



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

Case reference : **CAM/26UD/LAM/2019/0005**

Property : **7 Ware Road, Hertford, SG13 7DY**

Applicant : **Helen Nash**

Representative : **In person**

Respondent : **Mr Min Chen**

Representative : **In person**

Type of application : **Appointment of a Manager**

Tribunal member(s) : **Judge S Evans
Mrs M Hardman FRICS IRRV
(Hons)
Mr J Francis QPM**

Date and venue of hearing : **26 November 2019, at Ware Priory**

Date of decision : **2 December 2019**

DECISION

The Tribunal has decided that:

- (1) In accordance with section 24(1) of the Landlord and Tenant Act 1987, Mr Jim Thornton BSc(Hons) MA CEng MICE MCIOB MIRPM of Hurford Salvi Carr Property Management Ltd (“the Manager”) is appointed as manager of the property at 7 Ware Road, Hertford SG13 being all parts of the land and building thereon excluding the ground floor commercial premises (“the Property”).

- (2) The order shall continue for a period of 2 years from the date of this decision. 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 powers, 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 (if any) as a restriction under the Land Registration Act 2002, or any subsequent Act.
- (5) The Manager shall have the additional power to demand and receive the sum of £5500 payable by 31st January 2020 by equal contribution on the part of the Applicant, the Respondent and Mr Yarwood.
- (6) 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;
- (7) The Respondent shall pay to the Applicant the cost of the application fee and the hearing fee, a total of £300, within 21 days.

The Application

1. On 22nd July 2019 the Applicant and leasehold owner of flat 7A in the building on the upper floors of the Property made an application for an order appointing Jim Thornton BSc(Hons) MA CEng MICE MCIQB MIRPM of Hurford Salvi Carr Property Management Ltd as manager under section 24 of the Landlord and Tenant Act 1987 ("the Act").
2. The Applicant sought the order due to the alleged failure of the Respondent freeholder to comply with the terms of his leases, in particular as regards repair of the roof and gutters, and the lighting in the common parts.

3. Copies of the application form were sent to the leaseholder of flat 7B, Mr Roger Yarwood, who has taken no active part in the proceedings.
4. Copies of the application form were also sent to the Respondent, who did not reply to the same. Nor had he replied to the earlier preliminary notice served by the Applicant under s.22 of the Act.
5. Directions were given on 8th August 2019.
6. The Applicant prepared a paginated bundle of all relevant material, for which we are grateful.
7. The Respondent did not comply with the directions for service of a statement of case. However, as detailed below, he attended the hearing.

Background

8. The Property is part of a building at 7 Ware Road, Hertford. There are business premises on the ground floor (“Wok and Fish Bar”) and two residential flats above, 7A and 7B, which are accessed via an entrance door to the rear, off Villiers St, which entrance leads to a carpeted passageway with flights of stairs at the end, in turn leading to the 2 flats on the upper floors.
9. The Applicant acquired her leasehold interest in 2012.
10. At least 2 years ago, it is alleged that water penetration began to affect the common parts and Mr Yarwood’s Flat 7B, ostensibly coming from the roof.
11. In 2018, there were defects alleged to the lighting in the carpeted passageway, leading to the Applicant obtaining a quotation for replacement lighting, and for separation of this lighting circuit from her electricity supply.
12. On 30th January 2019 the Applicant served a s.22 Notice on the Respondent, complaining of defects to the guttering, roof, ceiling of the carpeted passageway being damp damaged with fungal growth, and about the entrance door being defective, and binding.
13. The Notice, amongst other requirements, set out steps for remedying the above complaints, and gave a period of 6 weeks for the main items to be the subject of an inspection, before any necessary consultation period under s.20 of the Landlord and Tenant Act 1985 could then begin.
14. There was no response to the Notice served, and the Application was later issued.
15. After the Application was issued, the Respondent started to obtain some quotations for repairs.

Statutory Framework

16. Under section 24(2) of the Act, the Tribunal may appoint a manager in various circumstances. These include where the tribunal is satisfied:
 - (1) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them; or
 - (2) that unreasonable service charges have been made, or are proposed or likely to be made; and
 - (3) that it is just and convenient to make the order in all the circumstances of the case.

The Inspection

17. The Tribunal inspected the Property immediately before the hearing, in the presence of the Applicant and Mr Thornton.
18. The internal state of repair was as shown on the photographs on pages 21 and 25 of the bundle as regards the entrance door and carpeted passageway, in particular:
 - (1) The entrance door threshold was split, and the door was binding on the frame;
 - (2) Just inside the door the ceiling had a section removed through which a visibly wet wall joist could be seen. The section had ostensibly been removed because the door closer had been catching on the sagging ceiling;
 - (3) There was mould to the ceiling including fruiting growths;
 - (4) Parts of the carpet were missing, where mice had allegedly damaged it;
 - (5) The carpeted passageway was not clean;
 - (6) There was wall lighting installed which appeared to be recent.
19. In addition, at the top of the first small flight of stairs leading to the flats, there was a relatively large patch of stained wallpaper, on the wall to the right.
20. The Applicant knocked on Mr Yarwood's door, without response. The Applicant stated there was no issue within her own flat which merited inspection, so the Tribunal did not access Flat 7A either.
21. Externally, from observation in Villiers St, it was apparent that the uppermost roof had several lifting, cracked and slipped slates (some in

the rear gutter), and a considerable amount of vegetation growth in the gutter on the flank elevation.

