



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

Case Reference : **LON/00AP/LAM/2022/0001**

Property : **38 Stanhope Road, London N6 5NG**

Applicant : **Stephanie Annie Catherine Hacker**

Representative : **Mr Adrian Carr, counsel**

Respondent : **Stanhope.38 Limited**

Representative : **Mr Huddlestone**

Tribunal members : **Judge Tagliavini
Mr C Gowman BSc
Ms J Dalal**

Place and date of hearing : **10 Alfred Place, London EC1 7LR
13 April 2022**

Date of decision : **10 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio/video hearing which has not been objected to by the parties. The form of remote hearing was V:VIDEOREMOTE. A face-to-face hearing was not held because no-one requested the same, or it was not practicable, and all issues could be determined in a remote hearing. The documents the tribunal were referred to are in three bundles of 1568, 149 and 510 pages, the contents of which have been considered. The order made is described at the end of these reasons.

The tribunal's summary decision

- (1) The tribunal appoints Ms Alison Mooney of Westbury Residential as the manager of premises situate at 38 Stanhope Road, London N6 5GN from the date of this decision until 24 March 2025 (or such date as represents the end of the service charge year in 2025 (if different) in accordance with the terms of the Management Order attached.
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The application

1. This is an Application made pursuant to s.24 of the Landlord and Tenant Act 1987 ('the 1987 Act') seeking the appointment of a manager for premises known as 38 Stanhope Road, London N6 5NG ('the premises'). The premises comprise a semi-detached house containing Flats A (basement flat with garden), B (flat on ground and lower ground floor with garden), C (first and second floor maisonette) and D (first and second floor maisonette). Each of the leases to the four flats have been extended to 999-year terms.
2. The applicant seeks the appointment of Ms Alison Mooney on the grounds set out in the section 22 Notice dated 2 December 2021. This alleged (i) numerous breaches of the lease by the respondent; (ii) the proposal by the respondent for the payment of unreasonable service charges; (iii) breaches of the RICS management code (3rd edition) and (iv) the existence of other circumstances that make it just and reasonable for a manager to be appointed.
3. The respondent accepted in principle (subject to the issue of the validity of the section 22 Notice), that a manager should be appointed pursuant to s. 24(2)(b) of the 1987 Act and proposed Mr Martin Kingsley of K&M Property Management Ltd as the appropriate person to be appointed by the tribunal.

The hearing – A preliminary issue

4. As the respondent contested the validity of the section 22 Notice on the grounds that it had not been validly served. It was asserted that service by post to the premises addressed to the respondent only, was insufficient for the Notice to

have been brought to the attention of any of the directors of the respondent company.

5. Mr Huddleston told the tribunal that as he had been away from the premises, the section 22 Notice did not come to his attention until after his return on 4 January 2021 when he received notification on 29 January 2021 from the tribunal of this application. Mr Huddleston stated that he would have expected the letter containing the Notice to have been addressed to individual directors, although accepted that had he seen the Notice on the table in the communal hallway he would have picked it up and opened it as could any of the other directors. Mr Huddleston also asserted that the applicant knew the Notice had not been opened by anyone, as it left in the communal hallway and chose to issue this application anyway.
6. Mr Huddleston also challenged the validity of the Notice on the basis that the time scale for rectification of the items specified in the Notice was too short and that the matters complained of could not have been remedied within the specified timescale.
7. Mr Carr for the applicant submitted that it was for the directors of the respondent company to ensure there were proper procedures in place to deal with letters and Notices sent to the company. In this instance it was proper procedure to send the Notice by first class post to the premises addressed to the respondent company.
8. Mr Carr also asserted that the time specified in the Notice to rectify certain items did not invalidate the Notice itself, at the highest, the time specified or lack of it, only went to that particular item and did not invalidate the whole of the Notice. In any event many of the acts required to be carried out were sequential in nature and therefore the time allowed was sufficiently long for the items specified to be remedied.

Preliminary issue – the tribunal’s decision

9. The tribunal is satisfied that the section 22 Notice was validly served having been sent by first class post to the respondent company at the subject premises. The tribunal finds that it is for the respondent to ensure that proper procedures are in place for dealing with all correspondence, including this Notice at all times and even during periods of a director’s absence.
10. The tribunal also finds that the Notice was not invalidated, either in whole or in part by the time periods specified for the carrying out of remedial action by the respondent.

The manager

11. After the determination of the preliminary issue the respondent conceded it was appropriate to appoint a manager under s.24(2)(b) of the 1997 Act. The tribunal was also satisfied, having had regard to extensive documentation provided by both parties, that it was appropriate for a manager to be appointed under s.24(2)(b) of the 1987 Act. Therefore, the only issue remaining in dispute

between the parties was the identity of the manager and the terms of the Management Order.

12. The tribunal heard oral evidence from both proposed managers and were provided with statements of their respective qualifications and experience as well as proposed terms of appointment in their respective Management Plans and the respondent's draft Management Order

The tribunal's decision

13. On 21 April 2022 and after the conclusion of the hearing, both parties sent uninvited, into the tribunal opposing proposed Management Orders. As the terms of the Management Order had not been agreed by the parties and neither the parties or the tribunal had the opportunity to ask questions of the other about its terms, the tribunal disregarded this evidence and relied only upon the documentary evidence provided and the oral evidence given at the hearing of the application.
14. The tribunal finds both proposed managers to be qualified and highly experienced, with both having been appointed on numerous occasions by the tribunal as managers. However, in this instance the tribunal preferred the more detailed evidence and approach of Ms Mooney set out in her Management Plan dated 22 February 2022, to that of Mr Kingsley who spoke to his witness statement dated 21 March 2022 but appeared unfamiliar in parts with the draft Management Order the respondent relied upon and accepted he had 'Not studied it in detail.' In contrast, Ms Mooney in her evidence expressly approved the terms of the draft Management Order relied upon by the applicant which omitted any reference to the involvement or approval of the directors of the respondent company having to be sought.
15. Therefore, in the circumstances, the tribunal finds Ms Mooney to be the appropriate person to be appointed as manager of the subject premises.
16. In considering the appropriate terms to be included in the Management Order, the tribunal had regard to the drafts of both parties submitted within their respective bundles. The tribunal finds that a number of the provisions included in the respondent's draft to be inappropriate, as a number of them included the requirement of the appointed manager to consult with the respondent Company directors before taking to take various actions in the management of the subject property.
17. The tribunal determined that these clauses would have the effect of limiting the Manager's independence and objectivity as a tribunal appointed manager. As the grounds for making this application substantially concerned the alleged failures to carry out repairs and other works, the tribunal drew up the Management Order to reflect these concerns.
18. The tribunal directs that Ms Alison Mooney is appointed as manager of the subject premises under the terms of the Management Order attached to this decision.

Section 20C

19. The applicant made an application under section 20C of the Landlord and Tenant Act 1985 in order that the respondent's costs of this application should not be added to the service charges. The respondent opposed this order.
20. The tribunal declines to make an order under section 20C. The tribunal finds that as a tenant owned respondent company the benefit and costs of the application to appoint a manager should be shared equally among the lessees.

Name: Judge Tagliavini

Date: 10 May 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).