



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

Case Reference : **BIR/00CN/LAM/2023/0003**
Subject premises : **Flats 93-104
Rupert Street
Nechells
Birmingham
B7 5DS**
Applicant : **Foziur Raza**
Representative : **Joseph Chiffers (of Counsel)**
Respondent : **Sycamore Management (Nechells) No 1 Ltd**
Representative : **Mark Strangward**
Type of Application : **Application under section 24 of the
Landlord and Tenant Act 1987 for the
appointment of a manager**
Date of Hearing : **3 October 2023**
Tribunal Members : **Deputy Regional Judge Nigel Gravells
David Satchwell FRICS**
Date of Decision : **16 October 2023**

DECISION

Introduction

1 This is a decision on an application by the Applicant, Mr Foziur Raza, the leaseholder of flats 93, 95, 98, 98a, 103 and 104 Rupert Street, Nechells, Birmingham B7 5DS. By that application, under section 24 of the Landlord and Tenant Act 1987 ('the section 24 application') the Applicant applied for an order appointing Mr Ian Smallman as manager of flats 93-104 Rupert Street (and all appurtenant property) registered at HM Land Registry under title number WM399821 ('the subject premises').

Background

- 2 The subject premises comprise a four-storey self-contained apartment block containing 13 flats and all appurtenant property.
- 3 The freeholder (and the management company currently responsible for the management of the subject premises) is Sycamore Management (Nechells) No 1 Ltd, a company owned by the leaseholders, with one share allocated to the leaseholder(s) of each flat.
- 4 For some years the management of the subject premises has been undertaken by Mr Mark Strangward, the leaseholder of flat 101.
- 5 However, in recent years there has been increasing disagreement about the management of the subject premises. The principal protagonists have been the Applicant and Mr Strangward, each supported by a number of other leaseholders; and the disagreements and antagonism have led to litigation in the High Court, the County Court and the First-tier Tribunal.
- 6 Against that background, in October 2022 the Applicant applied to the Tribunal for an appointment of manager order under section 24 of the Landlord and Tenant Act 1987 ('the 1987 Act'). For reasons summarised below, that application was refused.
- 7 On 16 May 2023 the Applicant initiated the preliminary stage of a new section 24 application for the appointment of a manager. Pursuant to section 22 of the 1987 Act, the Applicant served a notice on the Respondent, indicating that the Applicant intended to apply for an order for the appointment of Mr Smallman as manager of the subject premises and specifying the grounds on which the Tribunal would be asked to make the order.
- 8 The specified grounds are -
- (i) that unreasonable service charges have made (section 24(2)(a) of the 1987 Act);
 - (ii) that other circumstances exist which make it just and convenient to appoint a manager (section 24(2) (b) of the 1987 Act).
- 9 The preliminary notice set out the matters on which the Applicant relies to establish the above grounds and the steps required to remedy those matters.
- 10 On 29 June 2023 the Applicant made the present application to the Tribunal, the application largely repeating the content of the preliminary notice.

- 11 On 3 July 2023 the Tribunal issued Directions for the conduct of the application. Further Directions were issued in response to particular issues raised by the parties.
- 12 On 3 October 2023 a hearing was held at Centre City Tower in Birmingham. The hearing was attended by the Applicant, Mr Joseph Chiffers, of Counsel, representing the Applicant, Mr Smallman, Mr Strangward, representing the Respondent and by two other leaseholders.

Preliminary issue

Application to stay

- 13 By application dated 11 September 2023 Mr Strangward, on behalf of the Respondent, applied to have the section 24 application stayed. The Tribunal agreed to hear the application at the start of the hearing on 3 October 2023.
- 14 Although Mr Strangward's witness statement accompanying the application raised a number of issues, his submissions at the hearing were more limited in scope, referring to allegedly unauthorised action taken by the Applicant in respect of insurance of, and repairs to, the subject premises. In any event, Mr Strangward was unable to explain why the issues referred to were relevant to the question whether the section 24 application should be stayed.
- 15 The Tribunal therefore refused the application to stay.

Issues for determination

- 16 The section 24 application raises the following issues for determination by the Tribunal –
 - (i) whether the Tribunal is satisfied that the Applicant has established any of grounds specified in section 24(2) of the 1987 Act for making an order;
 - (ii) whether it is just and convenient to make an order in all the circumstances of the case;
 - (iii) whether the proposed manager is a suitable appointee;
 - (iv) the terms and duration of any appointment.
- 17 The present application is substantially similar to a previous application made by the Applicant in October 2022, except for the identity of the proposed manager.
- 18 The Tribunal issued its Decision on that application on 20 April 2023 (see BIR/00CN/LAM/2022/0008). The Tribunal determined that it would be just and convenient to appoint a manager of the subject premises.
- 19 The Tribunal concluded (at paragraphs [51]-[54]) –
 - [51] If the present application rested on the first two grounds alone – unreasonable service charges and breach of obligations – the Tribunal would not be persuaded that the breaches in question would be sufficient to justify ordering the appointment of a manager for the subject premises.
 - [52] However, in the view of the Tribunal, the third ground – that other circumstances exist which make it just and convenient to order the

