



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

Case reference : CHI/00HC/LAM/2018/0011

Property : 91 Pennycress, Locking Castle, Weston-super-Mare Somerset BS22 8PP

Applicant : Mr A C Cawthorne

Representative :

Respondent : Templars Court (WSM) Management Limited

Representative : About Buildings Ltd

Type of application : Appointment of Manager Section 24 of the Landlord and Tenant Act 1987 (1987 Act)

Tribunal member(s) : Judge Tildesley OBE
Mrs J Coupe FRICS
Mrs J Playfair

Venue : 4 September 2019
North Somerset Magistrates Court
The Hedges, St Georges, Weston-super- Mare
BS22 7BB

Date of decision : 3 October 2019

DECISION

The Application

1. Mr Cawthorne seeks a determination pursuant to s.24A of the Landlord and Tenant Act 1987 for the appointment of a manager of the property known as 91 Pennycress, Locking Castle, Weston-super-Mare, Somerset BS22 8PP. The proposed manager is Mr Darren Stocks MIRPM, AssocRICS of Crown Property Management, 135 Reddenhill Road, Torquay TQ1 3NT.
2. Mr Cawthorne is the leaseholder of Flat 9 under the terms of lease made between Second City (South West) Limited and Templar's Court (W-S-M) Management Limited of the one part and Richard Michael Davies and Joanne Arthur of the other part and dated 22 December 1995. The term of the lease is 999 years from 1 January 1995 with a ground rent of £30 per annum.
3. The Respondent to these proceedings is Templar's Court (WSM) Management Limited which is the Management Company named in the lease and now owns the freehold of the property. Each leaseholder holds one share in the Management Company, which is ran by a board of five directors who are all leaseholders. The directors appointed About Buildings Limited as managing agent for the property.
4. Under the terms of the lease Mr Cawthorne is required to contribute one-twelfth of all costs, charges and expenses incurred by the Respondent in carrying out its obligations to insure the flats, repair the reserved property and keep the common parts cleaned and in good order.
5. The property is a purpose built block of 12 flats situated over three floors. The property is of timber framed construction, with brick elevations underneath a pitched and tile roof. There is a small porch to the front. The communal areas for the property include the entrance door at the front, a rear door to the garden, hall, and stairs, landing and corridors leading to the individual flats. Outside there are gardens to the front and rear, a drying area, bin store and car parking with each flat having an allocated parking space.
6. Mr Cawthorne served a section 22 Notice on 7 December 2018 requiring the Respondent to take various steps to remedy specified matters by 20 January 2019. Mr Cawthorne applied for the appointment of manager on 14 December 2018.
7. On 15 February 2019 the Tribunal directed a case management hearing on 14 March 2019 by means of a telephone conference. Mrs Neath, director of the Respondent company and leaseholder of flat 1 together

with Mr Rooney of the managing agent attended the case management hearing. Mr Cawthorne did not. The Tribunal issued directions to progress the application.

8. On 8 April 2019 the Tribunal struck out the Application because of Mr Cawthorne's failure to comply with directions. On 23 May 2019 the Tribunal reinstated the Application, which was listed for hearing on 4 September 2019.
9. Mr Cawthorne attended the hearing in person. Mr Stocks the proposed manager and Ms Angela Gregory of Crown Property Management were also in attendance. Mrs Neath, Mrs Saunders of flat 2, and Mr Robbins of flat 5, directors appeared for the Respondents together with Mr Rooney. The Tribunal inspected the property including flat 9 immediately prior to the hearing in the presence of the parties.
10. The Tribunal admitted the hearing bundle prepared by Mr Cawthorne in evidence. The bundle did not include the Respondent's case. Mr Rooney insisted that he had sent it to Mr Cawthorne. At the hearing Mr Rooney asked the Tribunal's permission to admit ten documents attached to an email which had been sent to the Tribunal at 1559 hours on 3 September 2019. Mr Rooney had not brought with him paper copies of the documents. The Tribunal refused Mr Rooney's request. The Tribunal, however, allowed Mr Rooney to refer to the Position Statement of the Respondent (one page document) which had been sent earlier to the Tribunal, and copied to Mr Cawthorne who was given a short adjournment at the beginning of the hearing to refresh his memory of the position statement. Mr Rooney was also allowed during the hearing to refer to the Annual Report and Financial Statements of the Respondent company which were shown to Mr Cawthorne and the Tribunal on a laptop screen.
11. The Tribunal heard evidence from the parties and each party was given the opportunity to ask questions of the other party. The Tribunal also heard from Mr Stocks on his suitability to be appointed as a manager.

Findings of Fact

12. Mr Cawthorne in the third schedule of section 22 Notice relied on four matters to support his application for the appointment of manager. The Tribunal intends to make findings of fact against each ground.
13. Mr Cawthorne stated that the Respondent had breached its obligations to the tenants under the lease. This comprised two elements: not fulfilling the landlord's repairing obligations, and failure to comply with the requirements regarding service charge accounts.

