



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

Case Reference : CHI/00ML/LAM/2022/0005

Property : 19 Hove Park Villas, Hove, BN3 6HH

Applicant : Anne Louise Stafford & Stephen Joel Brett

Representative :

Proposed Manager : Graeme John AIRPM

Respondents : Martin Branson

Type of Application : Appointment of Manager section 24 of the
Landlord and Tenant Act 1987. S20C
Landlord and Tenant Act 1985

Tribunal Member : Judge D Whitney
Mr M J F Donaldson FRICS
Mr Peter Gammon MBE

Hearing Date : 15th September 2022

Date of Decision : 8th November 2022

DECISION

Background

1. The Applicants made an application for a manager to be appointed. This is a building converted into two flats, one of which is held on a long lease by the applicants. The other flat is owned by the freeholder Mr Martin Branson.
2. The Applicant refers to various failings of management and that relations have broken down. A Section 22(1) Notice was served on 25 January 2022 and the Applicants now seek an Order appointing a manager of the property in accordance with section 24 of the Landlord and Tenant Act 1987.
3. The Applicants propose Graeme John AIRPM of 17 Sackville Road, Bexhill on Sea, East Sussex, TN39 3JD as the proposed manager.
4. Directions were issued on 28th June 2022 listing this matter for hearing.
5. During August 2022 the parties submitted a consent order confirming that both parties agreed to the Tribunal appointing Mr John as a Tribunal Manager. Judge Tildesley OBE refused to endorse the consent order reminding the parties it was for the Tribunal to be satisfied that a manager must be appointed.
6. Shortly before the hearing on 5th September 2022 the Respondent sought an adjournment. This was refused. Further the Respondent looked to file a statement dated 12th September 2022. He was no longer in agreement to a manager being appointed.
7. The Tribunal had before it an electronic bundle of 304 pages and references in [] are to pages within that bundle.
8. Miss Stafford represented herself and Mr Brett and Mr Branson appeared in person. Mr John was also in attendance throughout the hearing.
9. The hearing took place at Havant Justice Centre with the parties listed above present together with Judge Whitney and Mr Donaldson. Mr Gammon appeared remotely by video. The hearing was recorded.

THE LAW

10. The relevant law is contained within Section 24 of the Landlord and Tenant Act 1985 which is annexed hereto.

THE HEARING

11. At the start of the hearing the Tribunal confirmed it would allow Mr Branson to rely upon his statement.

12. It was explained it would hear from Miss Stafford, then Mr Branson and then the panel would question Mr John. Each party questioned the other on their respective cases. Below is a summary of the evidence given.
13. Miss Stafford explained she had owned her flat since 2014. She suggested that there was long outstanding major works and little maintenance had been undertaken. There were no reserve funds held and managers appointed by Mr Branson had ceased acting, she suggested because Mr Branson would not allow them to properly manage the freehold. She referred to various emails [256-258] showing managers resigning. She relied on her witness statement [88].
14. Miss Stafford, in summary of her case, stated that there were long term issues as to maintenance with multiple breaches of the RICS Code. She was not satisfied that Mr Branson would change his ways and believed a Tribunal appointed manager was the only way for the major work which is required to the Property to be completed.
15. Mr Branson told the Tribunal he had lived in his flat since 1987 and purchased the freehold in 2004. He suggested the managers he appointed only resigned after meeting the Applicants. He referred to having appointed Austin Rees at the start of the year but had no documentation supporting this. He confirmed he had not taken any advice upon this application as he felt the money would be better spent on undertaking work to the Property. He accepted major works were required to the Property.
16. Mr Branson was adamant he had signed an agreement with Austin Rees and asked them to get on with undertaking major works. This was to be all works referred to in a 2016 survey of which the parties were aware, but a copy was not in the bundle. It referred to damp proofing works, works to the hallway, exterior rendering, guttering and painting. He accepted he had been aware of the need for works to be undertaken since 2015.
17. Mr Branson explained there was a dispute with the previous owner of the Applicants flat and he referred to a settlement he reached whereby he lost about £10,000 owed to him. He accepted that there have been failings on his part such as production of accounts. He accepted he had not been able to cope.
18. Mr Branson explained Austin Rees wanted to obtain advice on the terms of the lease but he would not fund this. He believed that the major works should be undertaken relying upon the specification of works produced by 3 J's Surveyors (not within the bundle) and he would pay his share of the costs.