22. The uppermost roof has an “observation tower” (as it is referred to in the lease) above it, which was in need of attention.
23. The roof slope above the common passageway did not show any obvious defect, although the internal state belies this (see paragraph 18(1) to (3) above).

The Hearing

24. The Applicant and Mr Thornton attended the hearing.
25. The Respondent attended with his wife, and Miss Zhen Wang, who acted as interpreter, once it became clear to the Tribunal that the Respondent required such assistance.
26. Miss Wang told the Tribunal she was a Finance Director and not an official interpreter (the Respondent informing the Tribunal that he did not know that the Tribunal could have arranged one for him). Notwithstanding this, it was clear to the Tribunal that Miss Wang could diligently translate questions, answers and statements, and the hearing progressed fairly smoothly as a result. We are grateful for her assistance.
27. The Respondent was provided with a copy of the bundle, although he said he had received all documents from the Tribunal and the Applicant.
28. The Tribunal took each of the issues in turn, with the parties having the opportunity to make representations and ask questions of the other.

The Issues

29. The following issues were identified for determination:
 - a. Did the contents of the section 22 notice comply with the statutory requirements?
 - b. Has the applicant satisfied the tribunal of any grounds for making an order as specified in section 24(2) of the Act?
 - c. Is it just and convenient to make a management order?
 - d. Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?
 - e. Does the proposed manager need any additional powers to levy his own service charge?

- f. Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the Respondent's costs that may be recoverable through the service charge?
- g. Should the Applicants be awarded certain other costs against the Respondent?

Did the contents of the section 22 notice comply with the statutory requirements?

- 30. The Applicant confirmed the Notice was served by recorded delivery, which the Respondent accepted he had received.
- 31. The Respondent was asked whether he was alleging any deficiency in the Notice, and there being none apparent to the Tribunal, this issue we find in the Applicant's favour.

Has the applicant satisfied the tribunal of any grounds for making an order as specified in section 24(2) of the Act?

- 32. The Applicant explained the position in her own words as being that there was no effective management of the building, and that a lot of repairs are needed. She also explained how electrical issues led to her replacing the wall lighting in the common passageway, because they were tripping out every 10 minutes.
- 33. The Applicant added that Mr Yarwood, the Respondent and she had met at the Property over 2 years ago when it was agreed the Respondent would obtain some quotes for works.
- 34. With the assistance of the Tribunal the Applicant identified the alleged breaches of the lease as being:
 - (1) A breach of clause 3(7)(i) of the lease dated 17th June 1988, being the covenant to maintain and repair the roof and gutters etc;
 - (2) A breach of clause 3.2 of the Deed of Variation to the lease dated 7th October 2005 (a covenant to maintain the floor covering and to clean and decorate and light the common passageway).
- 35. The Respondent first stated he was unaware of any issue until last year when the Applicant and Mr Yarwood brought these matters to his attention. He later conceded that this was probably longer than a year ago. He said that he never had access to the common areas, and initially stated he did not realise those parts were his responsibility. Once asked what he did do, on realising it was his responsibility, he said he talked to the Applicant and got some quotes for works (these were identified as having been obtained after the Application was issued). At one point he stated he had considered it was better for the leaseholders to get

their own quotes, because of language issues - that he would have to use builders who spoke his own language, whom the leaseholders would not themselves understand. He accepted he had not undertaken any repairs at all.

36. Although the Tribunal did not have the benefit of any evidence from Mr Yarwood directly, it notes the email from him dated 27th July 2017 to the Applicant (p.18 of the bundle) in which he complains of a "new leak in the roof" into the bedroom, which had landed on an electrical socket, causing his bedroom to become "full of smoke". A picture of a burned extension lead and plug is attached to the email.
37. The Tribunal finds that the Respondent has been in breach of his obligations as set out in paragraph 34 above, and which relate to the management of the Property. The roof and gutters have not been maintained or repaired in the last 2 years at the least, and there have been no service charges demanded nor accounts prepared in accordance with the provisions of the lease to enable him to do so. The common parts were not clean, and the Applicant has been compelled to replace the lighting therein.

Is it just and convenient to make a management order?

38. In short, the Applicant stated the Respondent had had enough time, and there had been enough conversations with him, to remedy the issues with management of the Property.
39. The Respondent, perhaps in recognition of the weight of evidence against him, did not take serious issue with the appointment of a manager, even after it was explained to him that under the terms of the lease he would still be responsible for 1/3 of the repairs etc. (except in relation to the common passageway where the leaseholders share half).
40. Although not strictly necessary to do so, the Tribunal is minded to find that the failure to repair the roofs and gutters is the likely cause of the internal water penetration in the common parts and within flat 7B.
41. The Tribunal therefore finds that in all the circumstances it is just and convenient to make a management order. The Respondent, we decide, would not act without compulsion, or at least not expeditiously enough, to remedy the pressing state of repair of the Property, whether or not through the service charge provisions.

