



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

Case reference : **CAM/00ME/LAM/2023/0004**

Property : **Convent Court, Hatch Lane,
Windsor SL4 3QR**

Applicant : **Dr Violet Leavers and others**

Respondents : **1. Salters Investments Ltd
2. Freehold Prime Investments Ltd**

Representative : **Stephen Willmer, Counsel**

Type of application : **Appointment of Manager**

Tribunal members : **Judge K. Saward
Mrs M. Hardman FRICS IRRV
(Hons)**

Date of hearing : **20 January 2025**

Date of decision : **27 January 2025**

DECISION AND REASONS

Decisions of the Tribunal

1. The Management Order dated 28 May 2024 (and varied on 9 September 2024) is further varied at paragraph 8(1) so as to permit the Manager to demand in writing from each of the Tenant's a preliminary payment of up to £3,500.00, of which sum £500.00 is to be allocated to the fees of the Manager and Cleaver Property Management Limited incurred in carrying out the terms of the Order.
2. The Tribunal directs the Manager to apportion the service charges for Flats 98, 99 and 100 in accordance with their square footage. For these purposes, Flat 98 is 356 square feet, Flat 99 is 364 square feet and Flat 100 is 507 square feet. Notwithstanding that the Tribunal makes no decision on liability (being outside the scope of this decision) the apportionment for Flats 98, 99 and 100 is to be applied with effect from 13 April 2022, and any necessary adjustments to the service charges be made accordingly.
3. The Manager should exercise her own judgement over the number of flats within the Property that the service charges are to be apportioned to.
4. The Tribunal directs the Manager to proceed to raise service charges for 2023 and 2024 based upon the information provided, albeit incomplete.
5. The Tribunal directs the Respondents to provide the appointed Manager with information on the source of energy supply to Flat 100 within 14 days of the date of this Decision.

REASONS

Background

6. By a Decision dated 28 May 2024, the Tribunal appointed Sarah Cleaver of Cleaver Property Management Limited ("CPM") as manager of the property at Convent Court, Hatch Lane, Windsor ("the Property") for an initial period of 2 years. The appointment was made under section 24(1) Landlord and Tenant Act 1987 and followed an application made by Dr Leavers and other leaseholders at the Property.
7. The Property is a former convent converted into a residential development between 2001 and 2007 and let on long leases. On 1 January 2007 CPM became managing agents until the appointment was terminated on 21 June 2023. HLM Property Management ('HLM') were subsequently appointed managing agents with effect from 18 September 2023. They resigned on 14 April 2024.
8. As the appointed manager, Ms Cleaver must manage the Property in accordance with the Management Order appended to the Tribunal's Decision. The Management Order includes directions to the landlord,

Freehold Prime Investments Limited (or its successors), to comply with the terms of the Order.

9. Since appointment, Ms Cleaver contends that:-
 - (1) documents are outstanding from the landlord in breach of the direction at paragraph 37(1) of the Management Order requiring the transfer of “all accounts, books and records relating to the Property, including a complete record of all unpaid service charges”; and
 - (2) there is non-compliance with paragraph 35 of the Management Order, which directed the landlord to “give all reasonable assistance and co-operation to the Manager in pursuance of their functions, rights, duties and powers under this Order.”
10. Ms Cleaver has sought further directions from the Tribunal.
11. A remote case management hearing took place on 9 September 2024 whereupon the Tribunal varied paragraph 8(1) of the Management Order to permit the Manager to demand in writing from each tenant a preliminary payment of up to £2,000. At the same time, directions were issued in readiness for a remote hearing on 4 November 2024.
12. By agreement of all parties, the Manager was directed to provide a witness statement supporting the contention that the landlord has breached paragraph 37, including details of documents received and those not received. The Respondents were directed to provide a witness statement supporting their contention that paragraph 37(1) has not been breached. They were also directed to provide the percentage apportionment of maintenance expenses for all flats within the Property.
13. In furtherance of those directions, the Tribunal received a witness statement from Ms Cleaver dated 23 September 2024 and a witness statement dated 24 October 2024 from Nadeem Naz, who identified himself as a director of the First Respondent with authority to make the statement for both Respondents.
14. The hearing scheduled for 4 November 2024 was opened and adjourned that day without evidence being heard. Case management directions were issued on 8 November 2024. Pursuant to those directions, Ms Cleaver submitted a further witness statement erroneously dated 22 October 2024 instead of 22 November 2024. The Respondents’ response dated 23 December 2024 is signed by their Solicitors.
15. Dr Leavers also provided a witness statement dated 3 December 2024 along with another statement submitted on 7 January 2025 responding to the Respondents’ Solicitors.

