



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

Case reference	:	LON/00AG/LAM/2020/0018 - V: CVPREMOTE
Property	:	21 Belsize Lane, London NW3 5AS
Applicant	:	Leon Saul Blitz and Cara Lee Blitz Jonathan Ilan Blitz
Representative	:	Howard Kennedy LLP
Respondent	:	Belsize Garages Project Limited
Type of application	:	Appointment of a manager
Tribunal member(s)	:	Judge Sheftel Mr T Sennett MA FCIEH
Date of Decision	:	11 December 2020 (following a hearing on 3 December 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 an electronic document bundle comprising 212 pages, the contents of which we have noted. The order made is described at the end of these reasons.

BACKGROUND

1. The Applicants seeks an order appointing Fiona Docherty of James Andrew Residential as a manager under section 24 of the Landlord and Tenant Act 1987 (the "Act").

2. The Property comprises a purpose-built building containing 10 flats. Leon and Cara Blitz are the lessees of flat 10 and Jonathan Blitz is the lessee of flat 7. The tribunal is informed that three flats in the Property are owned by Belsize Garages Limited, a connected company to the Respondent.
3. The hearing took place on 3 December 2020 and was attended by Andrew Skelly, counsel for the Applicants, Jonathan Cowley and Hollie Wight of Howard Kennedy LLP and Leon Blitz. There was no attendance or representation from the Respondent and indeed the Respondent has not taken any part in these proceedings.

The Applicants' case

4. A preliminary notice under section 22 of the Act dated 16 July 2020 (the s22 Notice) was served on the Respondent by the Applicants' solicitors. The s22 Notice alleged numerous breaches of the landlord's covenants under the lease as well as failure to comply with its statutory obligations in relation to the provision of information relating to service charges.
5. The Third Schedule to the s22 Notice sets out the landlord's various repair and maintenance covenants contained in the lease. These include:
 - By paragraph 1(ii) of the Second Schedule, the Landlord covenanted to maintain and keep in good and substantial repair and condition "*all such gas and water pipes drains and electric cables and wires and pumps serving the Building as are enjoyed or used by the Tenant in common with the owners or tenants of the other flats comprised in the Building*".
 - By paragraph 1(iii) of the Second Schedule, the Landlord covenanted to maintain and keep in good and substantial repair and condition "*the common entrances passages landings and staircases of the building*".
 - By paragraph 1(v) of the Second Schedule, the Landlord covenanted to maintain and keep in good and substantial repair and condition "*the lift serving the Building*".
 - By paragraph 1(viii) of the Second Schedule, the Landlord covenanted to maintain and keep in good and substantial repair and condition "*all structures, machinery and equipment ancillary to services provided to the Tenant in common with the owners or tenants of the other flats comprised in the Building*".
 - By clause 18.2 the Landlord covenanted "*throughout the Term at the Landlord's expense (save where otherwise specified herein) provide the services specified in the Schedule hereto.*"

- By paragraph 1 of the Schedule the Landlord covenanted to the "*maintenance, repair, amendment, mending and keeping in good and substantial repair and condition and where no longer capable of economic repair the renewal or replacement of: ... 1.3 the footpaths, forecourts, pathways, staircases, entrances, landings, fire escapes, car cleaning area, toilet facilities and all other common parts of the Building...1.4 any parts of the Building used by the Landlord for the housing of plant machinery and equipment or otherwise in connection with or required for the provision of services...1.5 The Accessways ...1.6 The Car Park*".
 - By paragraph 2 of the Schedule the Landlord covenanted to the "*maintenance in good working order and repair and where no longer capable of economic repair the renewal or replacement of: ... 2.2 all Service Media serving the Building (save for those serving the Parking Space of other let properties exclusively); ... 2.4 the common parts of the Building and the landscaped area within the curtilage thereof...*".
6. The s22 Notice includes a 6-page schedule of alleged items of disrepair, which includes references to plants, cladding, cleaning, leaking, damage, gates, electricity room, lift, air-conditioning, bins, garage, basement rooms, health & safety and security, energy, solar requirement, management and insurance.
 7. Attached were numerous photographs showing the state of disrepair, which the tribunal has considered.
 8. According to the s22 Notice, the breaches had previously been notified to the landlord by letter on 21 April 2020 and again on 27 April 2020. No response was received. As set out in the notice, a number of the issues required remedy. However, it appears that nothing has been done to remedy anything.
 9. The application to the tribunal (dated 3 September 2020) also referred to three urgent issues, which the landlord had failed to address. These were:
 - The insurance on the Property was being paid by the managing agent by monthly instalments. In an email of 11 August 2020, the agent advised that they only had sufficient funds to pay for only one more instalment of buildings insurance;
 - The managing agents (Mainstay) had terminated its contract with the Respondent due to "insufficient cash flow and nonattendance to latent defects".
 - The mains water supply failed on 21 August 2020. No water was servicing the building at all. The residents reported the issue to the managing agent and were advised that as the water pump

contractor had not been paid for previous work by the Respondent they would not attend to survey and fix the issue. The Applicants arranged for their own contractor to attend and fix the problem.

