



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

Case Reference : CHI/45UB/LAM/2018/0009

Property : 37, Buckingham Road, Shoreham-by-Sea
West Sussex BN43 5UA

Applicants : Miss Louise Whitnall and Mrs Mary Bean

Representative :

Respondents : Mr John Williams and Mr Paul Meredith

Representative : Mr J Dobbs,
Parsons Son and Basley (Managing Agents)

Type of Application : Appointment of Manager

Tribunal Member(s) : Judge D. Agnew
Mr BHR Simms FRICS

Date of Decision : 25th June 2019

DETERMINATION

Background

1. On 4th September 2018 the Applicants applied to the Tribunal for the Tribunal to appoint a manager in respect of 37 Buckingham road, Shoreham-By-Sea, West Sussex BN43 5UA (“the Property”). The application is made under section 24 of the Landlord and Tenant Act 1985 (“the Act”). Mr Peter Bigge AIRPM of Town & City Management Limited was the Applicants’ nominee to be appointed as manager.
2. On 31st July 2018 the Applicants served on the Respondents who are the freehold owners of the property a Notice under section 22 of the Act. This stated that the Applicants intended to apply to the Tribunal for the appointment of a manager on the grounds set out on the evidence indicated but would not do so if the Respondents complied with the requirements set out in the notice. There were two grounds specified, namely that there had been breaches of the obligations owed to the tenants under the lease and that there had been breaches by the Respondents of their statutory obligations under the Landlord and Tenant Act 1985. The Notice required the specified matters to be remedied within 30 days of the date of the Notice. There was no suggestion from the Respondents that there was any defect in the section 22 Notice as served.
3. A Case Management Hearing by telephone took place on 11th December 2019 and the application came before the Tribunal on 21st May 2019 at Brighton County Court and was heard immediately after the hearing of an application by the Respondents against the Applicants under section 27A of the Landlord and Tenant Act 1985 in respect of service charges.

Inspection

4. The Tribunal inspected the property immediately prior to the hearing. A description of the Tribunal’s findings on the Inspection is set out in the service charge application decision of the same date as this decision.

The Applicant’s case

5. In a nutshell the Applicants have the following major bases for their application. First, that the landlord has breached the repairing covenant in the lease with regard to the second floor extension to the property (hereinafter referred to as the “conservatory”). Secondly, that there has been a breach of the requirement of the lease for the Respondent to keep proper books of account and to produce clear and accurate accounts within a reasonable time frame.
6. With regard to the repairing covenant the Applicants say that the Respondents were aware of the need to repair the conservatory as long ago as 2012 but the work has still not been carried out. At that

time a report identified that all timberwork to the conservatory should be filled, rot removed primed and painted. The cost for this was estimated at £2000. It was not done. Then, in 2014 a further survey carried out by BLB advised that the conservatory should be repaired at the same time as other major works so that scaffolding only needed to be erected once. Although the major works were put in hand the Respondents decided not to do the work to the conservatory at this time but to delay it. In August 2016 a notice of Intention to carry out the works to the conservatory was issued under section 20 of the 1985 Act which stated the intention to demolish and reconstruct the conservatory. No survey report was supplied showing that such extensive works were required. A subsequent survey disclosed that the window frames were now rotten .

7. The Applicants arranged for their own survey which concluded that there was no structural reason why the rebuilding of the conservatory was necessary. Finally, the Respondents obtained a report from a surveyor, Mr David Smith , who has produced a specification of works required to the conservatory that the Applicants agree and that work is about to be put in hand. It has, however, taken seven years to reach this stage after constant battles with the landlords.
8. With regard to the accounts, those for the year end December 2017 have still not been delivered eighteen months after the year end. The accounts for 2016 had several errors which were corrected by the landlords' accountants following a meeting with the Applicants. The Applicants have had to spend an inordinate amount of time in trying to reconcile the accounts due to the sparse amount of clear information concerning expenditure which has been complicated by the fact that some of the work has been carried out on the Respondents' own Lower Ground Floor flat for which the Applicants should not be paying and accounts should be apportioned.
9. The Applicants feel that due to their battles over the works and the accounts the relationship of trust with the current managing agents has broken down.

The Respondents' case

10. The Respondents' representative accepted that the 2017 accounts have been delayed. This was due to certain staff leaving the firm. The 2017 accounts are now with the accountants to be finalised. The accounts for previous years (2013 to 2016) have been re-stated and certified following previous Tribunals' determinations. Mr Dobbs accepted that the 2016 accounts were amended by the accountants following a meeting with the applicants and at their request.

11. With regard to the work to the conservatory the delay has largely been as a result of a difference of opinion as to the extent of the work required to be done. The Applicants' surveyor disagreed with the landlords' survey report that the structure needed to be demolished and reconstructed. As a result a further survey was obtained and a specification has now been agreed. David Smith has proceeded to obtain tenders and he will be appointed as the contract administrator. The work is due to commence shortly.
12. Mr Dobbs felt that although the situation is strained and unsatisfactory, he does not consider that the relationship between himself and the applicants has irretrievably broken down.