16. Following the adjourned hearing on 4 November 2024, the Tribunal wrote to HLM on 18 November 2024 forewarning that the Tribunal was minded to make a direction adding HLM as a party to these proceedings. Anticipating this may be unnecessary, the Tribunal firstly directed HLM, under Rule 6(3)(d) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the 2013 Rules”), to complete a schedule of documents which Ms Cleaver had stated to be critical or high priority. The deadline for return of the completed schedule to the Tribunal (with copy to the parties) was 2 December 2024. The completed table was returned by HLM with copies of documents within their possession, albeit not all the requested information. In the circumstances, it would serve no purpose to add HLM to the proceedings.

The hearing

17. The resumed hearing took place by Cloud Video Platform on 20 January 2025. Ms Cleaver was represented by her Solicitor, Cassandra Zanelli. Although Ms Cleaver was present, Ms Zanelli asked that Ms Cleaver be allowed to observe only due to illness. Dr Leavers attended and answered questions from the Tribunal.
18. Mr Stephen Willmer appeared for both Respondents. Mr Willmer indicated that he wished to call Mr Naz to give evidence and answer questions. Whilst Mr Naz was present for the start of the hearing, he disappeared early in the proceedings. When he re-joined by mobile phone, Mr Naz said he had a low battery. There was a lot of background noise and after briefly answering a question from the Tribunal, Mr Naz lost connection again. The Tribunal adjourned for a short period to allow Mr Naz opportunity to rejoin from a suitable location with reliable connection. Upon resumption, Mr Willmer advised that Mr Naz did not think that he would participate further. There was no application for adjournment, and the hearing proceeded.
19. The procedure adopted by the Tribunal was to take the main issues identified in Ms Cleaver’s last witness statement as the framework for the hearing, namely;
 - (1) service charge apportionment;
 - (2) service charge billing;
 - (3) issues relating to time limits for service charge demands;
 - (4) utility billing;
 - (5) outstanding documentation; and
 - (6) application for further variation of the Management Order.
20. This decision follows the same approach. For the avoidance of doubt, issues concerning ground rent and whether the Respondents are owed

sums for buildings insurance are not before this Tribunal. The scope of this decision arises from the Management Order made under section 24(4) of the 1987 Act and Ms Cleaver's application for further directions on matters relating to the exercise of her functions under the Order and incidental/ancillary matters.

Service charge apportionment

21. By the time of the hearing the Respondents had confirmed agreement, via their Solicitors, that the service charge be apportioned on the basis of square footage of the flats. This is reflected in how the leases are drawn. At the outset, Mr Willmer reaffirmed that the principle of apportionment is not in dispute.
22. Ms Cleaver seeks clarification on: (1) the number of flats that the service charge is to be apportioned between; and (2) the square footage for numbers 98, 99 and 100.

Number of flats

23. The issue over numbers arises because of the creation of 3 leases for numbers 98, 99 and 100, all dated 13 April 2022. Ms Cleaver thought there were 79 flats, there being 80 leases registered with HM Land Registry, one of which is for a chapel. The Respondents had stated there were 83 flats, but Mr Willmer said this was a typographical error and he was instructed there are 81 flats. Dr Leavers specified 78 flats because she believes numbers 10a and 100 are the same flat.
24. During Mr Naz's brief participation, he told the Tribunal that number 100 is the chapel. He disappeared before he could be questioned further on his answer which is wholly inconsistent with the response filed by the Respondents' Solicitors. It identifies numbers 98, 99 and 100 all as "the new flats". This appeared to correspond with Mr Willmer's instructions who explicitly referred to leases granted over 3 additional flats.
25. The Tribunal finds it extraordinary how it cannot be known how many flats there are within a building. It is a question of fact that the Tribunal cannot answer. The Tribunal has considered directing that the Respondents and Ms Cleaver attend the Property to count the flats, but it has concerns over further delays and whether the question would remain unresolved. Essentially, the Manager needs to make a decision on the information available.
26. The Tribunal notes that the Schedule prepared by Ms Cleaver appended to her last witness statement for January 2023 identifies 79 flats (including 10a) but omitting number 100. Mr Naz was not present to clarify whether number 100 replaced 10a, and Mr Willmer did not have instructions. Given these factors and there are 80 registered leases, the Tribunal suggests (as a steer to assist in the progression of this matter) that 80 flats would be a prudent number to apply at this time. If

