



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

Case Reference : CHI/00HB/LVM/2022/0006

Property : 24 Montrose Avenue, Bristol BS6 6EQ

Applicant : Ms Shelley Fisher (Tribunal Appointed Manager)

Respondents : Mrs Sandi Marshall,
Ms Kerry Marshall and Mr Ewan Marshall Dr
Edgar Dr Buhl Ms Aline Moreira
Ms Kate O’Loughan
Mr Daniel George

Freeholder : 24 Montrose Avenue Management Ltd
Mr Daniel George, Company Secretary

Type of Application : Withdrawal of application to vary and extend a management order section 24(9) of the Landlord and Tenant Act 1987 .

Tribunal Members : Mr W H Gater FRICS MCI Arb
Judge C A Rai

Date and venue of Hearing : 20 July 2022
CVP Hearing (589) Havant

Date of Decision : 1 August 2022

DECISION

Background

1. The Applicant, Mrs Shelley Fisher, sought to vary a Management Order (the Order) made under section 24 of the 1987 Act on 26 January 2021 which appointed her as Manager of the property for a period ending on 25 July 2022, by extending her term of appointment for a further six months. The application was made on 23 May 2022.
2. On 1 July 2022 Mrs Fisher informed the Tribunal that she had decided to withdraw the application.
3. On 6 July 2022 the Tribunal issued directions stating that a hearing was now necessary to determine whether it consents to the withdrawal and if it does not, to extend the Order until the works have been completed.
4. Further directions were made dealing with arrangements for the hearing which was held on 20 July 2022.
5. The Tribunal determined that Mrs Fisher's application to withdraw the application to extend the Order would be heard first since, if the withdrawal is approved, the application to extend would naturally fall.
6. Present at the hearing were
 - Mrs Shelley Fisher: Tribunal Appointed Manager
 - Mr Ewan Marshall and Ms Kerry Marshall: Top Floor flat.
 - Mr Daniel George: Ground Floor Flat and Company Secretary for Freeholder.
 - Dr Edgar Buhl and Alina Moreira: Lower Ground Floor Flat

The Hearing

7. Mrs Fisher explained how disputes over the issue of dampness in the Lower Ground Floor flat led to her decision to seek to withdraw her application to extend the Order.
8. The matter was brought to her attention relatively late in the process and she considers that rectification of the dampness is a relevant service charge expense. The cost of remediation was added to the schedule of works and funds were collected for all items.
9. At a meeting with the surveyor in the Lower Ground Floor flat it was determined that it would be necessary to have all furniture removed to facilitate the works.
10. The Marshall family took strong exception to these costs being paid through the service charge and submitted information and video evidence to Mrs Fisher in support of their argument.

11. Given the strength of these challenges Mrs Fisher concluded that she should withdraw the extension application and let someone else deal with the matter. In particular, on taking legal advice on the threat of legal action for personal liability by the Marshall family, she resolved to withdraw.
12. Questioned by Dr Buhl, Mrs Fisher said that she fully agreed that the lease requires the Freeholder to repair and maintain the property and that the dampness found by the survey on 25 March 2021 qualified as a service charge issue. The Marshalls claim that the source of the damp was a blocked downpipe dating back years, would still make the repair a service charge matter. Mrs Fisher says her view that this is a shared problem is supported by the surveyor and contractors.
13. Questioned by the Tribunal, Mrs Fisher said that the works in the Order would be completed by 25 July 2022, the end date for the Order, apart from the removal of scaffolding. If the Order was discharged by the Tribunal, she would arrange payment of the scaffold costs to the surveyor who would deal with the payment.
14. The Tribunal then questioned Mrs Fisher on the extent to which primary purpose of the Order, detailed in clause 3, would be completed by 25 July 2022.
15. She confirmed that the roof, windows to the front and rear, the soffits, rainwater goods and chimney pointing would all be completed by that date.
16. Regarding fire precautions, the external doors have been dealt with but due to the action of the Marshalls she has not been able to deal with internal doors. In particular, the Marshalls have refused access by withholding a key, and interfered by speaking directly to the fire service. A professional risk assessor withdrew due to the interference of the Marshalls. On taking advice Mrs Fisher concluded that she could do no more.
17. Regarding the Schedule of Functions and Services Mrs Fisher confirmed that all items had been or would be dealt with by closure of the Order.
18. Dr Buhl opposed the application to withdraw and stated that he wanted the Order to continue. Notice of Intention of Works was issued in June 2021 and the dampness issue was added to the works in January 2022 following advice from Easton Bevins, Building Surveyors.
19. Dr Buhl understands that delays in the process have been caused by the Top Floor Flat. Constantly frustrating the works has meant that the requirements of the Order have not been fully completed. This has caused great difficulty to Mrs Fisher, and she should be allowed to complete all the works.
20. Ms Kerry Marshall said that she supported the application to withdraw.

