



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

Case reference : **LON/00AP/LAM/2019/0024**

Property : **32 Princes Avenue, London N10
3LR**

Applicants : **Iain Sheridan and Anita Sheridan**

Representative : **In person**

Respondent : **Mrs Phyllis Kursun**

Representative : **The Respondent with her husband
Mr Serdal Kursun and her sister
Mrs Janet Kursun**

Type of application : **Appointment of Manager**

Tribunal member(s) : **Tribunal Judge Dutton
Mr S F Mason BSc FRICS**

Venue : **10 Alfred Place, London WC1E 7LR
on 8th January 2020**

Date of decision : **16th January 2020**

DECISION

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Jim Thornton of Hurford Salvi Carr Property Management Limited ('the Manager') is appointed as manager of the property at **32 Princes Avenue, London N10 3LR** ('the Property').
2. The order shall continue for a period of two years from 1st March 2020. 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 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 as a restriction under the Land Registration Act 2002, or any subsequent Act.
5. 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.

REASONS

Background

1. This application for an appointment of a manager was made by Mr Ian Sheridan and Mrs Anita Sheridan (the applicants). The respondent to the application is Mrs Phyllis Kurson who is the freehold owner of 32 Princes Avenue London N10 3LR (the Property).
2. On the 5th of July 2019 the applicants served on the respondent a preliminary notice under S22 Landlord and Tenant act 1987(the Act). This set out the grounds of for the appointment of a manager, the matters relied upon and those items that were considered capable of remedying within 30 days.
3. The respondent did not, according to the applicants, fulfil the requirements set out in the S 22 notice and accordingly an application was made to the tribunal on 20th August 2019 for the appointment of Mr Jim Thornton as a manager of the Property.
4. Prior to the hearing we were provided with a bundle of papers prepared by the applicants which included the application and S22 notice, their witness statements, a copy of the lease for flat 5 and sundry other documents including exchanges of emails and photographs.

5. The respondent immediately before the hearing provided a bundle of her papers which included various documents, to which we will refer during the course of this decision.

Hearing

6. We heard firstly from Mr Sheridan indicating that in his view the respondent had failed to comply with the RICS code of practice and there were other circumstances which he considered made it just inconvenient for the appointment of Mr Thornton as the tribunal manager to proceed.
7. He told us that there are now 6 flats in the property. The applicants' own flats 5 and 6 and the respondent is the freeholder and owner of the remainder of the building. It appears that on the ground floor flat 1 is held under a long lease and flat 2 and 3, now combined into one property, is let out on an assured tenancy. We were told that they respondent intended to move back into this property later this year. Flat 4 on the 1st floor of the property is occupied by a Rent Act protected tenant and on the top floor of the property again held under a lease in the name of the respondent, is occupied by an AST tenant.
8. According to Mr Sheridan the issues related to a failure to repair the communal areas, failure to repair a balcony, which the applicants undertook and had to commence court proceedings to recover the costs and various issues concerning the maintenance of the common parts, carpets and the standard of the front door.
9. These items were set out in the S 22 notice that have by and large now being corrected by the respondent. Nonetheless the applicant's case was that there were still outstanding issues that needed to be addressed. One item of importance was the question of the electrics in the property. We were directed to an electrical certificate prepared in July 2019 which appeared to indicate works were still required. In addition, it was alleged by Mr Sheridan that no fire risk assessment had been carried out, although we were told by Mrs Kursun that one had been undertaken in the last few days, although no copy was supplied.
10. In addition to the above it appears that no service charge accounts have been prepared although it seems that the applicants paid service charges up to May 2019, when they extended the lease to their flats, as a term of the lease extension.
11. Mr Sheridan's view was that there should be a manager appointed because of the totality of the situation. There had been a catalogue of failure to maintain and repair the Property and those works that had been carried were only undertaken if there were either tribunal or court proceedings commenced. He considered that it was in the parties'

interest to be working together to keep the Property in good order. He did not consider that was happening whilst the management remained with the respondent.