The applicable law

13. Section 24 of the Landlord and Tenant Act 1987

Section 24 of the Landlord and Tenant Act 1987 ("the Act") provides, inter alia, that:-

" (1) A leasehold valuation tribunal [since 1st July 2013 a First-tier Tribunal (Property Chamber)] may, on application for an order under this section, by order...appoint a manager to carry out in relation to any premises....

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver,
or both, as the tribunal thinks fit.

(2) A...tribunal may only make an order under this section in the following circumstances, namely –

(a) where the tribunal is satisfied –

(i) that any relevant person is in breach of an obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or part of them..... and
(iii) 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 the relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management 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.

1. Section 22 of the Act requires a preliminary notice to be served upon the landlord and any person (other than the landlord) by whom obligations relating to the management of the premises are owed to the tenant under his tenancy before such an application is

made. This notice must specify the tenant's name and address, that he intends to make an application for an order appointing a manager but that he will not do so if the requirements to remedy the matter are complied with, specify the grounds on which the tribunal would be asked to make an order and state a time within which the matters capable of remedy are to be remedied and the steps to be taken to remedy them.

Discussion and determination

14. The Tribunal finds that the Respondent was in breach of its covenant to maintain and repair the Premises by failing to carry out repairs to the conservatory from 2012 to date. The Respondent was aware that the conservatory was out of repair from 2012 and remedial works were originally included in the scope of the major works which were carried out in 2015. However, the works to the conservatory were removed from the scope of those major works by the Respondents and they are only now about to start on them. The Tribunal accepts that some of the delay is attributable to the fact that the Applicants objected to the scale of the proposed works to the conservatory. The fact that a lesser specification has now been agreed by the parties is an indication that the Applicants were right to take the view that the complete removal and rebuilding of the conservatory as proposed by the Respondents was not necessary. In the Tribunal's view taking seven years or more to remedy wants of repair to the conservatory is an unreasonably long period of time.
15. The Tribunal also finds that the Respondent has breached clause 5.6.2 of the lease in failing to deliver "as soon as practicable after the 24th December.....in every year("the Maintenance Year") deliver to the lessee of each flat in the Block:-
 - 5.6.2.1 a fair summary in writing certified by a qualified accountant of the costs incurred and monies expended by the lessor during the year immediately prior to the said 24th Decemberin complying with its covenants in Clauses 5.2 and 5.4 to 5.9 hereof [to insure and to repair respectively] set out in a way which shows how the said costs incurred and monies expended are or will be reflected in demands for payment under Clause 3.2 hereof".
16. The accounts for the year ended December 2017 have still not been delivered to the lessees: they are with the accountants. A delay of eighteen months cannot be said to be "as soon as reasonably practicable" after the year end. The fact that personnel have left the managing agent's employ is a reason but not an excuse for the delay.
17. The Tribunal finds therefore that there are grounds under section 24(2)(a)(i) for an order for the appointment of a manager to be made. However, that ground also requires that it be just and

convenient for such an order to be made. In the circumstances of this particular case the Tribunal does not consider that it would be just and convenient for an order to be made at this juncture. The reason for this is that the final stage of the major works to be carried out at the Property is about to be started. The section 20 procedure has been undertaken, a specification of works obtained from an independent surveyor who has chosen the contractors invited to tender, and who has received and reported on those tenders. That surveyor has been appointed as the contract administrator. It does not make sense now potentially to disrupt that process by bringing in a new manager. Further, the Tribunal perceives that to a large extent the troubles and difficulties over the past few years may have been caused by a suspicion on the part of the Applicants that the 2015 major works were done and charged to favour the Respondents and their own lower ground floor property rather than the Applicants' part of the Property. If that is so, with the determination on the section 27A application having been made at the same time as this decision, that situation should now now passed. Once the work to the conservatory has been completed this should be a very straightforward property to manage and as far as one can tell, maintenance and repair costs should be minimal. The potential for further dispute between the landlords and the lessees and the managing agent should be reduced if not removed completely.

18. If the Tribunal is wrong and the Applicants do have further well-founded reasons for pointing out deficiencies in the management of the Property going forward, it will be possible for a fresh application for appointment of manager to be made in which it can be pointed out that the only reason why an order was not made on the current application was that the Tribunal did not consider it just and convenient to make an order when the most significant problem with regard to the major works was about to be overcome. Put another way, Mr Dobbs is on notice that a future Tribunal may be more easily persuaded that it is just and convenient to make an order if there is a further, justified, application.
19. Finally, the Tribunal is grateful to Mr Bigge for his attendance at the hearing and for the information and evidence he supplied.

Costs

20. Should either party wish to apply for an order for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (i.e. for unreasonable conduct) or should the Applicants wish to make an application under section 20C of the Landlord and Tenant Act 1985 any such application giving full reasons should be made within 28 days of this decision being sent to the parties and a decision will be made on the submissions received without an oral hearing.

Dated the 25th June 2019
Judge D. Agnew (Chairman)

APPEALS

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
- Appeals