Would the proposed manager be a suitable appointee and, if so, on what terms and for how long should the appointment be made?

42. Mr Thornton's qualifications are set out on p.48 of the bundle and are not repeated herein. The Tribunal asked questions in clarification of Mr Thornton's suitability as follows:

- (1) He was asked to clarify if he knew he would be personally appointed, and not just his firm, and he explained he did;
 - (2) He was asked to clarify if any of the properties for which he was appointed by the Tribunal in 2009/2010 are continuing appointments, and he replied that one was;
 - (3) He explained that the minimum fee of £1600 plus VAT per year would be for a full service within the first 2 years, with the expectation that the only management required thereafter would be the standard service charges/accounts;
 - (4) He explained that any other charges above that sum would only be for matters such as replies to enquiries on sale, and he would never add any percentage on top of major works, albeit he would seek the costs of obtaining any schedule of works from a third party;
 - (5) He confirmed he was prepared to abide by the RICS Code of Practice relating to management.
43. Mr Thornton explained that his primary attention would be directed towards checking there was adequate building insurance in place, and to arrange for a roof inspection, and for the clearing of gutters.
44. The Applicant and Mr Thornton proposed his appointment be for a period of 2 years.
45. The Respondent had no questions for Mr Thornton.
46. The Tribunal decides that Mr Thornton is a suitable appointee in terms of qualifications and experience, and that the term of his appointment should be 2 years.
47. Whilst his proposed fee was higher than that experienced by the Tribunal for a property of this type, bearing in mind the scope of the management needed (repairs and service charges and accounts) and that it will be split mostly but not exclusively 3 ways between the lessees and the Respondent, we consider it to be reasonable.

Does the proposed manager need any additional powers to levy his own service charge?

48. Mr Thornton expressed his concern that the lease at the 4th schedule, para.1(h)(iii) only permits the demand of £50 interim service charge instalments until the first service charge statement, and thereafter only the sum stated on the last service charge statement served on each lessee. This he considered to be unsatisfactory, because he would require a total sum by 31st December 2019 which (after must discussion with the Tribunal on this point) was put at £5500, being (a) £2500 for his management fee, occasional repairs, and electricity bill for the common parts, and (b) £3000 on account to begin the repairs.

49. The Respondent made no observations on this representation.
50. It is said that the jurisdiction to appoint a manager is a problem solving jurisdiction. Thus it is possible, for example, to give the manager the power to collect service charges on account where the lease does not provide for this (see *Maunder Taylor v Joshi* [2006] 8WLUK 66).
51. The Tribunal considers it reasonable to grant the appointee the additional power requested in order to levy the above sum for the above purposes, but directs that it should be paid by 31st January 2020, by equal contribution by the Applicant, the Respondent and Mr Yarwood.

Should the Tribunal make an order under section 20C of the Landlord and Tenant Act 1985, to limit the Respondent's costs that may be recoverable through the service charge?

52. The Applicant included an application for an order under section 20C, restricting the ability of the Respondent to include his costs as part of a service charge.
53. It is not clear whether the Respondent has in fact incurred any costs but given the circumstances of the case and for the avoidance of doubt, the Tribunal considers that it is just and equitable for an order to be made in favour of the Applicant.

Should the Applicant be awarded other costs against the Respondent?

54. The Applicant sought the reimbursement of application fee and the hearing fee. Given all the circumstances, and that it was necessary for a management order to be made in the face of a reluctant Respondent, the Tribunal orders the Respondent to pay those fees to the Applicant within 21 days.
55. The Applicant further sought:
- (1) Costs of legal advice in the sum of £500 inc VAT;
 - (2) Mr Thornton's fee of £500 plus VAT for his time today.
56. In the Tribunal's discretion, we do not award these costs. As to (1), the case did not pose any real legal complexity, and the nature and extent of the advice was not disclosed.
57. As to (2), the Tribunal was most surprised by the application. It is not normal for an appointee to be reimbursed their costs to date at this stage, and the Tribunal saw no reason to depart from the norm.



Name: Tribunal Judge S Evans

Date: 2 December 2019.

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).

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 £500,000 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 31st December 2019 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 contract for the provision of services shall on 1st January 2020 become the rights and liabilities of the Manager.
4. The Manager is entitled to prosecute claims in respect of causes of action accruing before or after the date of the appointment.
5. The Manager shall account forthwith to the Respondent for the payment of ground rent (if any) 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.
6. 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.
7. The Manager shall be entitled to apply to the Tribunal for further directions.
8. By no later than 12 months, 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.
9. 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.

SCHEDULE OF POWERS, FUNCTIONS AND SERVICES

The Manager will comply with the terms of the Schedule prepared by him dated 2nd September 2019, a copy of which is attached for ease of reference.