the Respondent's and to its agents' management failings, and she came across very well at the hearing. She has also had the written support of the leaseholders of Flats 1, 4 and 5 and of 60a West Green Road, and Mr Ehrenzweig and Ms Fricker also took the trouble to attend the hearing. In the circumstances, it is entirely appropriate to make a section 20C order and to order that the Respondent reimburse the application and hearing fees.

Name: Judge P Korn

Date: 31st July 2019

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 31st July 2019 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by him and shall apply the remaining amounts received by him (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 serve on the lessor and lessees a brief written report on the progress and outcome of the management of the Property up to that date, to include final closing accounts. The lessor and lessees may raise queries on the report and accounts 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) Set, demand and collect his own service charge payable by the Respondent (as if he were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (v) 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/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, 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 abovementioned management services will be a basic fee of £150.00 per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a Manager's contract administration fee of 7% of the cost. Other professional fees in relation to major works to be negotiated at the relevant time.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.
- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis.

Complaints procedure

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