FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AX/LAM/2020/0011**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	**:**	**45A/45 Victoria Avenue, Surbiton, Surrey KT6 5DN**
Applicant	**:**	**Ms J Hillyard**
Representative	**:**	**In person**
Respondent	**:**	**Ms S Chawdhary**
Representative	**:**	**Mr Chawdhary (Respondent's father) and Ms Chawdhary herself**
Type of application	**:**	**Appointment of Manager**
Tribunal members	**:**	**Judge P Korn** **Mr D Jagger MRICS**
Date of hearing	**:**	**22nd October 2020**
Date of decision	**:**	**16th November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined in a remote hearing. The documents to which we were referred were in electronic document bundles, the contents of which we have noted. The tribunal's decision is set out in paragraphs 38 to 40 below.

Background

1. The Applicant seeks an order appointing Mr Martin Kingsley of K&M Property Management Limited as manager of the Property under section 24 of the Landlord and Tenant Act 1987 ("**the 1987 Act**").

2. The Property is a semi-detached house converted into two maisonette flats. The Applicant is the leaseholder of one of the two flats. The Respondent is the freehold owner of the Property. A preliminary notice under section 22 of the 1987 Act was served on the Respondent on 2nd June 2020.

3. The Applicant's lease ("**the Lease**") is dated 17th June 1987 and was originally made between Ghulam Chawdhary and Alessandra Chawdhary (1) and Leonard Dixon (2).

Applicant's case

4. The Applicant asserts that the Respondent has failed to comply with the landlord's repairing covenants in the Lease, specifically the covenant contained in clause 3(i) requiring the landlord to maintain the external envelope of the building, the main structure and the roof. The Applicant states that although the Respondent issued a section 20 notice (under section 20 of the Landlord and Tenant Act 1985) in September 2018 in respect of urgently required major works she then failed to take any further action.

5. The Applicant submits that the Respondent is viscerally opposed to spending money on maintaining the external fabric of the building and in particular on those parts of the building which – when they leak – damage the Applicant's flat.

6. The Applicant's flat has been damaged by water ingress which has caused dampness and black mould in the external wall and ceiling and has spoiled decorative finishes to ceiling and wall surfaces. She is also concerned that persistent dampness over time may lead to an increased risk of plaster damage and timber decay.

7. As a result of the Respondent's inaction the Applicant felt that she had no choice but to issue a preliminary notice under section 22 of the 1987 Act. The Respondent then did not respond to the notice until the final

day when she sent the Applicant two quotations for works, both from July 2019 and therefore out of date. The Applicant asserts that there was *"no attempt by [the Respondent] to follow the notice requirements nor to rectify her failings"* and therefore that the Applicant *"had no choice other than to proceed with the application for the appointment of a manager"*.

8. The Applicant adds that, since she lodged the application for the appointment of a manager, the Respondent *"has now further harassed and disturbed the [Applicant's] basic right for quiet of enjoyment by having various contractors continually inspect the outside of the property at all times of the day"*. On several occasions the Respondent has demanded entry into her flat without notice in the middle of the working day, and the Applicant has listed other concerns regarding what she sees as disruptive or other poor behaviour by or on behalf of the Respondent, including deliberately restricting her access to the rear garden and deliberately driving into and breaking the Applicant's bin. She has provided a timeline of what she sees as the key events.

9. The Applicant also alleges that there have been fraudulent service charge claims. At the hearing, the Applicant referred the tribunal to the relevant demands, stating by reference to the original invoices that the demands had been inflated to include water usage and cleaning costs.

10. Also at the hearing, the Applicant referred the tribunal to her photographs in the hearing bundle showing problems with the roof and damp, and showing cracks in the brickwork and other damage. She also said that the quotations eventually obtained by the Respondent for the works were very high, which in her view indicates that major works are needed. As regards the general communication breakdown between the parties, the Applicant felt that the Respondent's approach had been aggressive and that she had always been abusive. The Applicant also suggested that the Respondent might be suffering from a mental illness.

11. The Applicant characterises the Respondent's response to the preliminary notice and her other recent actions as being far too little and far too late to constitute an acceptable response.

Respondent's case

12. In written submissions, the Respondent states that in her various allegations the Applicant has used incorrect assumptions and personal judgements and has not provided any evidence from a professional person. In November 2019 the Applicant asked when works would be commencing. She was advised that two estimates had been obtained but she did not request a copy of these until 2nd June 2020. On 31st January 2020, during an attempted inspection, the Applicant advised that there were no leaks, damp, or other urgent matters and the Respondent noted this confirmation in a letter dated 7th February 2020.

13. Much later, on 2nd June 2020, the Respondent received a list of allegations from the Applicant, but these allegations were not based on any evidence.