19. Mr Branson did accept that a line needed to be drawn and for matters to start again. He stated he would welcome things being done. He confirmed he has funds available to cover the costs of major works and once all completed he hopes to sell his flat.
20. Mr Branson explained he had a sum of £1798.38 in a treasurers account he used for service charges. Some of this money had been paid by him. He accepts moving forward he could not self manage hence he wants to appoint a managing agent.
21. Mr John was questioned by the Tribunal.
22. He explained he had about 12 years experience and had been a Member of IRPM for 3 years. He managed about 100 blocks consisting of about 1300 units. They were scattered over South East England with the majority in the Hastings, Bexhill and Eastbourne area. He explained he managed a couple of blocks of up to 50 units and several tower blocks as well as converted houses.
23. He employed 3 other persons and has various links with surveyors and structural engineers whom he uses from time to time.
24. He has £2million of indemnity insurance and this would cover him personally for any Tribunal appointment. His firm is a member of The Property Ombudsman Scheme.
25. He inspected the Property on 9th September 2022. It was apparent the building required maintenance and stated the photographs within the bundle demonstrated this. In his view the surveys would need updating and then a Section 20 consultation would be required.
26. Mr Johns explained he understood he would be answerable to the Tribunal. He needs to ensure there is no conflict with any party and must be wholly impartial. In his view an appointment of 2 years is required to ensure the works can all be properly undertaken. His fee would be £1300 plus vat per annum with charges for the section 20 major works and other administration charges.
27. He confirmed he has no current appointments by the Tribunal.
28. Neither the Applicant nor the Respondent had any questions for Mr John although both were given the opportunity.

DECISION

29. We thank both parties for their measured submissions.

30. It was apparent to the Tribunal that there was a degree of hostility between the parties which, as is all too familiar, came about due to failures in communications.
31. The Respondent accepted he had been served with the Section 22 Notice.
32. We are satisfied that it is just and convenient for a manager to be appointed.
33. The Respondent has by his own admission been wholly overwhelmed by management of the Property. He acknowledged the need for external help. Despite this we were not satisfied that he had taken any real steps to appoint a manager. Whilst managers had been appointed in the past for the past 5 years or so there had been no manager and so no works had been undertaken. This is despite the Respondent acknowledging that in 2016 he was given advice by a firm of surveyors, 3 J's, advising works. Mr Branson in his evidence accepted these works should be undertaken and yet even now nothing had been done to undertake the same.
34. Taking account of this history it seems plain that a manager needs to be appointed to ensure the required major works are undertaken to place the Property in good order. That is the object for the appointment of this manager.
35. We have considered carefully whether it is appropriate to appoint Mr Johns. The panel was impressed by his evidence. Whilst he has no previous appointments Mr Johns clearly understood his responsibilities and the requirements of his role. His fees are in our judgment reasonable and his estimate of the time required sensible in all the circumstances.
36. We have considered what other terms should be included within any order. It is of course not Mr Johns role to resolve any outstanding accounting issues in respect of the Respondents management. He effectively starts with a blank sheet. We are satisfied that he will require funds to ensure the survey can be updated and the works moved forward. To that end we will include provision within the order that each party shall pay £5,000 as an interim payment to the manager and the manager may at any time request further interim sums upon providing a budget to the parties.
37. The order will include provision that Mr John shall provide to the Tribunal and the parties a written report on the anniversary of his appointment which shall last for two years. All are reminded that any party may seek further directions from the Tribunal and if any party wishes to extend this order application should be made 3 months prior to the order expiring.

38. In conclusion we find that a manager should be appointed and appoint Mr Graham John on the terms of the attached order.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
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.