



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

**Case reference** : **LON/00AM/LVM/2019/0005 and  
LON/00AM/LSC/2019/0044, 0045,  
0069 and 0070**

**Property** : **108 Forest Road, London E8 3BH**

**Applicant** : **Mr John Fowler (existing Manager)**

**Representative** : **Mr Beresford of Counsel**

**Respondents** : **Mr Misha Manson-Smith  
(leaseholder of Flat A), NatkimCo  
Ltd (leaseholder of Flat B) and Mr  
Mark Arthurworrey (leaseholder of  
Flat C and freehold owner)**

**Representatives** : **First Respondent – in person.  
Second Respondent and Third  
Respondent – Mr Kitson of Counsel**

**Type of applications** : **(1) Variation of Appointment of  
Manager and (2) Determination of  
reasonableness of Service Charges**

**Tribunal members** : **Judge P Korn  
Mr D Jagger MRICS**

**Venue and date of  
hearing** : **8<sup>th</sup> July 2019 at 10 Alfred Place,  
London WC1E 7LR**

**Date of determination** : **8<sup>th</sup> July 2019**

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**DECISION**

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## **Decisions**

1. The order of the First-tier Tribunal dated 12<sup>th</sup> October 2016 (“**the Order**”) appointing Mr John Fowler as manager of the Property is hereby varied pursuant to section 24(9) of the Landlord and Tenant Act 1987 (“**the Act**”) such that Mr Fowler’s appointment shall continue until 31<sup>st</sup> December 2020 on the same terms as provided for in the Order.
2. It is noted that the service charge applications made by the Applicant direct to the First-tier Tribunal under references LON/00AM/LSC/2019/0070 and LON/00AM/LSC/2019/0069 are now withdrawn, and the Tribunal hereby consents to that withdrawal.
3. It is also noted that the claims which originated in the County Court and which were transferred to this tribunal and consolidated with the other applications referred to above (Claim Nos: E26YX531 and E26YX757) are no longer being pursued and therefore there is no determination to be made by the tribunal in respect of these claims and that they can be treated as having been settled. Those claims are therefore now transferred back to the County Court for final disposal.
4. No cost applications have been made made.

## **Background**

5. By a decision dated 12<sup>th</sup> October 2016 the tribunal appointed the Applicant as manager of the Property for the reasons stated in that decision (Ref: LON/00AM/LAM/2016/0028).
6. The existing appointment is due to expire on 11<sup>th</sup> October 2019 and the Applicant has now applied for a variation of the Order to extend it so that it would instead expire on 31<sup>st</sup> December 2020.
7. Mr Manson-Smith (“**the First Respondent**”) is the leaseholder of Flat A. NatkimCo Ltd (“**the Second Respondent**”) is the leaseholder of Flat B. Mr Arthurworrey (“**the Third Respondent**”) owns 100% of NatkimCo Ltd and he is also the leaseholder of Flat C and owns the freehold interest in the Property.
8. The Applicant has also issued the following claims and made the following applications:-
  - a County Court claim against the Second Respondent (Claim No: E26YX531) for recovery of £37,096.55 relating to service charges, ground rent, interest and other sums;
  - a County Court claim against the Third Respondent (Claim No: E26YX757) for recovery of £35,133.11 relating to service charges, ground rent, interest and other sums;

- an application to the First-tier Tribunal for a determination of the Second Respondent’s liability for service charges and/or estimated service charges for the years 2018 and 2019; and
- an application to the First-tier Tribunal for a determination of the Third Respondent’s liability for service charges and/or estimated service charges for the years 2018 and 2019.

### **The hearing**

9. At the hearing Counsel for the Applicant and Counsel for the Second Respondent and Third Respondent said that the parties had settled all of the claims between them relating to service charges, ground rent, interest and other sums and that therefore the Applicant – with the agreement of the Second Respondent and the Third Respondent wanted to withdraw the two County Court claims and the two tribunal applications.
10. Counsel for the Applicant also said that the Applicant was now applying for the Order (i.e. the management order) to be extended to 31<sup>st</sup> December 2020, and Counsel for the Second Respondent and Third Respondent said that his clients were not opposing this application.
11. The First Respondent said that his preference was for the Order to be extended longer than had been requested by the Applicant, and he explained his concerns as to what might happen after the expiry of the requested extension period.
12. Counsel for the Applicant explained the basis for the requested extension by reference to the papers in the hearing bundle, and Counsel for the Second Respondent and Third Respondent did not have anything to add.

### **Reasons for the tribunal’s decision**

13. Under section 24(9) of the Act “*A tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ...*”.
14. Under section 24(9A) “*The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied – (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made; and (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order*”.
15. We have considered the papers in the hearing bundle and note the oral submissions of Counsel for the Applicant and of the First Respondent, as well as the fact that the application for the extension of the Order to 31<sup>st</sup> December 2020 is not opposed by the Second Respondent or the Third Respondent. We accept that there are continuing problems with the management of the Property and consider that extending the Order

to 31<sup>st</sup> December 2020 will not result in a recurrence of the circumstances which led to the Order being made and that it is just and convenient in all the circumstances of the case to vary the Order in the manner requested. Whilst it might be arguable, as argued by the First Respondent, that it would be even better for the Order to be extended further still, that is not the application before us and whilst our discretion is quite wide we do not – in our view – have jurisdiction to extend the Order for longer than the period of extension sought by the Applicant.

16. In relation to the application to withdraw the two applications for a determination of the reasonableness of service charges (“**the Tribunal Applications**”) and the Applicant’s statement that it no longer wishes to pursue the two County Court claims (“**the County Court Claims**”), we are satisfied in the circumstances (a) that it is appropriate to consent to the withdrawal of the Tribunal Applications and (b) that there is no determination to be made by the tribunal in respect of the County Court Claims and that they can be treated as having been settled.

### **Costs**

17. No cost applications have been made.

**Name:** Judge P Korn

**Date:** 8<sup>th</sup> July 2019

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.