



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

Case reference : **LON/00BD/LAM/2020/2021**

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

Property : **Meadow Court, Whitton Dene, Whitton,
Hounslow, TW3 2JP**

Applicant : **Denis Gilgallon (1)
Chris Wright (2)**

Representative : **In person**

Respondent : **Meadow Court Flats Limited**

Representative :

Type of application : **Appointment of Manager**

**Tribunal
member(s)** : **Tribunal Judge Dutton
Mr T W Sennett MA FCIEH**

Venue : **Video remote hearing 15 March 2021**

Date of decision : **19 March 2021**

DECISION

Covid-19 pandemic: description of hearing [

This has been a remote video hearing which has been consented 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 we were referred to are in a bundle of 104 pages, the contents of which we have noted. The order made is described at the end of these reasons.

REASONS

1. This application was originally made by Mr Denis Gilgallon, the company secretary of the respondent, seeking to appoint Joanna Roznowska of SAFE Property Management, as a manager of Meadow Court, Whitton Dene, Whitton, Hounslow (the Property) under the provisions of s24(1) of the Landlord and Tenant Act 1987 (the Act). Subsequently, Mr Chris Wright sought to be joined as an applicant for the purposes to seeking an appointment of Mr Bob Robbins of 2 ManageProperty as the tribunal appointee. His request was, despite objections, granted.
2. The reason for the application was that the respondent was without a manager following the resignation of Duncan Residential Lettings in February 2020 and MIH Property Management in the summer of 2020. It is alleged that these resignations were as a result of the actions of Mr Chris Wright. This is not admitted by Mr Wright, who says he was raising legitimate concerns.
3. A notice under s22 of the Act was served by Mr Gilgallon on 8 July 2020 giving 7 days from the date of the Notice for steps to be taken to appoint a replacement Managing Agent.
4. No replacement Managing Agent was appointed and subsequently an application was made to the tribunal on 19 July 2020.
5. The hearing of the application took place by video on 15 March 2021. We were provided with an indexed hearing bundle of some 104 pages. The bundle included the application, the Notice under s22 of the Act, the three sets of directions and details of the two proposed managing agents.
6. Mr Wright had written to the tribunal on 21 December 2020 and it would seem on 26 January 2021, both in support of his position and to denigrate Mr Hoskins, the chair of the respondent and Mr Gilgallon. This was accompanied by a letter from Ms Feven Ghirmai supporting the appointment of Mr Robbins. This exchange of missives culminated in a response on behalf of the respondent by Mr Hoskins dated 27 January 2021 setting out the alleged failings of Mr Wright and exhibits said to disprove the allegations Mr Wright was making and raised allegations against Mr Wright.
7. It is clear that there is antipathy between what would appear to be a cohort of four directors who appear to support Mr Gilgallon, and two, Mr Wright and Ms Ghirmai who wish to see the appointment of Mr Robbins.

HEARING

8. At the commencement of the hearing we did discuss with the parties why, as it did appear that four directors wished to Appoint Ms Roznowska, they did not just go ahead and do so, thus avoiding the need of a tribunal appointment. We were told that Ms Roznowska would not accept an appointment without tribunal backing, although Mr Robbins said he would. Mr Gilgallon told us that approaches had been made to other managing agents but when they were made aware of the issues at the Property, they declined to undertake the role.
9. Mr Wright told us of issues he alleged had occurred in respect of insuring the Property, which resulted in a lack of trust with Mr Gilgallon and it would seem Mr Hoskins.
10. The tribunal's role is, in part, a problem solving one. The appointment of a manager on the application of a tenant is a draconian step. It removes the management of the Property from the Board of Directors and places it in the hands of an independent property manager. It is a great pity that the six leaseholders, who are all directors and shareholders of the respondent, could not reach agreement or that the quorum, which we were told was a majority of four, could not proceed to make the appointment directly. However, we accept that this would not appear to be possible and accordingly the application became something of a 'beauty parade' with fulsome apologies to Ms Roznowska and Mr Robbins for that phraseology.
11. We heard first from Ms Roznowska. She told us that she had the following qualifications, MIRPM and AssocRICS and was in the process of joining ARMA. She is a director of SAFE Property Management based in Shepherds Bush Green and with Professional Indemnity cover of £1 million. Her CV was included in the bundle at page 54 onwards. We noted all that was said. She confirmed her fees would be £250 per flat, with no VAT and that there would be a charge of 10% for dealing with s20 consultations and manging works, although that might be reduced depending on the amount of the contract. We were told that she had two tribunal appointments, both in W12. She had confirmed she would be willing to accept the appointment and that she would not charge a set up fee.
12. We were told that she has three colleagues, one, a book-keeper and two property managers, one an assistant and another a AIRMP. She confirmed that she thought an appointment of two years would be sufficient. She had visited the Property in February 2021 and read the lease and was aware and would abide by the RICS code of management.
13. There was out of hours cover and a contractor who took over at weekends, but at no cost to the tenants. There would be a minimum of quarterly visits to the property. On the question of insurance, she confirmed that two brokers would be approached and that she received

10% commission which was retained but used to handle any insurance claims that may arise. An IT system known as 'Blockman' was used with remote access by leaseholders to check their accounts etc. The steps she would take to recover unpaid service charges were explained and that the company had a complaints procedure, although she would hope to handle any complaint directly and find a solution with the aggrieved party.