12. It appears that the applicants had not been at the property until 2016 but the service charges had been dealt with to that point by the previous owner of the freehold. It was upon the applicants returning to the Property that it appears that issues arose leading to these proceedings. There having been an earlier attempt to invoke the provisions of the Act which had not resulted in the appointment of a manager. This decision in case reference LON/00AP/LAM/2017/0010 was given on the 17th August 2017 when Mr and Mrs Sheridan's application was dismissed for the reasons set out therein.
13. Mrs Kursun accompanied by her husband who did not speak English, and by her sister who was to translate, indicated that she did not agree with the allegations of mismanagement. She said that she was always available to assist if required and had attempted to meet with the applicants but without success.
14. She told us that she had plans for the refurbishment of the property but admitted there were no professional reports available. In respect of the lack of accounts she said that those would be prepared as her father who was it seems an accountant. She told us that she will be obtaining a report from a building surveyor as to the structural issues and that she would produce within 7 days copies of the fire risk assessment and the electrical safety certificate.
15. In response Mr Sheridan accused her of being unprofessional and cynical. His view was that he could not deal with the respondent and that she appeared unwilling to assist or to collaborate with them.
16. We have considered the witness statements of Mr and Mrs Sheridan, which are in identical format and are dated the 5th of October 2019. As we have indicated above the vast majority of the works which formed the basis of the notice have been complied with.
17. The terms of the lease, a copy of which was included within the bundle, are unremarkable. They contain the usual lessee covenants to repair and to make good any damage caused to the balcony. The lessor's covenants including an obligation to maintain repair redecorate and renew the structure of the building, the main entrance, common passageways and to keep clean those areas. There is also an obligation to insure the Property and the lease includes the provision for setting up a reserve fund.

18. The applicant's obligations under the lease for flat 5 are to pay 16% of the service charges and under flat 6 we were told it was 14%.
19. Within the bundle of papers were documents relating to a claim in respect of the balcony railings which the applicants had paid for but which we were told had been resolved.
20. The respondents written statement of case appears in comments to a letter sent to the tribunal which included comments from the applicant in respect of matters that the respondent had raised. In her bundle Mrs Kursun had provided an overview of the ongoing situation, which we noted and the various steps that had been undertaken by her in respect of the management of the Property. This statement was dated the 19th of December 2019. Exhibited to the statement were a number of documents one confirming the occupancy of flat 4 by a Mr Regan and a number of invoices indicating electrical works, some of which appeared to be to flat 7 alone and some of which appeared to be to the common parts. There were other documents available concerning other outgoings which had been expended. In addition was a report from J&S Surveying and Design Services Limited, which the respondent presented to us as some form of structural report on the Property but was in truth nothing more than a statement from a surveyor concerning leaks to the Property and which did not provide any great assistance to us. In addition, some indistinct photographs were also included.

The law

21. The law applicable to this application is to be found at section 24 of the landlord and tenant act 1987 details of which appear below. The provision of the Act requires that there be breaches of various matters set out in detail under section 24(2). In addition, there is a proviso at section 24(2)(b) that where the tribunal is satisfied that circumstances exist which make it just inconvenient for an order to be made then the tribunal may do so.

Findings

22. It is accepted by the applicants that those matters set out on the section 22 Notice have by and large been complied, albeit after the application was issued. However, it was clear to us during the course of the hearing that Mrs Kursun was not seized of sufficient knowledge of both the Landlord and Tenant Acts 1985 and 1987 to enable her to properly manage this Property. The description of the Property at the time of our colleagues inspection in 2017 has not, in respect of the exterior as shown on photographs taken by the applicants, altered to any degree and it is only recently, since these proceedings, that the interior has been attended to. There had been a lack of accounts, which has at the moment appeared to have cost the respondent dearly. Indeed, it would

seem that had the applicants not sought a lease extension last year that no service charges had been demanded since 2016. In addition, a failure to properly comply with the provisions of section 20 of the Landlord and Tenant Act 1985 may further deprive her of a contribution from the applicants in respect of the refurbishment works of the common parts. All is not lost as it may be that an application that could be made but she will need to take advice on that point.