challenged, any further evidence can be considered through the process under section 27A of the Landlord and Tenant Act 1985.

Floorspace

27. None of the figures put forward for the square footage of numbers 98, 99 or 100 correspond. The information provided by the Respondents Solicitors is that: *"The square footage of flat 98 is 409 square feet; flat 99 is 376 square feet; and flat 100 is 430 square feet."* This is not within a witness statement, a representative being unable to provide a witness statement under Rule 14(3)(a) of the 2013 Rules. Mr Willmer acknowledged that unless Mr Naz was cross-examined, the stated figures could only be taken as a "bare assertion". The Tribunal has no information at all on how the figures were calculated.
28. As it so happened, Mr Willmer was able to obtain instructions from Mr Naz during the adjournment on this one item to accept the figures quoted by Ms Cleaver from Foxtons letting agents. The agents had advertised both Flats 98 and 99 as being 491 square feet. It does not necessarily follow that internal measurement were undertaken, and that cannot be assumed. It appears odd that both flats are given as the same size when the Respondents indicated a notable difference between the two flats. Flat 100 is not being advertised.
29. Dr Leavers questioned the accuracy of the Foxtons figures as Flats 98 and 99 are "very tiny" and created from what was once a corridor. Dr Leavers stated that she had asked a Valuer to scale off the drawings obtained from HM Land Registry. The resultant figures were: 356 square feet for Flat 98, 364 square feet for Flat 99, and 507 square feet for Flat 100. From the Tribunal's own observations, they are not "abstract calculations" as Mr Willmer put it. The figures appear realistic.
30. The Tribunal is unattracted to the request for directions that a suitably qualified person inspects Flats 98, 99 and 100 for a measuring survey. As Dr Leavers pointed out, this will cause more delay. It would not be a proportionate response. There are copy leases for the three flats with scaled drawings registered at HM Land Registry from which a reasonably accurate calculation should be capable of being made. Indeed, utilising scaled drawings is not an unusual approach.
31. Based on the scaled drawings, the Tribunal considers the figures cited by Dr Leavers to be the most credible and those that should be applied.

Service charge billing

32. The Tribunal is invited to confirm how far Ms Cleaver is backdating service charges. Whether it is to the date of her appointment or earlier. The Tribunal queried why the question was being asked. In response both Ms Zanelli and Mr Willmer agreed that there is no reason in law why a Manager could not bill for charges prior to the date of

appointment. Of course, that is subject to statutory time restrictions to which we return below.

33. The Respondents' Solicitors had taken a jurisdictional point that the Tribunal could not give a direction on the First Respondent's liability to contribute towards service charges pre-dating the appointment of the Manager. Mr Willmer did not pursue this point acknowledging that "if a debt is owed, it's owed". However, the Tribunal clearly cannot pre-judge any future determination on the liability for service charges that would properly be made through an application under section 27A of the 1985 Act.
34. Nevertheless, Mr Willmer confirmed that service charge adjustments would be needed with effect from 13 April 2022, being the date of the new leases for the three flats.
35. It emerged that the Manager's concern stems from whether she could correct the billing from 13 April 2022, bearing in mind potential impacts from the statutory time constraints.
36. As the appointed Manager, Ms Cleaver should reapportion and make adjustments to reflect the creation of the new flats even if it transpires that such charges are not recoverable. We see no basis to disregard the 3 flats altogether from the calculations from 13 April 2022 if that is a source of uncertainty for the Manager.