10. Witness statements from the lessees of flats 2, 3, 4, 6, 8 were provided with the application. All supported the application and asserted that the Respondent has failed to comply with its obligations in relation to the repair and maintenance of the Property.
11. A more detailed witness statement was provided by Mr Leon Blitz. This confirmed that Mainstay gave notice to terminate its contract on 28 July 2020 and such termination was due to take effect on 27 October 2020. It appears that there has been no management of the Property since that time.
12. Further, according to Mr Blitz, Mainstay had explained that there was nothing they could do during the notice period without funds. By email of 31 July 2020 Mainstay stated "*... at the moment we are struggling with paying our creditors to the point of all services being suspended including Life Saving Equipment and the Lift which means there will be no more attendances which puts the block at risk in particular the Health and Safety infrastructure.*" It also appears that there have been no responses to requests from Mr Blitz to deal with problems during this time, including significant leaking in the Property.
13. In relation to insurance, during Mainstay's time as managing agents, insurance premiums were paid monthly due to lack of funds. There have been no responses to emails to the Respondent asking them to ensure that insurance premium payments were made so that the policy does not lapse. The tribunal notes that the Respondent's obligation to keep the Property insured is contained in paragraph 9 of the Second Schedule to the lease.

The Respondent's case

14. The Respondent has made no oral or written submissions nor engaged with these proceedings in any way.
15. The bundle contained an email from 'customer@godfreylondon.co.uk' to the lessee of flat 3 dated 10 November 2020. This stated that "... We are currently in the process of signing on a new managing (sic.). We will update all residents once this has been confirmed. Kind regards, Dilpreet." However, nothing further has been received, despite the Applicants' solicitors attempting to contact the Respondent at this email address and there has been no other communication from the Respondent.

The proposed manager

16. Ms Doherty experienced some difficulty joining the hearing but was able to join by telephone.

17. The tribunal asked Ms Docherty various questions about her qualifications and experience and about how she would manage the Property.

The terms of the Order if granted

18. The Applicants provided a draft order prior to the hearing, which was included in the bundle. No comments have been received from the Respondent.
19. The proposed order is comprehensive and goes beyond the provisions of the leases. As Mr Skelly pointed out, there are apparent defects in the leases, which hinder or prevent the collection of service charges on account. For example, in the specimen lease included in the bundle, the definition of 'ON ACCOUNT PAYMENT' is stated to be "£[] per annum". Accordingly, the proposed order allows for the manager to set, demand and receive from the Lessees payments of service charges on account in such sum as the Manager shall reasonably determine having regard to the likely costs to be incurred and in respect of which service charges are payable during the relevant financial year. The order also would grant a power to raise a reserve/sinking fund for the Property.

Discussion

20. We note the contents of the Applicant's s22 Notice and are satisfied that the notice was valid, and that the Respondent has not taken any steps necessary to remedy the problems specified in it.
21. We are satisfied on the basis of the evidence provided that the Respondent is in breach of its repairing obligations in particular as set out in the Third Schedule to the s22 Notice, and that this has had and continues to have a detrimental effect on the Property.
22. As set out above, there is significant disrepair in breach of the landlord's covenants; there appears to have been no response by the landlord to issues of disrepair being raised; the Property is not currently being managed; and it is not clear whether insurance premiums have been paid.
23. We therefore consider that the Respondent is in breach of obligations owed by it to the Applicant and that it just and convenient to make an order in all the circumstances of the case and therefore that the requirements of section 24(2)(a)(i) and section 24(2)(a)(iii) of the 1987 Act have been met.
24. We now move on to the question of whether Ms Docherty would be a suitable appointee as manager and, if so, what the terms of such appointment should be.

25. We have considered the documentation provided by Ms Docherty and have had an opportunity to cross-examine her about her qualifications and experience and about how she would manage the Property.
26. Ms Docherty came across well. Although she has not previously been a tribunal-appointed manager, she has 30 years of property management experience and has experience of high-end and new-build developments. She clearly understood issues relating to property management, for example s.20 procedures. In addition, she had provided a detailed proposal to the Applicants' solicitors setting out plans for the management of the Property.
27. The tribunal is satisfied as to the proposed fees having regard to the locality and nature of the Property.
28. As to the length of appointment, while the application initially suggested a period of 3 years, at the hearing Mr Skelly on instructions proposed whether 1 year might be more appropriate. In the tribunal's view, given that there are a number of issues relating to the Property that need to be sorted out and having regard to the fact that there is currently no management of the Property, it is considered that 1 year might be too short and instead, it is determined that a period of 2 years would be appropriate. As to any adverse impact on the Respondent's future management of the Property, as noted above, the Respondent has not engaged with this process and there is no evidence of any intention to engage in the future.
29. We are therefore satisfied that Ms Docherty would make a suitable manager and that it would be appropriate to appoint her.
30. In the circumstances, the tribunal will make an order appointing Ms Doherty as manager of the Property pursuant to section 24 of the 1987 Act as set out in full in the order annexed to this Decision.

