



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

Case Reference : CHI/45UB/LAM/2020/0002

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

Applicants : Ms L Whitnall and Mrs M Bean

Representative :

Respondents : Mr J Williams and Mr P Meredith

Representative : Mr J Dobbs, Managing Agent

Type of Application : Appointment of a manager

Tribunal Member(s) : Judge D. Agnew
Mr R Wilkey FRICS

Date of Decision : 3 March 2020

DECISION

Background

1. This is, in effect, a renewed application by the lessees of the First and Second floor Maisonette at 37 Buckingham Road, Shoreham-by-Sea, West Sussex BN43 5UA (“the Property”) for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 (“the Act”). The proposed manager is Mr Peter Bigge of Town and City Management Limited.
2. On 25 June 2019, on a previous similar application, the Tribunal had found that the Respondent landlords had been in breach of their obligations under the Applicants’ lease to keep the Property in repair and to produce accounts and that the Applicants had, therefore, established grounds for the appointment of a manager under the Act. It was considered by the Tribunal on that application, however, that at the time of the hearing it was not just and convenient for the order sought to be made. This was because the Tribunal had been given to understand that the production of accounts was imminent and that with regard to repairs to the lessees’ conservatory Mr David Smith, surveyor, had produced a specification of works, had gone out to tender and had reported on the tenders received. He had been appointed as contract administrator and the work would commence shortly.
3. The Tribunal on that occasion warned the landlords’ managing agents that a subsequent Tribunal may be more easily persuaded that it would be just and convenient to make an order if there is a further, justified application.
4. The application came before the Tribunal for hearing on 26 February 2020 at Havant Justice Centre. Those present were the Applicants in person, Mr Peter Bigge, Mr J Dobbs (the Respondent’s managing agent from Parsons Son and Basley). Mr Dobbs was accompanied by Mr Michael Barber, Director of Estate Management for Parsons Son and Basley and Mr Paul Meredith (landlord). Mr John Williams (landlord) was delayed in traffic but joined the hearing part way through. Ms Sian Jones attended as a supporter of the Applicants.

The Applicants’ case

5. The Applicants contended in the current application that this was a further, justified, application, and that therefore the Tribunal should be satisfied that it is just and convenient to make the order sought. They say that eight months has elapsed since the June 2019 decision. The promised accounts for 2015-2017 and draft accounts for 2018 were received only two weeks ago. From the Applicants’ perspective, no progress had been made to repairing the conservatory during this time. The condition of the conservatory has deteriorated in the meantime such that there has been an ingress of water that the Applicants have felt obliged to attend to themselves. It seems that the current managing

agents only take effective action when threatened with tribunal proceedings. Costs may well have increased due to this delay.

The Respondent's case

6. Mr Dobbs acknowledged that the submission of the accounts to the Applicants had been delayed. This was due, firstly, to the accounts clerk in their office being ill and subsequently leaving the firm, and secondly because after the last hearing their accountants had resigned causing them to have to instruct new accountants. It inevitably took some time for the new accountants to be able to get up to speed and be in a position to certify the adjusted accounts.
7. When asked by Mrs Bean why draft accounts had not been sent to her with a view to trying to agree them, Mr Dobbs said that he was anxious to get the accounts out prior to the Tribunal hearing. If a draft had been submitted before they were signed off he considered that this could potentially lead to some to-ing and fro-ing with the lessees on the accounts and this would just have delayed the finalisation of them.
8. With regard to the works to the conservatory, Mr Dobbs explained that after the last hearing a demand was sent to the Applicants for the payment of the sum of £1852.64 which the Tribunal had ruled was a reasonable sum for the lessees to pay as their share on account of the cost of the said works. The Applicants had not, however, paid this sum. Instead they had said they would not pay this until they had a statement of account showing the amount held in reserves and they also queried his firm's fees with regard to these major works. Mr Dobbs said that until he was in funds he could not progress the works by instructing the surveyor to administer the works or authorise a contract with the contractor to be entered into. In the event and in order to break the deadlock, Parsons Son and Basley made a loan of £1255 (i.e. £1852.84 less his firm's and the contract supervisor's fees). Mr David Smith has now been instructed to proceed and a meeting on site has been arranged with the contractor to take place on 25 March 2020.
9. In these circumstances he did not consider that it would be in the Applicants' interests for a new manager to be appointed at this stage as it will inevitably cause further delays. He considered that his firm had made every effort to ensure that the works were progressed promptly.

