



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

**Case reference** : **LON/00AM/LVM/2021/0017**

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

**Property** : **108 Forest Road, London E8 3BH**

**Applicant** : **Mr Misha Kinsey Manson-Smith**

**Representative** : **Mr Jamal Demachkie, counsel**

**Respondent** : **Mr Mark Andrew Arthurworrey**

**Representative** : **In person**

**Type of application** : **Appointment of Manager**

**Tribunal  
member(s)** : **Judge Tagliavini  
Mrs S Redmond**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **2 December 2021**  
**Date of decision** : **21 January 2022**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has not been objected 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 all issues could be determined in a remote hearing. The documents that the tribunal referred to are in a bundle of pp 1-367 (applicant) and pp 1-115 (respondent) the contents of which have been considered.

## **Decision of the tribunal**

- (1) In accordance with section 24(9) Landlord and Tenant Act 1987 the appointment of Mr Charles John Fowler a director of stock Page Stock Limited ('the Manager') made by the tribunal on 8 December 2020 is continued until for a further one year until 1 December 2022.
  - (2) The Manager shall continue to manage the Property in accordance with the tribunal's original Order dated 12 October 2016.
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## **The application**

1. This is an application made under the provisions of section 24 of the Landlord and Tenant Act 1987 ('the 1987 Act') seeking a variation of the Order made by the tribunal dated 12 October 2016 appointing Mr. Charles Fowler as the Manager of premises situated at 108 Forest Road, London E8 3BH ('the premises'), by extending the period of the appointment by one year to 1 December 2022.

## **The background**

2. The premises comprise a converted four-storey residential dwelling divided into three flats of which the applicant is the long lessee of Flat A on the lower ground floor. The respondent controls Flats B and C on the upper floors with Flat B demised to the respondent's company Natkim Co Limited and Flat C to the respondent. The respondent is also the freeholder of the entire premises.
3. An order appointing Mr Fowler as the Manager was made by the tribunal after a contested hearing. Consequently, for the purposes of this application seeking a variation of Mr Fowler's appointment the tribunal needs to be 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.*

### **The hearing**

3. At the hearing, the applicant Mr Manson-Smith was represented by Mr Jason Demachkie of counsel. The respondent Mr Arthurworrey represented himself. As well as the documents provided to the tribunal the parties provided oral evidence to the tribunal. The tribunal also heard oral evidence from Mr Fowler who spoke to his witness statement dated 18 November 2021 and confirmed his willingness to have his appointment extended for a further year.

### **The tribunal's decision and reasons**

4. Having heard and considered the oral and documentary evidence of the parties, the tribunal is satisfied that the conditions and reasons for the tribunal appointment of Mr Fowler as the Manager continue to exist. The tribunal finds the respondent continues to be in breach of the terms of his lease and has continued to harass the applicant.
5. The tribunal is satisfied that it is just and equitable to vary the Order appointing Mr Fowler to the extent that the date of appointment is extended to 1 December 2022 on the terms as previously set out in the tribunal's Order.
6. Therefore, the tribunal makes the following Order:

*The Order of the First-tier Tribunal (Property Chamber) (Residential Property) dated 12 October 2016 ([the Order'~) appointing Mr John Fowler as the manager of the property known as 108 Forest Road, London E8 3BH ('the Property') pursuant to section 24(1) of the Landlord and Tenant Act 1987 ('the '1987 Act') is hereby varied under section 24(9) of the 1987 Act, such that Mr Fowler's appointment as Manager of the Property shall continue until 1 December 2022 on the same terms as provided for in the Order.*

**Name:** Judge Tagliavini

**Date:** 21 January 2022

### **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).

## **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 [date] 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) [Set] Demand and collect [ground rents,] service charges (including contributions to a sinking fund), insurance premiums and any other payment due from the lessees.
- (iii) [Set] Demand and collect his own service charge payable by the Respondent (as if he 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.

### **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.
- (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.

## **Fees**

[Will be as per the fee sheet attached {with the following additions}] / or

- (i) Fees for the abovementioned management services will be a basic fee of £... 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 [...] % of the cost (subject to a minimum fee of £[...]). 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.

## **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.