21. With regard to fire precaution works not being complete she said that an email from Mrs Fisher in January 2022 stated that all flat doors were the responsibility of individual flat owners.
22. Damp works to the Lower Ground Floor flat could have been dealt with by 25 July 2022 were it not for Air B and B bookings of the flat at that time. The manager had only taken advice on damp from a contractor whereas the survey recommended that a specialist be consulted. The manager is not following the surveyor's advice. The Top Floor Flat has paid their share of damp repair costs but still challenges the rationale.
23. Ms Marshall said that they had never threatened litigation against Mrs Fisher but wanted a reasonable right to challenge.
24. Judge Rai questioned why the Top Floor flat had issued four separate statements to the Tribunal one of which suggested that Mrs Fisher must pay for the removal and storage of the furniture belonging to that leaseholder herself. She suggested that statement was made with the intention of intimidating Mrs Fisher.
25. Mr George said that he wished the Order to be extended to ensure the damp works are completed. The survey recommended the work, the funds were in place and if the Order is not extended there is a risk of further delay.
26. Summing up, Mrs Fisher said that if she could obtain reassurance from the Tribunal that she would not be held personally liable she would be prepared to continue as manager for the duration of an extended Order. The challenges and threat of personal liability from the Marshalls led her to take legal advice and that advice was to withdraw.
27. Questioned by the Tribunal as to why she had not made an application to determine whether the costs of damp repairs were fully payable she said that there had been a large number of applications in this case, which had been a steep learning curve. On balance and following legal advice she chose withdrawal rather than making a further application on the dampness.
28. Summing up, Dr Buhl said that if the Order ends on 25 July 2022 the matter will return to court and that the work needs to be done. There is a history of the Marshall family frustrating the Order and the matter will inevitably need to be determined.
29. Mr Ewan Marshall in summary said that the Ground Floor had agreed the course of action on fire doors. He also stated that Mrs Marshall had failed to build a relationship with the leaseholders during her term.

Findings of Fact

30. The primary purpose of the Order will have been almost entirely satisfied by 25 July 2022. The items listed in the Schedule of Functions and Services in the Order have been dealt with as directed.
31. Work to address the issue of dampness in the Lower ground Floor Flat has not been concluded.
32. The Manager has stated that were it not for the threat of personal liability she would have continued with the application to extend the order and have all works completed.

Frustration of the Order.

33. In proceedings since the Order, the Tribunal has received evidence, from a number of sources, of interference in the management, and frustration of the objects of the Order by the Respondents of the Top Floor Flat
34. The Tribunal appointed managers, Mr Cloke and Mrs Fisher, both of whom were recommended by Mrs Marshall, have cited interference and frustration. Both ended their tenures without wishing to continue because of these problems.
35. In the latest hearing the Tribunal finds Mr Ewan Marshall's suggestion that Mrs Fisher has failed to form relationships not credible. Both Mrs Fisher and the previous manager have experienced (and referred to) persistent interference and refusal to pay services charges which have inevitably added costs and resulted in delay.
36. The Tribunal prefers the evidence of the manager finding the members of the Marshall family unreliable witnesses in both these and previous proceedings.
37. The Tribunal has recorded persistent breaches of directions by the Marshalls as is illustrated by continuing piecemeal correspondence with the Tribunal and its staff.
38. The current manager would have continued with and completed all the proposed works but for the threat of personal litigation.
39. There can be no clearer evidence of frustration of the Tribunal's orders.
40. The Marshalls have failed to understand the purpose of a management order and to heed the warnings from the Tribunal on conduct.
41. The Penal Notice issued on the 8 December 2021 included all Respondents

Decision

42. The Tribunal issued a verbal summary of the decision to accept Mrs Fisher's the application to withdraw at the end of the hearing and stated that it would issue a written decision thereafter. That decision is as follows: -
43. The Tribunal deliberated on this application and finds that because of the conduct of the Marshalls it would not be just and convenient to refuse the application to withdraw.
44. The Tribunal does not have jurisdiction to give the reassurance requested by the Manager in respect of personal liability. The Marshalls have shown no sign that they will abate disregard for Tribunal directions, frustration and interference with the operation of the Order so that the issue of dampness in the Lower Ground Floor could be fully addressed.
45. Given all of these circumstances the Tribunal finds it would not be appropriate to deny the withdrawal of the application to extend the order.
46. The Tribunal determines that it will approve the withdrawal of the application to extend the Order subject to the following conditions.
47. The Tribunal directs that the order will be extended by two weeks to the 8 August 2022 to allow for the removal of the scaffolding and payment of the contractors by the manager from service charge funds. Mrs Fisher has agreed that she will not charge the leaseholders any further management fee for this two week extension.
48. Attention is drawn to the duties of the manager on closure of the order, in particular paragraph 17 with regard to the accounts. The management will revert to the freeholder on 8 August 2022.
49. In the circumstances of the appointment and those which have ensued since that time Mrs Fisher is to be thanked for her considerable achievements.
50. Work to alleviate the dampness in the basement will need to be sorted out between the parties and if necessary, may form the subject of a further Tribunal application.

Appeals

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties. Where possible you should send your application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. 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.
4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers .
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appendix

Penal Notice

If any of the within named Respondents fail to comply with this decision or the Management Order dated 26 January 2021 appointing the Applicant as the Manger of the Property, they may be held to be in contempt of the Tribunal which made the Order and issued this decision.

If the County Court gives permission for this Decision and the Management Order to be enforced in the same way as orders of that Court for contempt of court, you may be fined, imprisoned or your assets be seized.