14. Mr Cawthorne complained that the preservative on the window sills was peeling, and that the wood was showing signs of rot, the wooden fascia adjoining the pitch roof to the porch was rotten, and that the recent decoration to the Juliet balconies was not to a reasonable standard, with the original paint showing on the metal structure facing the individual flats. Mr Cawthorne also considered that the communal areas had not been kept to the required standard. He included a photograph in the hearing bundle of cigarette butts lying just outside the porch.
15. The Tribunal concluded from its inspection that the property was in reasonable condition with minor general areas of disrepair. The Tribunal found that the communal areas both inside and out were generally clean and tidy and maintained to a reasonable standard.
16. The Tribunal noted from the lease that the Respondent was responsible for the windows in the communal areas, not the windows in the individual flats. The Tribunal's inspection of the communal windows revealed the wood surfaces were firm but they required rubbing down and redecoration. The Tribunal acknowledged the presence of rot in the wooden fascia but it did not appear to be widespread. The Respondent had required the contractors to return to complete the decoration to the Juliet balconies which could only be carried out by painting from inside the individual flats. The contractors were unable to gain access to Mr Cawthorne's flat which was why the decoration to the Juliet balcony in flat 9 had not been finished. The Tribunal noted that the photograph of cigarette butts provided by Mr Cawthorne was confined to one small area outside the porch and not that obvious.
17. The Tribunal is satisfied that the Respondent was fully aware of its repairing and maintenance obligations under the lease. The Respondent had systems in place for carrying out its obligations. The Respondent engaged the services of a local handy person for odd jobs and went out to tender for larger works such as the decoration of the Juliet balconies.
18. Mr Cawthorne stated that the Respondent had not complied with the requirements of the paragraph 8 to the Seventh schedule of the lease which required the Respondent to keep proper books of account of all costs, charges and expenses incurred by the Respondent in carrying out its obligations under the lease; the accounts to be prepared and audited by a competent accountant who shall certify the total amount of the costs, charges and expenses for the period to which the accountant relates and; the proportionate amount due from the lessee in relation to service charges.

19. Mr Cawthorne contended that the Respondent had not sent him a copy of the accounts, and that the accounts did not include a Directors' report. Mr Cawthorne also alleged that the accounts had not been audited by a competent accountant, and that the managing agent had used one of its directors, Mrs Debbie Giddens, as the accountant. Finally Mr Cawthorne asserted that he had not received notices of Annual General Meetings, and details of service charge arrears owed by him.
20. Mr Rooney showed the Tribunal and Mr Cawthorne at the hearing a copy of the Annual Report and Unaudited Financial Statements for the year ended 30 June 2018. The Tribunal noted that the Report was prepared by Debbie Giddens Accountancy Services, and independently examined by Ms Alison Beatty, an accountant of TLA Portishead. The report included a Directors' report and a Profit and Loss Account.
21. Mr Rooney stated that copies of the Annual Report were sent to all leaseholders with Notice of the AGM by email. Mrs Neath confirmed Mr Rooney's statement. Mr Rooney also said that he sent on several occasions copies of the same documents together with a service charge statement and the document entitled Tenant's Rights and Obligations to Mr Cawthorne. Mr Rooney added that he was now refusing to send the documents again to Mr Cawthorne unless he paid an administration charge. Finally Mr Rooney stated that Mrs Giddens had now retired, and that the Respondent had appointed a new accountant, Mr Danny Stevens ACA MAAT of Pure Professionals.
22. Mr Cawthorne denied that he had received the various documents from Mr Rooney. Mr Cawthorne also argued that Mrs Giddens could not be regarded as independent in view of her position as director of the managing agent.
23. The Tribunal noted that Mr Cawthorne had included in the hearing bundle an email from him dated 8 November 2018 to Mr Rooney which listed the number of recent emails received by him from Mr Rooney setting out details of the attachments to those emails, such as 2018 & 2019 service charge statements and tenancy rights, notice of AGM, and AGM minutes. Although Mr Cawthorne's email did not refer specifically to the Annual Report, the Tribunal accepts Mr Rooney's evidence which was corroborated by Mrs Neath that Mr Rooney sent the Annual Report with the Notice of the AGM.
24. The Tribunal is satisfied from its inspection of the Annual Report and Unaudited Financial Statements for the year ended 30 June 2018 that Mr Cawthorne's criticisms that the Report did not include Directors' Report and Profit and Loss Account were unfounded. The Tribunal

finds that the Respondent's accounts were prepared by a competent accountant which were also examined by another accountant overcoming Mr Cawthorne's suggestion that Mrs Giddens had a conflict of interest. In respect of the last point the Tribunal notes that Mrs Giddens has now retired and replaced by Mr Stevens.