The Proposed manager

10. Mr Bigge confirmed that the information he supplied to the Tribunal for the last hearing still held good. This information included his cv, experience of property management, his professional indemnity cover and proposed charges if appointed. He emphasised the need for good communication leading to the establishment of trust with both landlords and lessees. He was confident that, if instructed, he would be able to take over the contract with Mr Smith and the contractors so that the works could commence at the earliest opportunity. His fee would be £250 per

unit without any set-up fee being charged. For major works where no contract supervisor was appointed, the fee would be 10% of the contact price. Where a supervisor was appointed that would be a matter of negotiation but in those circumstances he envisaged that his involvement would be much less and a lower percentage fee would be appropriate.

The landlords' position

11. Although the landlords had not submitted any statement of case in response to the application, as they were present at the hearing and as an order, if made, would affect them, the Tribunal asked for their comments. Mr Meredith helpfully explained that they had an open mind about the application and would accept whatever decision the Tribunal came to.

The Tribunal's decision

12. The Tribunal's decision of 2019 was a clear warning that it was only the assurance given by the managing agents that the accounts for 2015 to 2018 would be produced imminently and that the repair works to the conservatory were about to commence that the Tribunal found that it was not just and convenient for there to be a change of manager. The landlords and their managing agents must have realised that any further delay in either of these aspects was likely to change the Tribunal's mind.
13. There has been further delay. The managing agents say that this is not their fault. The accounts were delayed in part due to the accounts clerk's illness. That is an explanation but it does not alter the fact that it has prolonged the landlords' breach of the lease terms and has exacerbated the situation as far as the Applicants are concerned. The other reason for the delay in producing accounts is the resignation of the accountants. That is regrettable and may well have been beyond the control of the Respondents' managing agents but it was incumbent upon them to ensure, one way or another, that the accounts were produced quickly. As it was, there was a last minute scramble before the hearing on 26 February 2020. This understandably contributed to the Applicants' perception that the current managing agents only seem to act decisively when confronted with Tribunal proceedings.
14. As far as the works to the conservatory are concerned, these may well have been commenced a lot earlier had the Applicants paid the £1852.54 that the Tribunal had determined was a reasonable sum for them to pay on account. However, the Applicants had evidently lost all trust in the managing agents due to the fact that they were without a set of accounts that the Applicants considered were reliable, were without any detailed explanation as to how the amount of the monies in reserve had been calculated (this was received the day prior to the hearing) and had ascertained that Mr David Smith had not been instructed to progress the conservatory works, contrary to what they understood had been assured by Mr Dobbs at the previous hearing.

15. It is extraordinary for managing agents to do as Parsons Son and Basley have done in this case to provide a loan to enable major works to proceed. It should be for the landlords to do this. In that respect the firm's actions are to be commended. But they come far too late. The loan was not made until early February, the Respondents having been notified of the current application in mid January 2020, again giving the impression that nothing significant happens without the pressure of litigation.
16. The Applicants stated at the hearing that if Mr Bigge is instructed they will pay to him the £1852.54 as their contribution on account of the major works to the conservatory. That will enable the works to proceed without delay and Parsons Son and Basley can be repaid their loan.
17. The appointment of a Tribunal-appointed manager is a practical solution to the current situation where there has been a complete breakdown of trust by the Applicants in the current managing agents. It is therefore now just and convenient to make the order whereas it was felt not to be so in June 2019. The grounds for the application have already been found to have been made out in the decision of 25 June 2019. Accordingly, the Tribunal now does make the order.
18. The Tribunal was satisfied that Mr Peter Bigge would be an appropriate person to appoint as Manager and is so appointed. His appointment will last for one year. That should be sufficient time for him to complete the works to the conservatory and to reconcile the accounts that have now been produced. Should he need a longer period he will need to apply to the Tribunal for a variation of the management order before the year has elapsed. If all goes well and the landlords are prepared to instruct Mr Bigge or his firm as their managing agent after the year is up, it will be open to them to do so.
19. A management order and schedule of functions and services is attached.

