



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

Case reference : **LON/00AG/LVM/2020/0007**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **36 Mornington Terrace, London NW1
7RS**

Applicant : **Mr Martin Kingsley of K&M Property
Management Limited (the current
Manager)**

Representative : **In person**

Respondent : **Ms M J Hutchison (absentee landlord)**

Representative : **Not represented and not present**

Interested Persons : **The leaseholders of Flats 1-5, 36
Mornington Terrace**

Type of application : **Extension of order for appointment of a
manager**

Tribunal members : **Judge P Korn
Mr S Mason FRICS**

Date of hearing : **2nd November 2020**

Date of decision : **10th November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the Applicant and not objected to by the Respondent. 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 that we were referred to were in a series of electronic document bundles, the contents of which we have noted. The order made is described at the end of these reasons.

Background

1. At the date of the application the Applicant was the manager of the Property pursuant to a management order dated 30th September 2015. That appointment expired on 30th September 2020.
2. The Respondent was an absentee landlord when the original management order was made.
3. By an order dated 18th August 2020 the First-tier Tribunal made an interim order extending the term of Mr Kingsley's appointment until the final determination of the present application in order to avoid disruption to the management of the Property.
4. The Applicant seeks an extension of the original order by a further 5 years pursuant to section 24(9) of the Landlord and Tenant Act 1987 ("**the 1987 Act**").

Applicant's case

5. The Respondent remains an absentee landlord. The Applicant has tried to contact her but without success.
6. During his tenure as tribunal-appointed manager the Applicant has carried out some repairs and dealt with a structural issue in one of the flats. He has identified the need for some refurbishment to the front elevation and has noted some water ingress. He envisages a phased programme of works.
7. In the continued absence of the owner the Applicant submits that someone needs to be responsible for the management of the Property, and he is happy to continue in the role. He did not actively seek the leaseholders' support for his application but feels that relations with the leaseholders are good.
8. The Applicant explained at the hearing how he operates, and he referred the tribunal to the documentation in the hearing bundle which included details of his experience, his future management plan and his professional indemnity insurance. He also answered questions from the tribunal.

9. He proposed a further 5 year period at a slightly increased fee of £3,750 per annum inclusive of VAT for the Property in aggregate (the current fee being £3,500). The tribunal members questioned him as to whether the appointment (if made) needed to be for as long as 5 years and whether the proposed fee was higher than the market rate.

Ms F Butler's comments

10. Ms Butler is the leaseholder of Flat D. At the hearing she said that the leaseholders were in the process of trying to purchase the freehold and were hoping to be able to do so within the next 18 months. She confirmed that she had been happy with the Applicant as manager and was nervous at the prospect of not having someone in place who was responsible for management. She was slightly concerned about the level of fees, and she also felt that some works were taking longer than ideal to organise.

Ms F Campagnoli's comments

11. Ms Campagnoli is the leaseholder of Flat C. At the hearing she confirmed that the leaseholders were in the process of trying to purchase the freehold, and her preference was for the management order only to be extended for a further 18 months. She had also been happy with the Applicant as manager but was also slightly concerned about the level of fees.

Follow-up comments from Applicant and response from leaseholders present at hearing

12. As regards fees, the Applicant originally took over from a different manager and inherited the level of fees. He accepted at the hearing that the fees were slightly on the high side but pointed out that – unlike a managing agent – he did have to take personal responsibility as a manager. However, in the light of the leaseholders' and the tribunal's comments he would be happy to keep the level of fees at £3,500.
13. As regards the length of the term, he accepted that it could be shorter than 5 years. However, particularly in the light of the current pandemic, as a result of which works were taking longer than normal, he felt that it would be unwise to make it as short as 18 months. His feeling was that the extension should not be for less than 3 years.
14. In response, both Ms Butler and Ms Campagnoli confirmed that they would be happy with a 3 year appointment at £3,500 per annum.

Respondent's case

15. The Respondent has made no oral or written submissions nor made any contact with any of the other parties and is therefore presumed still to be an absent landlord.

Analysis of the tribunal

16. We note the Applicant's written and oral submissions and the leaseholders' comments at the hearing.
17. Whilst ideally the Applicant should have canvassed the leaseholders' views before making his application, it seems clear that the leaseholders have broadly been happy with the way in which he has carried out his role as tribunal-appointed manager to date. They also want him to continue, the only issues from their perspective being the length of the extension and the level of fees.
18. The Respondent continues to be an absent landlord and therefore it is important that, in her continued absence, someone suitably qualified takes responsibility for the management of the Property. No objections have been received to the Applicant continuing as tribunal-appointed manager.
19. Under section 24(9) of the 1987 Act "*The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section ...*". The phrase "*an order made under this section*" in this context means an order to appoint a manager.
20. Under section 24(9A) "*The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied – (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.*"
21. We therefore have the power to vary the existing order. Having considered the evidence we are satisfied that it is appropriate in principle to extend the current order. The landlord is absent, the leaseholders are broadly happy with the Applicant's performance as manager, we consider him to be a suitable manager and somebody needs to manage the Property. We do not consider that an extension of the management order will result in a recurrence of the circumstances which led to the order being made and we are satisfied that it is just and convenient in all the circumstances of the case to extend the order.
22. We do not consider that it would be appropriate to increase the fee. Whilst we accept that a tribunal-appointed manager bears significant responsibility, we consider that the fee does not need to be higher than £3,500 per annum and that this should be a very acceptable fee for the work involved. The Applicant has indicated that he will accept this.
23. As regards the length of the extension, 5 years is a long time, particularly in the context of the leaseholders' apparent firm intention to purchase the freehold within 18 months. At the same time, we do not think that it can be assumed that the purchase of the freehold will be completed within 18 months, and 3 years seems an appropriate length of extension

in order to take into account the length of time that might be needed to deal with all pressing building issues in the context of a pandemic. Those present at the hearing confirmed that 3 years was acceptable to them. If at a later stage any interested person considers that a further variation is appropriate it will be open to them to make a further application at the relevant time.

24. No other variations to the wording of the management order have been proposed and we do not consider that any other variations are necessary.

Costs

25. There were no cost applications.

Decision of the tribunal

26. Accordingly, the existing management order is extended by a further 3 years from the date of this decision (10th November 2020). The terms of the order remain the same, including the manager's fee (£3,500 inclusive of VAT in aggregate).

Name: Judge P Korn

Date: 10th 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).