25. The Tribunal questioned Mr Rooney in some detail on his understanding of the Respondent's obligations in respect of service charges. The Tribunal established that Mr Rooney is primarily a letting agent and that he managed just this one property. The Tribunal on the whole considered that Mr Rooney had a good understanding of the Respondent's obligations. The Tribunal, however, would point out the need for separate service charge accounts and to ensure that they comply with Paragraph 8 of the Seventh Schedule to the lease.
26. The Tribunal finds that Mr Cawthorne had not established that the Respondent has breached its obligations to the tenants under the lease.
27. Mr Cawthorne alleged that the Respondent acted unreasonably in the administration of the property. Under this ground Mr Cawthorne repeated his allegations regarding the state of the condition of the property. In addition Mr Cawthorne alleged there had been no fire risk assessment of the property. Mrs Neath and Mr Rooney disputed Mr Cawthorne's allegation.
28. Mrs Neath stated that an Officer of the local Fire Brigade had visited the property about 18 months ago and made various recommendations. Mr Rooney stated that there was a fire risk assessment in place which had been reviewed by the Board of Directors. Mr Rooney in answer to the Tribunal's observation that there were cycles and other items in the corridors said that this has been considered under the fire risk assessment which had noted that they were not a serious risk because of the width of the corridors. Mr Rooney, however, added that the Board of Directors was considering the erection of a shed in the garden so that these items could be stored there.
29. The Tribunal prefers the evidence of Mrs Neath and Mr Rooney. The Tribunal finds that Mr Cawthorne had not established that the Respondent had acted unreasonably in the administration of the property.
30. Mr Cawthorne stated that the Respondent had breached the Code of Practice on the grounds of no transparency of the Company's accounts, no annual directors report and the absence of professional administration. The Tribunal is satisfied that the grounds cited by Mr

Cawthorne were a repetition of those matters already considered by the Tribunal under alleged breaches of obligations. The Tribunal finds that Mr Cawthorne's allegations regarding the accounts and the administration had no substance.

31. Mr Cawthorne put forward a range of other circumstances for the appointment of a manager. Mr Cawthorne raised in his application the issue of the Sky engineer gaining access to the loft which he did not pursue at the hearing. Mr Cawthorne complained about the competence of Mr Rooney. The Tribunal under section 24 of the 1987 Act is concerned about the Respondent's competence to manage the property not that of Mr Rooney's. The Tribunal considers that the Respondent has acted responsibly by appointing an agent to manage the property rather than do it themselves. The Tribunal finds that Mr Cawthorne has not identified serious shortcomings in the management of the property by the Respondent. Finally Mr Cawthorne cited Mr Rooney's refusal to handover the administration to Mr Stocks, the manager proposed by Mr Cawthorne. The Tribunal comments that Mr Rooney is entitled to refuse to handover the administration until the Tribunal makes a determination on whether a manager should be appointed.
32. Mrs Neath confirmed that the Board of directors and the other leaseholders did not support Mr Cawthorne's application. Mrs Neath stated that the Board was satisfied with the services provided by Mr Rooney.
33. Mrs Neath mentioned that the Board had called an Extraordinary General Meeting of the shareholders on the 31 July 2019 to discuss Mr Cawthorne's application. The members present unanimously rejected Mr Cawthorne's application to appoint Mr Stocks as manager. Mr Cawthorne had expressly requested that the Board call an EGM to discuss his concerns. Mr Cawthorne, however, decided not to attend the meeting because he feared he would get into an argument. Mrs Neath pointed out that she welcomed leaseholders contacting her about their concerns.

Decision

34. The appointment of a manager under section 24 of the Landlord and Tenant Act 1987 is the remedy of last resort when all other avenues to resolve the leaseholder's concerns have been exhausted.
35. In order for a leaseholder to be successful with his application for the appointment of a manager, he must first serve a section 22 Notice giving the landlord the opportunity to remedy the matters complained of

within a reasonable time. If that is not done the leaseholder is entitled to bring an application to the Tribunal and must establish that one or more of the statutory grounds exist for the appointment of Manager and that it is just and convenient to appoint a manager.

36. The Tribunal notes that it would appear that Mr Cawthorne made the application before expiry of the period given in the section 22 Notice for the Respondent to remedy the alleged defects. Also the Tribunal observes that Mr Cawthorne failed to attend the EGM called to deal with his concerns, which was one of the remedial steps requested by Mr Cawthorne in the section 22 Notice.
37. Mr Cawthorne put forward two statutory grounds for the making of the order: breach of obligation under the lease, and failure to comply with code of management practice. The Tribunal found that Mr Cawthorne had not established that the Respondent had breached its obligations under the lease and that it had failed to comply with the code of management of practice.
38. The Tribunal is satisfied that it would not be just and convenient to make a management order. The Tribunal finds that the Respondent has managed the property to a reasonable standard, and its decision to appoint About Buildings Limited as its managing agent is a matter for them. The Board was satisfied with the services provided by its managing agent.
39. Mr Cawthorne's principal submission at the hearing was that Mr Rooney had failed to prove his case. The Tribunal did not understand Mr Cawthorne's submission. Mr Cawthorne had the obligation to establish the grounds for the making of a management order, which he failed to do. Also the Respondent to these proceedings was Templars Court (WSM) Management Limited not Mr Rooney. The Tribunal is satisfied that the Respondent is run by a Board of Directors who are aware of their responsibilities and of the requirements of the leaseholders.
40. **The Tribunal refuses the application for appointment of manager.** The Tribunal adds that this is not a reflection on Mr Stock's competence as a manager. If the grounds had existed for the making of a management order the Tribunal would have considered Mr Stocks a suitable person to appoint as manager.

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.