



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

Case reference : **LON/00AT/LAM/2019/0006**

Property : **45 Sutton Court Road, London W4
3EJ.**

Applicant : **Ms. L. Herman.**

Representative : **Mr. B. Maunder-Taylor.**

Respondent : **45 Sutton Court Management
Company Limited.**

Representative : **Ms. R. Farell of Counsel.**

Type of application : **Appointment of Manager**

Tribunal member(s) : **Ms. A. Hamilton-Farey.
Ms. S. Coughlin.
Ms. L. West.**

Venue : **10 Alfred Place, London WC1E 7LR.**

Date of decision : **25 July 2019.**

DECISION

1. In accordance with section 24(1) Landlord and Tenant Act 1987 **Mr. Craig Newell of The Craig Sheehan Partnership** ("the Manager") is appointed as manager of the property at **45 Sutton Court Road, London W4 3EJ** ("the Property").
2. The order shall continue for a period of **five** years from **23 July 2019**. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.

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 shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.

Background:

6. A Notice under S.22 of the Landlord and Tenant Act 1987 ("the Act") was served on the respondent by the applicant on or around 28 February 2019, that Notice identified management failings within the property, and informed the respondent that, unless those failings were remedied an application would be made to this tribunal for the appointment of a manager under S.24 of the Act.
7. The applicant had identified Mr. Martin Kingsley of K & M Property Management Limited as a suitable manager for the property.
8. There was no dispute between the parties that a manager should be appointed, however the respondent had identified Mr. Craig Newell of the Craig Sheehan Partnership to undertake this role.
9. The tribunal issued directions to the parties on 10 April 2019 that required, amongst other things, that the parties supply bundles of documents on which they wished to rely to support their respective cases, and that the proposed managers attend the hearing that was listed for 4 July 2019 at 10:00. The directions did not propose the tribunal inspect the property, given the agreement of the parties to an appointment.
10. A hearing was undertaken on 4 July 2019 as listed. The applicant was represented by Mr. Maunder Taylor with the proposed manager, Mr. Kingsley in attendance. The respondent was represented by Ms Farrell of Counsel with Mr. Newell in attendance.

11. The tribunal questioned both proposed managers as to their experience of property management and their proposals for the property.
12. Both managers had produced a management plan. Mr. Maunder Taylor suggested that the final plan from Mr. Newell had, in effect, copied the one submitted by Mr. Kingsley, especially in relation to costs, however having considered both documents the tribunal prefers that submitted by Mr. Newell and with some minor amendments, that is appended to this decision.
13. The tribunal was taken through the evidence. One of the main areas of dispute was the source of the water leak that was affecting flat 3 in the property. Ms. Herman was certain that the leak was coming from Flat 5 upstairs, but this had not been acknowledged either by the management company or the owner of that flat, who was also a director of the company. Given this main dispute, the tribunal preferred the approach by Mr. Newell, in that we consider the best approach would be for a trace and access company to be appointed to determine the cause of the leak and then a professional could be appointed to rectify the issue.
14. The tribunal was also concerned that Mr. Kingsley was based so far away from the property, while Mr. Newell was based within a few yards, and could therefore attend more quickly in the event of an emergency for example.
15. Having heard the evidence, we prefer the approach by Mr. Newell to the management of the property and accordingly appoint him as manager of the property for a period of five years. The management Order is appended to this decision.

Reasons for decision under S.20C

16. The tribunal has considered the application by the applicant for an Order under S.20c of the Landlord & Tenant Act 1985 that the landlord may not recover the cost of these proceedings from the service charges. However, the tribunal considers that, no Order should be made because it was agreed by the parties that a manager should be appointed so that the property may be properly managed, and the only issue was which manager was preferable. Although the applicant had had to make an application to the tribunal to regularise the issue, it was clear to the tribunal from the evidence that the respondent had incurred costs in responding to the application, and these are costs that should be borne by the leaseholders through the service charge.
17. The rights of the applicant are preserved in relation to any unreasonable costs that might be proposed under Ss. 19 and 27A of the Landlord & Tenant Act 1985, and if it is considered the costs are excessive a further application may be made to the tribunal to determine the reasonableness of those costs and whether they are payable under the leases.

Name: Aileen Hamilton-Farey

Date: 25 July 2019

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 23 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. By no later than 22 July 2020, the Manager shall prepare and submit a brief written report for the Tribunal on the progress of the management of the property up to that date, providing a copy to the lessees of the Property and the Respondent at the same time.
7. 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.
8. The Manager shall be entitled to apply to the Tribunal for further directions.