14. The Respondent has been the resident freeholder at the Property since 1986. Prior to that, her parents had been freeholders since 1964. Over the last 34 years she had been able to communicate satisfactorily with some 13 sets of prior leaseholders regarding maintenance of the building.

15. The Respondent states that Applicant has been the most uncooperative and obstructive person to reside at the Property to date. The Applicant has no regard for her obligations under the Lease, nor for the Respondent or for the ground floor residents, and she has behaved in an exceptionally nasty manner. The Respondent has provided her own timeline of what she sees as the key events.

16. The section 20 notice was served to promote transparency, and the Applicant offers no proof of her claim that the works were urgent. The photograph of the alleged damage to the Applicant's flat shows a small patch of mould and some staining which could be due to condensation. The patch of mould is on an exterior wall and the area in question was seen from ground level to be packed with boxes and stored items indicating a possible lack of ventilation which could cause mould over winter months. Condensation around the skylight as shown in a photograph is to be expected during the winter due to central heating. The Applicant is responsible for her own maintenance within the flat including clearing and cleaning condensation.

17. The Applicant makes claims pertaining to the structural integrity of the building but without any qualified evidence. As regards the estimate provided from the nominated contractor, this has been re-confirmed this year as the same.

18. The claims of harassment are vigorously denied. The Respondent has the right to have a contractor inspect the exterior of the building and has been attempting to carry out her duties. In addition, rather than the Respondent herself being abusive it is the Applicant who has been abusive and made threats towards ground floor guests, as can be seen from the witness evidence of Mr Sycamore.

19. The Respondent regards the suggestion that she deliberately broke the Applicant's bin as ridiculous. At the hearing she said that the Applicant had placed her bin in a place where she was not entitled to place it and where she knew the Respondent liked to park. The Respondent added that she hit the bin by accident and that the Applicant responded wholly disproportionately by calling the police.

20. As regards the allegation that her car blocked the Applicant's access to the garden, the Respondent said that it was still possible to get to the garden and that the car was only parked in that position for 10 minutes.

21. Also at the hearing the Respondent's father said that the Property was in good condition. It was possible that there was internal damage in the Applicant's flat but the Respondent had not been allowed in to see the interior. The Respondent's father said that he is a qualified civil engineer and that there are no works to the Property which need to be carried out as a matter of urgency. Some plaster fell down two weeks prior to the hearing but this was dealt with immediately. The render does need some attention, but again it is not urgent. The roof is in an acceptable condition, in his view, and there have been no leaks, although he acknowledged that the roof was very old and that a roofing contractor had expressed some concerns. The damp, if any, was not coming from outside, and the likely cause was condensation due to lack of ventilation.

22. Regarding the Applicant's allegations of fraudulent service charges, the only ones questioned by the Applicant related to two emergency drain repairs and the reason for the discrepancy between the service charge demands and the invoices was that the demands had included an estimate for water usage.

23. The Respondent agreed with the Applicant that there had been a breakdown in relations between the parties but did not accept that this pointed to the need for a tribunal-appointed manager.

Other witness evidence

24. Mr Ewan Shotter, the Respondent's partner, gave a witness statement covering a number of practical matters relevant to relations between the parties. Mr Mark Sycamore, a long-term friend of the Respondent, gave a witness statement in which he described the Applicant shouting abuse at the Respondent (based on the Respondent's own account to him) and also shouting abuse at himself.

The proposed manager

25. The tribunal asked Mr Kingsley various questions about his qualifications and experience and about how he would manage the Property if appointed.

26. In relation to the Property itself, Mr Kingsley said that in his view it was understandable that the Applicant was concerned about water ingress and disrepair and that some works to the Property were needed.

The terms of the Order if granted

27. The Applicant did not provide a draft order prior to the hearing and therefore the tribunal itself sent a draft form of order to both parties, inviting them to comment on it.

28. After some discussion at the hearing, it was agreed that instead of having to make detailed comments on the wording of any order at the hearing the parties would be given an opportunity to make written

submissions in the event that the tribunal decided to grant an order in principle.

Analysis of the tribunal

29. As explained to the parties at the hearing, we have some concerns about the preliminary notice. Under section 22(2)(c) of the 1987 Act, the notice must *"specify the grounds on which the tribunal would be asked to make … an order and the matters that would be relied on by the tenant for the purposes of establishing those grounds"* and under section 22(2)(d) the notice must *"where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take steps for the purpose of remedying them as are so specified"*.