Costs

31. 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.
32. The Applicant has also obtained signed authority from Jeffrey Woolf (flat 2), Anthony Maurice Rajwan (flat 3), Holly Rebecca Smith and Fiona Margaret Smith (flat 4) and Jael Dina Geiger (flat 6), and email confirmation from Tariq Bin Hendi (flat 8), on whose behalf the application was purportedly made.
33. The Applicant has been successful in the application and the Respondent has not engaged with these proceedings at all. In the circumstances, it is just and convenient and entirely appropriate to make such an order. Further, the tribunal is prepared to order reimbursement of fees as requested by the Applicants.

Name: Judge Sheftel

Date: 11 December 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).

**ORDER UNDER SECTION 24 OF THE LANDLORD AND TENANT
ACT 1987**

1. In this Order
 - (a) “the Property” means 21 Belsize Lane, London NW3 5AS, registered at HM Land Registry under title number NGL257868
 - (b) “Leases” shall mean the leases of the residential flats within the Property
 - (c) “Lessee” means any person holding any of the Leases from time to time
 - (d) “Accounting Year” means 1 January to 31 December
 - (e) “the Tribunal” means the First-tier Tribunal (Property Chamber) (Residential Property)
2. In accordance with section 24(1) of the Landlord and Tenant Act 1987 (“the 1987 Act”) Fiona Docherty MIRPM of James Andrew Residential of Fairchild House, Redbourne Avenue, London N3 2BP is appointed as the manager of the Property.
3. The order shall continue for a period of 2 years from 11 December 2020. If the parties wish to apply for any extension of the order, they are encouraged to do so at least three months before the order expires.
4. 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 obligations of the Lessor in the Leases 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.
5. The Manager shall be entitled to exercise the following powers:
 - (a) The power to delegate to colleagues at James Andrew Residential, appoint accountants, architects, solicitors, surveyors and other professionally qualified persons as may be reasonably required to assist her in the performance of her functions and pay the reasonable fees of those appointed;

- (b) The power to appoint any agent or servant to carry out such function or obligation which the Manager is unable to perform herself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant;
 - (c) The power to open and operate client bank accounts in relation to her management of the Property and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 and / or to hold those funds pursuant to section 42 of the 1987 Act on trust and to keep an account or accounts established for that purpose of monies received on account of the reserve fund;
 - (d) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the parties to these proceedings or of any lessee owing monies under any of the Leases;
 - (e) The power to instruct solicitors and/or take proceedings against the Respondent in respect of breaches of the Respondent's obligations under the Leases not being matters the subject of the service charge. The Manager shall further have the power to apply ground rent received from the Lessees against the costs of such liabilities on the part of the Respondent.
 - (f) The power to insure the Property as a cost to the service charge fund for the Property ("the Service Charge Fund"); and
 - (g) The power to raise a reserve/sinking fund for the Property.
6. The Manager shall not be personally liable to make any payments due from the Lessees but shall instead be entitled to demand and collect sums from the Lessees for the purposes of making such payments.
7. The Manager shall register the order against the lessor's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act, and is entitled to recover her reasonable legal costs for doing so from the Service Charge Fund.
8. The Tribunal makes 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 charge.
9. The Tribunal also makes an order under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requiring the Respondent to reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00 paid by them in respect of this application.

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that they have appropriate professional indemnity cover in the sum of at least £5,000,000 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 11 December 2020 become rights and liabilities of the Manager.
4. 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.
5. By no later than six months and thereafter on an annual basis, 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.
6. 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.

7. The Manager shall be entitled to apply to the Tribunal for further directions.
8. The Manager shall register a restriction in Land Registry standard form N, with the following wording “No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without the written consent of Fiona Docherty MIRPM of James Andrew Residential of Fairchild House, Redbourne Avenue, London N3 2BP” who is entitled to recover her reasonable legal costs for doing so from the Service Charge Fund.
9. In the event of any inconsistency between these directions and/or the Schedule of Powers, Functions and Services set out below and the Leases, the provisions of these Directions and/or the Schedule of Functions and Services shall prevail.

