



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

Case reference : **LON/00AP/LVM/2022/0012**

Property : **32 Princes Avenue, London N10 3LR**

Applicants : **Iain Sheridan
Anita Sheridan**

Respondents : **(1) Phyllis Kursun (nee Filiz Civale)
(2) Jim Thornton**

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

Tribunal : **Judge Nicol
Mr T Sennett FCIEH
Mr JE Francis**

Date of decision : **11th October 2022**

DECISION

(1) In accordance with section 24(9) Landlord and Tenant Act 1987, the management order appointing Mr Jim Thornton MA CEng MICE MCioB MIRPM as the manager of the property at 32 Princes Avenue, London N10 3LR made by the Tribunal on 16th January 2020, and extended by further order made on 30th November 2021, is hereby further extended until 1st October 2024 on the same terms.

(2) The parties remain at liberty to apply to extend the order further.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The subject property is a 3-storey semi-detached property containing 6 flats. The Applicants are the lessees of Flats 5 and 6 and have lived at the property for most of the last 25 years. The First Respondent is the freeholder. She also either owns or manages on behalf of the owner, Mr Kyrikos Yorke, the other 4 flats which she occupies or lets out.

2. On 16th January 2020 the Tribunal appointed the Second Respondent to be the manager of the subject property in place of the First Respondent. The management order was for 2 years. The Tribunal stated that the First Respondent had insufficient knowledge of both the Landlord and Tenant Acts 1985 and 1987 to enable her to manage the property properly. The exterior had not changed since last viewed in 2017 and the interior had only been attended to since the appointment application had been made. Further, there had been a lack of service charge accounts.
3. On 30th November 2021 the Tribunal extended Mr Thornton's appointment until 9th October 2022. Amongst other matters, the Tribunal noted that the First Respondent now accepts that she requires professional assistance with managing the property and, when the management order comes to an end, she would instruct managing agents. The First Respondent also agreed to pay to the Second Respondent £7,000 by the end of January 2022.
4. The Applicants have now applied for a further extension of the appointment. The Tribunal's decision of 16th January 2020 provided that, if such an application were made in time, the appointment would continue until that application had been finally determined.
5. The application was heard on 2nd September 2022. The attendees were:
 - The Applicants;
 - Mr Nigel Woodhouse, counsel for the First Respondent;
 - Mr Satbir Singh Choudry, solicitor for the First Respondent; and
 - The Second Respondent.
6. The documents before the Tribunal consisted of:
 - An unindexed bundle of 52 pages from the Applicants;
 - An additional witness statement dated 24th August 2022, also from the Applicants;
 - A witness statement, also dated 24th August 2022, from the First Respondent; and
 - A two-part bundle, with a covering letter, totalling 215 pages, from the Second Respondent
7. The First Respondent had told the other parties that she intended to appoint Mr Daniel Green to manage the property. The Second Respondent familiarised himself with Mr Green's business and discussed the future management of the property with him. They reached a point where the Second Respondent would have been content to give up his appointment so that Mr Green could take over management.
8. However, the First Respondent then changed her mind and decided not to appoint Mr Green, although she still intends to appoint someone when her responsibility for managing the property resumes. In the circumstances, both the Applicants and the Second Respondent sought

an extension of the management order while the First Respondent argued that it should just be allowed to expire as currently scheduled.

9. The Second Respondent has encountered a number of difficulties in managing the property. Both the First Respondent and the Applicants have addressed matters in correspondence and in witness statements in emotional and sometimes aggressive language. Their relationship had been noted previously as having broken down and there does not appear to have been any improvement.
10. The Tribunal previously recommended that the Second Respondent could “show the ropes” to the First Respondent so that she would be better equipped for management in future. The last Tribunal withdrew this but it seems to have resulted in some blurring of responsibilities. The First Respondent appears to have taken it on herself to carry out some works, for which she expects to be paid, and has sought to involve herself in insurance claims. So long as there is a Tribunal-appointed manager, this is inappropriate. It is good practice for a manager to maintain good communications with lessees and others interested in the property they are managing but the manager should be the one making all the decisions and implementing any work required.
11. The First Respondent has not paid the service charges sought by the Second Respondent. Neither has she paid the £7,000 she promised the previous Tribunal she would pay. Naturally enough, the Second Respondent wants to be sure he is going to be paid. He proposed that the rental income from the flats owned or managed by the First Respondent should be diverted to him. However, in the Tribunal’s opinion, this would over-reach the Tribunal’s power to appoint a manager. The Tribunal told the First Respondent that they could only make such a direction with clear authority for the existence of such a power. He was unable to point to any such authority.
12. In the event of any problems with managing a property during the period of a Tribunal appointment, the first place for all parties to look is the management order. Such an order is intended as a comprehensive statement of the manager’s powers and, if it is deficient in any way, it is open to the manager to revert to the Tribunal for further guidance or an amendment of the order. The order in this case already contains powers to use legal process to recover unpaid service charges. It is understandable if the Second Respondent regards litigation as a last resort due to the time, effort and cost involved but sometimes it is necessary to go to the last resort. The Second Respondent should not be reluctant to use the powers given to him when it is required.
13. The First Respondent must understand her role. It is not to try to correct for any perceived problems with the Second Respondent’s management. She must understand that as long as she refuses to pay her service charges and allow the Second Respondent to get on with management, then the Tribunal will be reluctant to allow the management order to be discharged. If she, or any other party, has a problem with any actions by

the manager, the first resort is to try to talk it over in good faith and in moderate language. If that does not work, an application may be made to the Tribunal specifying exactly what is wanted and why.

14. The Second Respondent believes there are several issues that remain to be settled, including:
 - (a) Closing the accounts and settling the balance sheet as at 1st April 2022;
 - (b) Certainty about payment of service charges – if he can be put into funds, he can complete the work identified in a recent fire risk assessment; and
 - (c) The budget for 2022-23.
15. He believes that one year should be sufficient time to wrap these matters up and he would be willing to give his appointment up early if that were to happen. However, his experience suggests that a longer period might be required and so he sought an extension to 1st October 2024.
16. In the circumstances, the Tribunal is more than satisfied that it is just and equitable to grant the application and extend the management order.
17. The Second Respondent sought a direction that his costs may be included in the amounts payable by the other parties. This is unnecessary since that is already addressed in the management order. However, his schedule of costs provided to the Tribunal included an amount for a period before his appointment. This is not covered by the management order and is not recoverable.

Name: Judge Nicol

Date: 11th October 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).

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 24

- (1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies--
 - (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver, or both, as the tribunal thinks fit.
- (2) The appropriate tribunal may only make an order under this section in the following circumstances, namely--
 - (a) where the tribunal is satisfied--
 - (i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii) . . .
 - (iii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ab) where the tribunal is satisfied--
 - (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (aba) where the tribunal is satisfied--
 - (i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (abb) where the tribunal is satisfied--
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
 - (ac) where the tribunal is satisfied--
 - (i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;

or

- (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person—

- (a) on whom a notice has been served under section 22, or
- (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable—

- (a) if the amount is unreasonable having regard to the items for which it is payable,
- (b) if the items for which it is payable are of an unnecessarily high standard, or
- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to—

- (a) such matters relating to the exercise by the manager of his functions under the order, and
 - (b) such incidental or ancillary matters,
- as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide—

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
- (d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

- (6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.
- (7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding—
 - (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
 - (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).
- (8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.
- (9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
- (9A) The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is 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.
- (10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.
- (11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.