Section 20C application

20. The Applicants made an application under section 20C of the Act which, if granted, would prevent the landlord from seeking to recover the costs of the Tribunal application in future service charges. Both parties appreciated that much would depend upon the outcome of the application for appointment of manager as to whether it was likely that an order under this section would be granted. As the Applicants have succeeded in having a manager appointed by the Tribunal it is just and equitable for an order to be made and the Tribunal therefore does make an order under section 20C of the Act so that the landlord's costs of the application to the Tribunal shall not be regarded as relevant costs to be taken into account with regard to future service charges.

Dated 3 March 2020

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

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PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/45UB/LAM/2020/0002

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

Applicants : Miss Louise Whitnall and Mrs Mary Bean

Representative :

Respondents : Mr Paul Meredith and Mr John Williams

Representative : Mr Jason Dobbs of Parsons Son and Basley
(Managing Agents)

Application : Section 24 Landlord and Tenant Act 1987
Appointment of Manager

**Date and place of
Hearing** : 26 February 2020 at Havant Justice Centre

Tribunal members: Judge D. Agnew
Mr R Wilkey FRICS

**Date of
Determination** : 3 March 2020

MANAGEMENT ORDER

Interpretation

In this order

- (a) “leases” means the long leases of the flats and maisonette at 37 Buckingham Road, Shoreham-by-Sea, West Sussex BN43 5UA
- (b) “lessee” means a tenant of a dwelling under a long lease of a flat or maisonette at 37 Buckingham Road aforesaid.
- (c) “the Manager” means Mr Peter W Bigge of Town & City Limited whose Head office is at 2nd Floor North Point, Faverdale North, Darlington DL3 0PH
- (d) “the Premises” means the whole of the property at 37 Buckingham Road aforesaid
- (e) “the Respondents” means Mr Paul Meredith and Mr John Williams

IT IS ORDERED THAT:-

1. Mr Peter Bigge shall in accordance with section 24(1) of the Landlord and Tenant act 1987 (“the 1987 Act”) be appointed as the Manager to carry out the functions in connection with the management of the Premises and/or such functions of a receiver as are specified herein.
2. The appointment shall be for a term of 1 year from 3 March 2020.
3. The Manager shall exercise in that capacity all the rights of the Respondents as landlord under the leases and shall carry out in that capacity all the responsibilities of the landlord under the leases.
4. The Manager shall manage the Premises in accordance with:
 - a) The Directions of the Tribunal and the Schedule of Functions and Services attached to this order

- b) All statutory requirements and the provisions of the current Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
5. The Manager is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the leases to carry out the management functions of the Respondents as landlord and in particular:
- a. The power to receive ground rents, service charges and any other monies payable by any of the lessees under the leases
 - b. The power and duty to carry out the Respondent's obligations as landlord under the leases as to the landlord's repairing and maintenance obligations
 - c. The power to enter into or terminate any contract or arrangement and/or make any payment necessary , convenient or incidental to the performance of his functions
 - d. The power to appoint any agent or servant to carry out such function or obligation that the Manager is unable to perform himself or which can be more conveniently be done by an agent or servant and the power to dismiss such agent or servant
 - e. The power to grant to lessees on application landlord's consents under and for the purpose of the leases
 - f. The power in his own name to bring, defend or continue any legal proceedings in connection with the leases. The manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account. The Manager shall be under no obligation to commence or continue such proceedings unless he has been placed in funds to do so by the lessees.