SCHEDULE OF POWERS, 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

For each Accounting Year

- (i) Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees.
- (ii) Set, demand and receive from the Lessees payments of service charges on account (“on account payment”) in such sum as the Manager shall reasonably determine having regard to the likely costs to be incurred and in respect of which service charges are payable during the relevant financial year.
- (iii) Set, demand and collect service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the Lessees.
- (iv) Recover from the Respondent service charge contributions in respect of each and every Flat in the Property, the ownership of which was/is retained by the Respondent and which was not/is not demised to a

Lessee (not being a person, corporate or otherwise associated with or connected to the Respondent) on a long lease. For the avoidance of doubt, Flats 1, 5 and 9 were un-leased by the Respondent until 12.04.2019, when they were leased to Belsize Garages Limited.

- (v) Set, demand and collect her own service charge payable by the Respondent (as if it were a Lessee) in respect of any un-leased premises in the Property which are retained by the Respondent.
- (vi) Instruct solicitors and/or take proceedings in respect of unpaid rents service charges and any other monies due to the Respondent or if required to enforce the Freeholder's or the Lessees' rights against third parties.
- (vii) 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.

Accounts

For each Accounting Year

- (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.
- (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) All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

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) 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.
- (iv) Instruct a building surveyor in connection with the matters detailed at paragraphs (i) to (iii) above, as and when they consider appropriate.

Alterations

- (i) The Manager shall have the power to deal with any future applications for consent for alterations from Lessees, and may give consent (not to be unreasonably withheld) subject to any conditions they consider reasonable, provided the proposed alterations are within the demise of the Lessee seeking consent. In considering whether to give consent the Manager shall take into account amongst other factors whether the proposed alteration adversely affects the other Lessees, or negatively impacts the freehold reversion.

Disputes and litigation

- (i) The Manager shall be entitled to take such action as may be necessary, including bringing Court or Tribunal proceedings, to secure the compliance of the Lessees with their obligations in respect of the Property, as prescribed under the Lease, Licence for Alterations or under the terms of this order or by operation of law. Such action may include forfeiture (in the name of the owner of the reversion from time to time) and/or action to recover service charges, the Manager's fees and/or any other relevant contributions due.
- (ii) For the avoidance of doubt, the entitlement under clause (i) above includes the right of the Manager to take whatever legal action is necessary to recover any liabilities or contributions due from the Lessees in respect of the flats at the Property or the Property as a whole, the costs of such action to be paid from the Service Charge Fund and recoverable from the Lessees irrespective of the provisions of the Leases. The Manager shall be entitled to an indemnity for both their own costs reasonably incurred and for any adverse costs order from the Service Charge Fund.

Fees

- (i) For the duration of this order the Manager shall be entitled to charge the following fees:
 - (a) A one-off set up fee of £2,500 (One Thousand Pounds) plus VAT to complete the following tasks:
 - (i) Initial inspections of the Property
 - (ii) Consideration of documents
 - (iii) Preparation of proposed management plan
 - (b) An annual management fee of £5,000 (Five Thousand Pounds) plus VAT and disbursements for the basic management duties listed at (i)-(x) below (“the Standard Management Fee”):
 - (i) Collection of service charges
 - (ii) Payment of all invoices
 - (iii) Maintaining service charge income and expenditure details for handover to an accountant to produce certified year end accounts
 - (iv) Managing day to day repair issues, including arranging contractors to carry out repairs with the costs of repairs to be paid for from the Service Charge Fund
 - (v) Providing a telephone number for emergency out-of-hours calls of a maintenance nature
 - (vi) Not less than one visit to the Property per month to carry out on-site inspections
 - (vii) Communicating with the Lessees but not beyond reasonable correspondence
 - (viii) Providing a point of contact for maintenance issues
 - (ix) Annual reporting to the applicant and the respondents, in their capacity as the freeholders of the Property
 - (x) Oversight of health and safety compliance.
- (ii) The Standard Management Fees may be increased annually, on the anniversary of the order, in line with the Consumer Prices Index.
- (iii) An additional charge shall be made for administering insurance claims over the value of £50,000, at the rate of 5% of the value of a claim.
- (iv) A reasonable additional charge for dealing with solicitors’ enquiries on sales and transfers of the flats at the Property, payable by the outgoing Lessee.
- (v) Tasks which fall outside of set-up requirements or the Standard Management Fee are to be charged separately using the following

hourly rates; £250 plus VAT for the Manager or a partner/director/general manager at James Andrew Residential, £150 plus VAT for an associate or senior property manager at James Andrew Residential; £150.00 for Head of Accounts at James Andrew Residential; £55.00 for an Accounts Clerk or Property Manager at James Andrew Residential. The recovery of outstanding service charges shall give rise to an administration charge payable by the defaulting Lessee of £30 plus VAT for each letter written. The registration of dispositions shall give rise to a reasonable charge to be levied by the Manager's nominated solicitors.

- (vi) The fees at clause (v) above may be increased annually on the anniversary of the order in line with inflation.

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.