30. The Fourth Schedule to the preliminary notice sets out two matters which are stated to be capable of remedy and also sets out the steps to remedy them. The first numbered matter is described as "Allegations of tenants' breach" and the Applicant goes on to state in the notice that she requires the Respondent either to withdraw her complaints that the Applicant herself is in breach of the tenant's covenants under the Lease or to produce a legal opinion substantiating those complaints. However, the Applicant has provided no coherent explanation as to why the failure to do this would constitute a proper basis for the appointment of a manager even if she is correct that the complaints in question cannot be legally proven.

31. The second numbered matter in the Fourth Schedule is described as "Appointment of a manager". Whilst it is clear from the context that the Applicant means to refer to the appointment of a managing agent (rather than a tribunal-appointed manager), the failure by a landlord to appoint a managing agent is also not a proper basis for an application for an order to appoint a manager. The Applicant's demand that the Respondent appoints a managing agent seems to stem from concerns about alleged breaches of the landlord's repairing covenants. Breaches of the landlord's repairing covenants, if proven, can themselves constitute a basis for the appointment of a manager – if the tribunal is satisfied that it is 'just and convenient' to make an order in all the circumstances of the case – but if the concern is breach of repairing covenants then the action specified in the Fourth Schedule needs to be to carry out the necessary repairs (within a reasonable specified time). It is not open to the Applicant to impose her own solution to the problem and simply demand that the Respondent appoint a managing agent.

32. The preliminary notice is therefore, in our view, seriously flawed. And this is not merely a technical matter. The application is for the tribunal to remove from the Respondent the right to manage her own property. The purpose of the preliminary notice, if there have been management failings, is to afford her an opportunity to remedy those failings. If the notice, as here, fails to identify matters which are capable of forming a

proper basis for an order and/or fails to offer the Respondent a coherent and proper path to remedy any problems then it is not performing its function.

33. Under section 24(7) of the 1987 Act, *"where an application for an order under [section 24] was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding – (a) that any period specified in the notice … was not a reasonable period, or (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3)"*. The tribunal does therefore have discretion to make an order if the circumstances warrant it, even if there are problems with the preliminary notice.

34. However, first of all, for the reasons given above we do not consider the defects in the preliminary notice to be trivial or technical, and therefore there would have to be compelling reasons to make an order notwithstanding the significant defects in the notice.

35. Secondly, we are not satisfied in any event that the Applicant's case is nearly strong enough in relation to the factual matters on which she seeks to rely.

36. The evidence does indicate that the Property needs some work. The roof is extremely old and looks as though it needs some attention, and there is credible evidence that other repairs are needed. However, the Property is certainly not dilapidated and there is also credible evidence that the Respondent had taken steps towards carrying out repairs prior to the service of the preliminary notice and that she was looking to move the process forwards in response to the preliminary notice. The Applicant describes the response to the notice as "too little too late", but we do not accept that there is a reasonable objective basis for this description, given that the purpose of such a notice is to alert the landlord to their responsibilities in the hope that the response will be positive rather than to assume that any apparently positive response is of no value.

37. In addition, whilst we believe the Applicant to be genuine in her concerns we do not consider her to have approached the issues reasonably or proportionately. The Respondent, by contrast, came across well and we generally found her evidence to be more credible. On issues such as the damage to the bin, access to the rear garden and the Applicant's claims that she was being harassed by (for example) the presence of contractors, we prefer the Respondent's evidence. We are particularly concerned by the Applicant's casual use of the word "fraudulent" to describe a couple of very small charges for which the Respondent has provided a plausible explanation, and we are also very concerned about the Applicant's unsubstantiated claim that the Respondent is suffering from a mental illness.

38. We would also make the point that, whilst breach of repairing covenants – if proved – can form the starting point for an ultimate conclusion that a manager should be appointed, it is not sufficient just by itself as the tribunal still needs to be satisfied that it would be just and convenient in all the circumstances to make an order. Although we do have a concern that relations between the parties are poor and although there is some evidence of disrepair, this is not sufficient reason to take the serious step of depriving the Respondent of her right to manage her own property on the facts of this case.

Decision of the tribunal on the substantive issue

39. Accordingly, the tribunal refuses the application for the appointment of a manager over the Property.

Costs

40. The Applicant has applied for an order under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the tribunal (if any) shall not be added to the service charges. The Applicant has also applied, pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, for an order requiring the Respondent to reimburse to the Applicant the application fee and the hearing fee.

41. The Applicant has not been successful in her application for the appointment of a manager. Furthermore, her preliminary notice did not afford to the Respondent a proper opportunity to address any genuine concerns, and those concerns were in our view significantly overstated. The Respondent herself came across quite well. In the circumstances it would not be appropriate to make any cost awards in the Applicant's favour and accordingly we refuse both cost applications.

Name: Judge P Korn **Date:** 16th November 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).