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

CASE REFERENCE: LON/00AT/LAM/2019/0006

**IN THE MATTER OF SECTION 24 (1) OF THE LANDLORD AND TENANT
ACT 1987**

AND IN THE MATTER OF

45 SUTTON COURT ROAD, LONDON W4 3EJ

B E T W E E N:

LINDA HERMAN

Applicant

AND

45 SUTTON COURT ROAD MANAGEMENT COMPANY LIMITED

Respondent

MANAGEMENT ORDER

Interpretation:

In this Order:

- (a) “Common Parts” means any garden area, postal boxes, refuse store, cycle store, security gates, lifts, paths, halls, staircases and other access ways and areas (if any) within the premises that are provided by the Respondent for common use by the Lessees.
- (b) “Leases” means the long leases vested in the Lessees of the Flats.
- (c) “Lessee” means a tenant of a dwelling holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 (“the Act”).
- (d) “the Manager” means Craig Newell, Craig Sheehan, Power Road Studios, 114 Power Road, Chiswick, London W4 5PY.

- (e) “the Premises” means all that property known as 45 Sutton Court Road, London W4 3EJ, being five self-contained flats as shown on the Plan attached.
- (f) “the Respondent” includes any successors in title of the freehold estate registered under Title Number NGL182000 and any interest created out of the said freehold title.

Preamble

UPON the Applicant having applied for the appointment of a Manager under Part II, Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the Applicant is entitled to so apply and that the jurisdiction to appoint a Manager is exercisable in the present case

AND UPON the First-Tier Tribunal being satisfied that the conditions specified in S.24 Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a Manager

AND UPON the parties agreeing to endeavour to enter into deeds of variation incorporating provision equivalent to the Functions and Services set out in this Order

IT IS ORDERED THAT

The Manager

1. The appointment of Mr Craig Newell BSc, MRICS, MCI Arb as Manager (including such functions of a Receiver as are specified herein) of the Premises pursuant to S.24 of the Act for a period of 5 years and shall continue until 22 July 2024 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:
 - (a) To receive all service charges, interest and any other monies payable under the Leases and any arrears due thereunder, the recovery of which shall be at the discretion of the Manager.

- (b) For the avoidance of doubt, the Manager shall start with a clean financial sheet and the first financial year under this order shall run from the date of the Order until 24 March 2020, and thereafter from year to year for each year this Order is in place.
- (c) To receive the ground rents reserved under the Leases and to account annually to the Respondent in respect of the same.
- (d) The power and duty to carry out the obligations of the Respondent contained in the Leases and in particular and without prejudice to the foregoing:
 - (i) The Respondent's obligations to provide services;
 - (ii) The Respondent's repair and maintenance obligations; and
 - (iii) The Respondent's power to grant consents.
- (e) The power to delegate to other employees of Craig Sheehan Partnership, appoint and remunerate all solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions.
- (f) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.
- (g) The power in his own name or on behalf of the Respondent to bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Respondent. The Manager shall be entitled to an

indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account.

- (h) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.
- (i) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and to hold those funds pursuant to S.42 of the Landlord and Tenant Act 1987.
- (j) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money under his Lease.
- (k) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold interest of the Premises in respect of the Respondent) PROVIDED THAT the Manager shall not secure any borrowing as aforesaid without the consent of the defaulting party (not to be unreasonably withheld), or in default of that consent, without further Order of the First-Tier Tribunal.

2. The Manager shall manage the Premises in accordance with:

- (a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order, which shall take precedence over any conflicting and/or missing provisions in the Leases.

- (b) the respective obligations of all parties – the Respondent management company and the tenants – under the Leases and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and
 - (c) the duties of managers set out in the 3rd Edition of the RICS 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 S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.
- 3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.
- 4. From the date of this Order, the Respondent shall not, whether by itself or any agent, servant or employee, demand any further payments of services charges, administration charges or any other monies from the Lessees at the Premises, such functions having been transferred to the Manager from and including the date of the Tribunal’s decision.
- 5. The Respondent and the Lessees and any agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not interfere or attempt to interfere with the exercise of any of his said duties and powers.
- 6. Without prejudice to the generality of the foregoing hereof:
 - (a) The Respondent shall permit the Manager and assist him as he reasonably requires to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.