14. Part of Mr Wright's complaints were that there had been no health and safety assessments, in particular fire safety. Ms Roznowska told us that the Health and Safety issues appeared to be up to date, electrical testing had been carried out and risk assessments were in place.
15. Further, an initial complaint by Mr Gilgallon that service charge payments were in some cases in arrear appears to no longer be the case and we were told by him that all leaseholders are up to date with their service charge accounts, the current year's insurance premium had been paid and that there was some £2,000 in the service charge account.
16. We then heard from Mr Robbins of 2ManageProperty Limited, a company based in Sunbury Upon Thames. The services offered were set out in a letter from his company dated 8 November 2020 at page 66 of the bundle. The letter was signed by Rob Bailey. The fees for managing would be £1,872 inclusive of VAT and the same charge as Ms Roznowska for s20 issues. A summary of the company's services were set out, which we noted. Mr Robbins confirmed he had been appointed as Tribunal manager of a property in Richmond but that had ceased.
17. He told us he would be willing to manage the Property without an appointment from the tribunal. He confirmed that he had not visited the Property, as he had not been asked to and had not read the lease.
18. His company had 8 people working for it, including an accountant and 4 property managers. They looked after some 1000 units, some in large blocks and a number were tenant managed. His PI cover was £0.5m, which if required he could increase, but he pointed out that was the limit for each claim, although as with Ms Roznowska no claims had been made, save for some employment issues. He confirmed the company was a member of ARMA and followed their code.
19. The arrangements for insurance were testing the market through two brokers and receiving commission, which his firm retained. He stated that claims handling was a matter for the Insurer but would assist with claims management. The out of hours cover was provided by his company, although it was rare for this to be utilised. The recovery of unpaid service charges were dealt with in a similar fashion to Ms Roznowska and that he would not charge a set up fee. He also considered two years would be sufficient. Their IT support was the same as Ms Roznowka's and he would visit the Property once a quarter.

FINDINGS

20. As we indicated above it is saddening that there could not have been some rapprochement between the parties. However, we accept that at present that is not possible, and the Property needs to be managed. Ms Roznowska thought that there was a need to carry out internal decorations and a review of the roof was required. She would arrange a condition survey as soon as possible.
21. Asked by the tribunal what capital expenditure plan he had in mind, Mr Robbins at first expressed some uncertainty as to what that was. However, he confirmed that one would be put in place, perhaps over 10 or 15 years. He had not visited the Property, nor read the lease, which we found surprising, yet was prepared to put himself forward as a manager. It seemed a somewhat strange way of preparing for the hearing.
22. Two proposed managers were put to us. One appears to have the support of the majority of the directors, which will be helpful, although of course, this is our appointment. We were impressed with Ms Roznowska. She is well qualified and appeared to have a grasp of what was required.
23. In contrast, we were concerned that Mr Robbins had not even visited the Property, he should not need to be invited, he should have asked, and he had not read the lease. We have no doubt that he is a competent Property Manager, with experience but, on this occasion, we consider that it would be more appropriate to appoint Ms Roznowska for a two year term.
24. We will also provide that each leaseholder, on a per flat basis, should lodge £500 with her company as is provided in the attached Order to enable her to arrange a condition survey and to cover some of her fees. The Decision below sets out the terms of the Order we are making, and the directions and schedule of functions should be noted.

Decision of the tribunal

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Joanna Roznowska MIRPM Assoc RICS of Safe Property Management Limited ('the Manager') is appointed as manager of the property at Meadow Court, Whitton Dene, Whitton, Hounslow TW3 2JP ("the Property").
2. The order shall continue for a period of two years from 1 April 2021. Any application for an extension must be made prior to the expiry of that period. If such an application is made in time, then the appointment will continue until that application has been finally determined.

3. The Manager shall manage the Property in accordance with:
 - (a) The directions and schedule of functions and services attached to this order;
 - (b) The respective obligations of the landlord and the leases by which the flats at the Property are demised by the Respondent and 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.
4. The Manager shall register the order against the landlord's registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.
5. An order shall be made under section 20C Landlord and Tenant Act 1985 that the Respondent's costs before the Tribunal shall not be added to the service charges.
6. The leaseholder shall, within 28 days, or such additional time as the Manager agrees, pay to the Manager the sum of £500 to go against the costs of a condition survey and on account of her fees for the first year. This sum will be credited to the respective service charge accounts of the leaseholders.

Name: Tribunal Judge Dutton **Date:** 19 March 2021

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 she 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 1 April 2021 become rights and liabilities of the Manager.
4. The Manager shall account forthwith to the Respondent for the payment of ground rent received by her and shall apply the remaining amounts received by her (other than those representing her 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 31 March 2022, 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. The ground rent recovered shall be credited to the respondent on an annual basis
- (iii) Instruct solicitors to recover unpaid rents and service charges and any other monies due to the Respondent.
- (iv) 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.
- (iv) To arrange as soon as possible a condition survey and ensure that all fire, health and safety and electrical condition reports are up to date.

Fees

- (i) Fees for the abovementioned management services will be a basic fee of £250 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 10% of the cost, subject to a lower fee if the overall costs are to exceed £50,000 excluding 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) No VAT is presently payable on the fees quoted above. The fees are fixed for the two year period of the management order
- (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.