appointment of a manager - is rather more substantial. There is compelling evidence that the Applicant (and to some extent some other leaseholders) and Mr Strangward have reached an impasse in their relationship as shareholders (and actual/potential directors) of the Respondent company. They seem to be incapable of agreeing on matters that affect the physical condition of the subject premises - to the serious detriment of the premises. There is evidence of a near total loss of trust

[53] In those circumstances, the Tribunal takes the view that responsibility for the management of the subject premises should, if possible, be transferred to an independent manager, free from the persistent and obstructive disagreement among the members of the Respondent company, which has clearly had an adverse effect on the proper management of the premises.

[54] The Tribunal is therefore satisfied that it would be just and convenient to make an order for the appointment of a manager of the subject premises in place of the Respondent.

- 20 However, the Tribunal was not persuaded that the manager proposed by the Applicant was the appropriate person to be appointed because he had almost no experience of managing residential developments such as the subject premises. The Tribunal therefore made no Order.
- 21 On reviewing the present application, the Tribunal formed the provisional view that the grounds of the application (set out in both the section 22 preliminary notice and the application form) were substantially similar to those advanced in the previous application and that there was nothing to suggest that the Tribunal would reach a different conclusion on the issues identified in paragraph 16(i) and (ii) above.
- 22 The Tribunal therefore proposed, subject to any objection by the Respondent, not to revisit those issues in determining the present application but to move directly to consider to the issues identified in paragraph 16(iii) and (iv) above in relation to the proposed manager (Ian Smallman).
- 23 Mr Strangward, on behalf of the Respondent, did object; and the Tribunal invited him to make submissions on the issues identified in paragraph 16(i) and (ii) above.
- 24 Mr Strangward repeated the allegations that he had made in connection with his application that the proceedings be stayed. However, in the view of the Tribunal, Mr Strangward said nothing that undermined the conclusion reached by the Tribunal in the previous case. Indeed, the evidence of what has happened since the Tribunal issued its Decision on the previous case suggests that the need for an independent manager has increased.

Determination

Grounds for making an order under section 24 of the 1987 Act

- 25 For the reasons discussed above the Tribunal is satisfied that (other) circumstances exist which make it just and convenient to make an appointment of a manager for the subject premises pursuant to section 24(2)(b) of the 1987 Act it.

The proposed manager

- 26 The person proposed by the Applicant to be appointed manager of the subject premises is Mr Ian Smallman, of MetroPM Limited.
- 27 Mr Smallman confirmed his willingness to accept the appointment.
- 28 The Tribunal reviewed the witness statement of Mr Smallman and his Management Tender; and the parties were invited to question Mr Smallman.
- 29 The Tribunal is satisfied that Mr Smallman has the required knowledge and experience generally to manage the subject premises and to address and resolve the specific issues currently affecting the subject premises.
- 30 The Tribunal therefore orders the appointment of Mr Ian Smallman as manager of the subject premises.
- 31 For the avoidance of doubt, it is important to stress –
- (1) that the appointment of Mr Smallman as manager is the appointment of the Tribunal and he is therefore answerable to the Tribunal alone;
 - (2) that from the date of the commencement of Mr Smallman's appointment no other party shall be entitled to exercise a management function in respect of the property where that management function is a responsibility of the manager under the Order;
 - (3) that from the date commencement of Mr Smallman's appointment no other party shall interfere or attempt to interfere with the exercise by the manager of any management function which is the responsibility of the manager under the Order.

The terms of the appointment

- 32 The appointment and its terms are set out in the Order attached to this Decision.
- 33 Copies of the Practice Statement on Appointment of Managers (including the Management Order template) were sent to the parties in advance of the hearing. None of the parties made any comments on the template.
- 34 If Mr Smallman wishes to apply for any amendment to the terms set out in the attached Order, he must do so **not later than 30 October 2023**.

Commencement and duration of the appointment

- 35 The appointment shall commence on 1 November 2023 or, in the event that Mr Smallman applies for any amendment pursuant to paragraph 34 above, on such date as the Tribunal specifies.
- 36 The usual duration of appointments under section 24 is three years (with the possibility of renewal). However, it is convenient for the termination of the initial appointment to coincide with the end of the service charge year. The appointment shall therefore terminate on 30 September 2026.

Appeal

- 37 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 38 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 39 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 40 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

16 October 2023

Professor Nigel P Gravells
Deputy Regional Judge