- (b) The rights and liabilities of the Respondent as Landlord arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.
 - (c) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.
7. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure he has appropriate professional indemnity cover in the sum of at least £1,000,000 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.
 8. The Manager shall act fairly and impartially in his dealings in respect of the Premises.
 9. The Manager is directed to register a restriction in Land Registry standard form N against the Respondent's Title Number NGL182000 in the following words: "No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by Craig Newell, Craig Sheehan Partnership, Power Road Studios, 114 Power Road, Chiswick, London W4 5PY.
 10. The Manager's appointment shall continue from the date of this Order and the duration of his appointment shall be limited to a period of 5 years.
 11. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire an interest in the Property (whether by assignment or fresh grant).

Liberty to apply

12. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:
- a. Any failure by any party to comply with an obligation imposed by this Order;
 - b. For directions generally;
 - c. Directions in the event that there are insufficient sums held by him to discharge his obligations under this Order and/or to pay his remuneration.
13. The parties or the Manager may apply to the First-Tier Tribunal (Property Chamber) to discharge this Order in the event that sufficient management powers are granted under deeds of variation to all respective leases.

Signed.....

Dated.....

SCHEDULE

FUNCTIONS AND SERVICES

Financial Management:

1. Prepare an annual service charge budget, demand an Interim Maintenance Charge at the beginning and mid-way point of the financial year, administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees as per the percentage proportions under the terms of the Leases. For the avoidance of doubt, the Interim Maintenance Charge of £6,000.00 for the first year, and all future maintenance charges shall be demanded in accordance with the annual service charge budget and not in accordance with the terms of the Leases.
2. Demand and collect service charges, insurance premiums and any other payments due from the Lessees in advance and on account, in the same proportions as provided for in the Leases: 25% from Flats 1, 2 and 5; 12.5% from Flats 3 and 4.
3. Create a reserve fund and collect contributions from Lessees in accordance with a long-term maintenance plan, reserve fund monies to be demanded in the same proportions as the service charges, as set out above.
4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).
5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and pay bills.
6. Deal with all enquiries, reports and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

Insurance:

7. Arrange for buildings and public liability insurance at a reliably calculated reinstatement value, covering usual insurance perils for a property of this age, character and location, subject to standard excess figures on any claim, with an insurance company of repute.

Repairs and Maintenance

8. Within 14 days of this Order to appoint a competent person to undertake a survey and identify the source/causes of the water penetration into flats 2 and 3, and the common parts and then take appropriate action to rectify any problems found.
9. By reference to the leases, establish ownership and rights of way over the rear garden, and if necessary, arrange for removal of the lock or distribute keys to give access to any leaseholder entitled.
10. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.
11. Administer contracts entered into on behalf of the Respondent and Lessees in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.
12. Manage the Common Parts and common services to the Premises, including the arrangement and supervision of maintenance.
13. Carry out regular inspections (at the Manager's discretion but not less than four per year) without use of equipment, to such of the Common Parts of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of those Common Parts.

Major Works

14. In addition to undertaking and arranging day-to-day maintenance and repairs, to arrange and supervise major works which are required to

be carried out to the Premises (such as extensive interior or exterior redecoration or repairs required to be carried out under the terms of the Leases or other major works where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on the Lessees and supervise the works in question).

15. In particular to undertake as soon as practicable a full health and safety review and an assessment of the electrical supply to the Premises.

Administration and Communication

16. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquires from the Lessees or their solicitors.
17. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.
18. Keep records regarding details of Lessees, agreements entered into by the Manager's in relation to the Premises and any changes in Lessees.

Fees

19. Fees for the above-mentioned management services (with the exception of supervision of major works) would be a fee of £1,800 plus VAT per annum for the Premises. Thereafter the fee shall be reviewed annually in line with inflation.
20. An additional charge shall be made in relation to the arrangement and supervision of major works: £250 plus VAT for each statutory consultation notice under Section 20 of The Landlord and Tenant Act 1985 and 10% plus VAT of the cost of major works for arrangement and supervision thereof.
21. An additional charge for dealing with solicitors' enquiries on transfer will be made in the sum not to exceed £250 plus VAT payable by the outgoing Lessee.

22. The recovery of outstanding service charges shall give rise to an administration charge payable by the defaulting Lessee of £10 for each letter written after the first.
23. An additional charge in relation to brokering insurance claims or valuations on the basis of £200 per claim.
24. Any work, outside the list of matters above covered by the annual fee, is charged at £150 per hour plus VAT.

Complaints:

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

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).