23. Although it appears that an electrical certificate has been obtained, from the copy we saw it would seem that there are still works that require to be undertaken. We were not satisfied on the documentation provided to us by Mrs Kursun that the works that she has undertaken have resolved those issues. It seems also that there may be additional fire risk assessment works that are required and although we were advised a report has been obtained very recently no copy was available to us at the hearing.
24. Although Mrs Kursun indicated that her father would be able to deal with the accounts these have not been attended to, which is unsatisfactory in the extreme.
25. Mr Kursun through Mrs Kursun's sister appeared to indicate that he could undertake items of work as he was a handyman and that the applicants were being unreasonable in their demands.
26. We listened to all that was said and considered the papers before us. We consider that it would be helpful for all concerned if Mr Thornton were appointed as a tribunal manager for a period of no more than 2 years. This will give him the opportunity of reviewing the condition of the property, getting the accounts into proper order and undertaking works, it would appear to the external structure, which will resolve the concerns of the applicants and will ensure that the Property is satisfactorily maintained.
27. In this two year period it is hoped that Mrs Kursun can learn from Mr Thornton and be in a position to take over the management of the Property again at the expiration of the management agreement the details of which are annexed hereto.
28. We do appreciate that the appointment of a manager is a somewhat draconian step. However, we are satisfied having seen and heard from both Mr and Mrs Sheridan and Mrs Kursun that a period of reflection and non-combat would be useful and beneficial for both parties. It is clearly in the interests of all concerned to resolve the ongoing management issues to ensure that the property is maintained and the capital value preserved. We find that it is just and convenient to make

an order in the terms annexed appointing Mr Thornton for a period of two years.

29. The applicants sought a refund of the application and hearing fee totalling £300. The respondent objected, considering it to be unreasonable. In the spirit of compromise we order that the respondent should reimburse the applicants with half the fees, namely £150 within 28 days of the date of this decision.

Name: Tribunal Judge Dutton **Date:** 16th January 2020

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).

SCHEDULE
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 £1,000,000 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 four weeks after the date of this order 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 any contract for the provision of any services to the Property shall upon 1st March 2020 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of ground rent 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.
5. 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.
6. By no later than one year 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.
7. 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.

8. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- (i) Maintain appropriate building insurance for the Property.
- (ii) Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- (ii) Demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees (but see Accounts (vi) below).
- (iii) Demand and collect his own service charge payable by the Respondent (as if she were a lessee), in respect of any un-leased premises in the Property which are retained by the Respondent.
- (iv) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (v) Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.
- (vi) Demand the sum of £5,000 from the leaseholders payable in accordance with their obligations under the terms of their respective leases, that is to say £1,500 by the applicants and £3,500 by the respondent, such sums to be paid to the manager on or before 31st March 2020 on account of the annual service charge liability of the parties.

Accounts

- (i) Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended. The accounts to be certified by an external auditor, if required by the Manager. The first set of accounts should be for the period 31st March 2020
- (ii) Maintain efficient records and books of account which are open for inspection by the lessor and lessees. Upon request, produce for inspection, receipts or other evidence of expenditure.

- (iii) Maintain on trust an interest-bearing account/s at such bank or building society as the Manager shall from time to time decide, into which ground rent, service charge contributions and all other monies arising under the leases shall be paid.
- (iv) Set up a reserve fund seeking such contributions as he in his discretion considers appropriate
- (v) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.
- (vi) The respondent shall continue to receive the rental income from the short term/ protected tenancies for her properties and be free to deal with such income as she wishes

Maintenance

- (i) Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- (ii) The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- (iii) Undertake a fire risk assessment or a review of the assessments recently undertaken by the respondent.
- (iv) The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property over the next 5 years.
- (v) As soon as is practicable retain the services of a qualified Building Surveyor to undertake a review of the Property and to report on works required and the time periods for the need to undertake such works

Fees

- (i) Fees for the abovementioned management services will be a basic fee of £400 + VAT per annum per flat. Those services to include the services set out in the Service Charge Residential Management Code published by the RICS.
- (ii) Major works carried out to the Property (where it is necessary to prepare a specification of works, obtain competitive tenders, serve relevant notices on lessees and supervising the works) will be subject to a charge of 10% of the cost. This in respect of the professional fees of an architect, surveyor, or other appropriate person in the administration of a contract for such works.
- (iii) An additional charge for dealing with solicitors' enquiries on transfer will be made on a time related basis by the outgoing lessee.

- (iv) VAT to be payable on all the fees quoted above, where appropriate, at the rate prevailing on the date of invoicing.
- (v) The preparation of insurance valuations and the undertaking of other tasks which fall outside those duties described above are to be charged for a time basis at the rate of £125 per hour + VAT for work undertaken by the manager.

Complaints procedure

- (i) The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.