- g. The power to open and operate client bank accounts in relation to the management of the Premises and to hold those funds pursuant to section 42 of the 1987 Act. The Manager shall deal separately with and keep in a separate account reserve fund monies, and any ground rent monies received. The manager shall account to the landlord for any ground rents received.
6. From the date of this order no person other than the Manager shall be entitled to exercise a management function in respect of the Premises.
7. The Manager shall produce service charge accounts not less frequently than once a year and shall serve the same on each of the lessees and the Respondent.
8. Without prejudice to the generality of the foregoing the Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services below.
9. The Manager shall in the performance of his functions under this order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure he has appropriate professional indemnity cover in the sum of at least £1 million providing copies of the current cover note on request by any lessee, the Respondent or the Tribunal.
10. The Manager shall act fairly and impartially in his dealings in respect of the premises.

11. The Manager shall register this order against the freehold title in accordance with section 24(8) of the 1987 Act.
12. The Manager shall within two months of the end of his appointment cause a final account to be taken in respect of the service charges and any reserve fund and shall send a copy thereof to the lessees and the Respondent. The Manager shall within one month of the end of his appointment also hand over any funds held to the credit of any bank account in respect of the Premises and/or any documentation relevant to the ongoing management of the Premises to the landlord (or its managing agent) or, if applicable, to the person appointed as the Manager by the Tribunal in Mr Bigge's stead.
13. The Manager may apply to the Tribunal for further Directions in accordance with section 24(4) of the 1987 Act. The Manager's cost of applying for further Directions shall be chargeable to the service charge account if not recovered from an individual lessee.

SCHEDULE OF FUNCTIONS AND SERVICES

Financial management

1. Following consultation with the lessees to prepare an annual service charge budget, administer the service charge and prepare and distribute service charge accounts to the lessees in accordance with the proportions contained in the leases.
2. Demand and collect ground rent and service charges from the lessees. Instruct solicitors to recover any unpaid service charges.
3. Create a reserve fund.
4. Produce for inspection (but no more than once each year) within a reasonable time following a written demand by a lessee relevant receipts or other evidence of expenditure, and provide vat invoices (if applicable).

5. Manage all outgoings from the funds in respect of day to day maintenance and pay bills.
6. Deal with all enquiries, reports, complaints and other correspondence with the lessees, solicitors or other professional persons arising from the day to day financial management of the Premises.

Repairs and maintenance

7. Deal with all reasonable enquiries raised by the lessees in relation to repair and maintenance work and instruct contractors to attend and rectify problems as necessary.
8. Administer contracts in respect of the Premises and check demands for payment, goods, services, plant and equipment supplied in relation to the contracts. In particular the manager shall take over the contract with Mr David Smith and Cambridge Construction for the major works to the conservatory at the Premises.
9. Manage the common parts and service areas of the Premises, including the arrangement and supervision of maintenance.
10. Carry out regular inspections of the common parts of the Premises at the Manager's discretion.

Insurance

11. Maintain in the Manager's own name an insurance policy with a reputable insurer insuring the building in which the Premises is contained for full re-instatement value and associated risks and provide a copy of the cover note to all lessees and the Respondent on request.

12. Manage or provide for the management through a broker (if appropriate) any claims brought under the aforesaid insurance policy.

Major Works

13. Undertake as soon as practical (if not already done) a full health and safety review to include asbestos and fire safety survey, an assessment of the electrical supply to the Premises and a condition report to determine what works if any may be required and the relative urgency of the same.

Administration and Communication

14. Deal promptly with all reasonable enquiries raised by lessees, including routine management enquiries from lessees or their solicitors.
15. The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors.
16. Provide the lessees with telephone, postal and email contact details and complaints procedure.
17. Keep records regarding lessees, agreements entered into by the Manager and any changes in the lessees.

Fees

18. Fees for the routine day to day management services shall be a yearly fee of £250 per flat/maisonette. Fees for supervision of major works will be in addition and where no third party is appointed contract supervisor, the fee will be 10% of the contract price. Where a third party contract supervisor is instructed a reasonable hourly rate will be negotiated with the parties and in

default of agreement the manager shall apply to the Tribunal for further directions.

Dated 3 March 2020

Judge D. Agnew. (Chairman)