



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

Case Reference : CHI/00HE/LVM/2023/0002

Property : The Old Foundry, Roseland, Liskeard,
Cornwall, PL14 3PQ

Applicant : Mr & Mrs G Mottram

Representative :

Respondents : Ms A Glanville (Flat 1)
Mr & Mrs D Martin (Flat 2)
Mr D Gerrard (Tribunal appointed Manager)

Representative :

Type of Application : Variation of an order appointing a manager-
S.24 Landlord and Tenant Act 1987

**Tribunal
Member(s)** : Judge Tildesley OBE

Date of Decision : 17 May 2023

DECISION

The Application

1. On 23 February 2023 the Tribunal received an application from Mr Mottram of Flat 3 to vary an Order for the Appointment of Manager made on 24 May 2021 by extending the term of the Order which is due to expire on the 30 June 2023.
2. On 16 March 2023 the Tribunal directed that the Application would be determined on the papers. The parties did not request an oral hearing within the allotted time. The Tribunal required Mr D Gerrard, the Tribunal Appointed Manager, to provide a progress report in connection with the current order, and to indicate whether he was prepared to continue as Manager if the Order is extended. The Tribunal permitted the leaseholders a right of reply to the report and to indicate whether they were in agreement with Mr D Gerrard continuing as a manager.

Consideration

3. Mr Gerrard stated that he had established a good working relationship with the leaseholders and despite various obstacles he had managed to complete the necessary works to render the property watertight. Mr Gerrard explained that his priorities for the building were to commence the electrical rectification works and to oversee the installation of a fire alarm and emergency lighting system.
4. Mr Gerrard confirmed that (1) he was in favour of the Tribunal extending his term of management for a period of either 12 or 24 months, (2) he fully understood and accepted the duties that the appointment would entail, and that the property would continue to be managed in accordance with the current Service Charge Residential Management Code (RICS) and that of the Association of Residential Managing Agents Consumer Charter and Standards, (3) his company (Freehold Management Services Ltd) held professional indemnity insurance, and the level of cover is £2,000,000, and (4) his fee remained at the current level of £300 per annum.
5. Ms Glanville of Flat 1 expressed her delight that Mr Gerrard had agreed to extend his management services. Ms Glanville believed that the building needed a manager and that good progress had been made in respect of repairs desperately needed. Ms Glanville pointed out that Mr Gerrard has had a very difficult task, problems with neighbours and availability of trades people. Ms Glanville stated that she found Mr Gerrard to be very professional and confident he will continue to fulfil his commitment to the leaseholders.
6. Mrs Martin of Flat 2 was more than happy for Mr Gerrard of Freehold Management Services to continue to manage the property. Mrs Martin believed that without a management company little would be achieved due to a breakdown in communications between leaseholders and freeholder.

7. Mr Mottram of Flat 3 was the Applicant in these proceedings and had requested an extension of Mr Gerrard's appointment. Mr Mottram stated that he was so pleased that Mr Gerrard was willing to continue as the Manager and that Mr Gerrard deserved a medal. Mr Mottram continues to have genuine concerns about the state of the repair of the building but those were matters which were not relevant to this application to extend the current order.

Decision

8. This is an application under section 24(9) of the Landlord and Tenant Act 1987 by extending the term of the current order made on 24 May 2021 for a term of two years starting 1 July 2021 and ending on 30 June 2023.
9. The Court of Appeal in *Orchard Court Residents Association v St Anthony Homes Limited* [2003] 2EGLR 28(CA) established that there was a distinction between making and varying an Order and that they dealt with quite separate issues. The Court of Appeal said that under section 24(9) of the 1987 Act it was not necessary for the Applicant to demonstrate again the grounds for making a management order under section 24(2) existed. The Court of Appeal observed that the legislation imposed no criteria on how the Tribunal should exercise its discretion when an application for variation was made by an interested person other than the landlord.
10. The Tribunal, therefore, has wide discretion when considering applications under section 24(9) provided it has regard to relevant considerations. The Court of Appeal in *Orchard Court Residents Association* favoured the term "just and convenient" to capture the approach that should be adopted by the Tribunal when exercising its discretion on applications for variations.
11. The Tribunal is satisfied that Mr Gerrard has made satisfactory progress under the current order in resolving some of the repair and maintenance issues at the property. The Tribunal finds that Mr Gerrard has established good relationships with the leaseholders who have confidence in his abilities to manage the property. The Tribunal considers there is still work to be done which requires the continuing involvement of Mr Gerrard with the management of the property.
12. The Tribunal, therefore, decides that it is just and convenient to extend the appointment of Mr Gerrard for a further two years from 1 July 2023 and expiring on 30 June 2025. The Tribunal confirms that his appointment will be under the same terms as the current order and that his fee will be at the present level of £300 per annum per leaseholder. The Tribunal wishes to express its thanks to Mr Gerrard for the professional way in which he has carried out his duties as Manager.

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 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.