Time limits on making demands

37. Under section 20B(1) of the Landlord and Tenant Act 1985 a tenant has no liability for any service charge incurred more than 18 months before a demand for payment of the service charge is served on them. Subsection (1) does not however apply if within the relevant period of 18 months beginning with the date that the costs are incurred, the tenant was notified in writing that the costs had been incurred and the tenant would subsequently be required to contribute (section 20B(2)).
38. Ms Zanelli accepted at the hearing that section 20B is a statutory provision over which the Tribunal has no discretion. There may be possibility of service charges being time barred from recovery with regard to Flats 98, 99 and 100, but that is not a matter this Tribunal can address as part of these proceedings.
39. Ms Zanelli explained that Ms Cleaver's concern arises from "a black hole" with two gaps in time not being accounted for when there was no Manager in place and no records. The Tribunal acknowledges that there have been various opportunities for the Respondents to provide documents to enable the Manager to fulfil her functions under the Management Order. Directions to produce all requested documents have not been complied with. There are currently no accounts for 2023 and 2024 due to incomplete records.

40. The expectation of the Tribunal is that Ms Cleaver now proceeds to levy service charges on the financial information that has been provided, albeit still incomplete. Where there are periods without any records, the Tribunal recognises that Ms Cleaver would be unable to collect service charges through no fault of her own.

Utility billing

41. The Respondents have confirmed that Flats 98 and 99 have their own metered electricity supply with payment being made directly to the utility provider. Therefore, the issue of back-billing for utilities from 13 April 2022 does not apply to these two flats.
42. The Respondents say there is no meter currently installed at Flat 100 as it is not yet occupied. This response has not reassured Ms Cleaver because works have been in progress at Flat 100 for which it is believed tradespersons would need an electricity supply. The concern is that the communal supply has been used.
43. Mr Willmer accepted that the Respondents' written response did not address the point. It was agreed that if the Tribunal was minded to make an order then the Respondents be directed to supply details of the source of energy supply for Flat 100. This would not cause delay in raising service charges as utilities are billed separately under the lease.
44. As Mr Naz was not present to provide an explanation, the Tribunal shall direct the production of further information on the energy supply for Flat 100. If the communal supply has been utilised, then the Manager will need to exercise reasonable judgement on the effect upon billing.

Outstanding documentation

45. From the undisputed chronology, there were two periods when there were no managing agents appointed. There are gaps in records when the First Respondent self-managed the Property between 21 June 2023 to 17 September 2023 and also from 14 April 2024 to 27 May 2024.
46. Despite Ms Cleaver's repeated requests, and the Tribunal Directions, the Respondents have failed to produce all the financial information requested to levy service charges for the accounting periods of 2023 and 2024. Whilst HLM provided information from their short period of management, including a hand-over pack, the schedule records that the year end accounts for 2023 could not be produced because "there was not enough information for the accountants to produce."
47. Ms Zanelli explained, and Mr Willmer agreed, that the Respondents have had plenty of opportunity to address the requirements and there is a knock-on effect in being able to enforce liability for service charges.
48. The Tribunal cannot provide the "note of comfort" sought by Ms Cleaver in the event of a counterclaim or offset.

49. However, the Tribunal notes that the Second Respondent, as named landlord within the Management Order, has neither provided all the information directed by paragraph 37(1) thereof, nor given all reasonable assistance and co-operation to the Manager as directed by paragraph 35. Furthermore, the Tribunal has not been assisted by the lack of participation by Mr Naz at the hearing.
50. The conduct of the Respondents has led to a situation whereby the Manager can only raise service charges for 2023 and 2024 based upon the information provided.

The Management Order

51. Paragraph 8(1) of the Management Order was previously varied by the Tribunal to increase the preliminary payment that the Manager may demand of each tenant from £1,000 to £2,000. Ms Cleaver requests a further increase to £3,500.
52. The Tribunal is sympathetic to the impact upon tenants as relayed by Dr Leavers, and the effect upon those with smaller flats. By the same token, the transition has not been straightforward as evident from these proceedings. After giving the matter very careful consideration, the Tribunal has decided to exercise its discretion under section 24(9) of the 1987 Act to vary the Management Order by increasing the preliminary payment to £3,500, of which £500 is to be allocated to the Manager's and CPM's fees.
53. In reaching this view, the Tribunal is satisfied, in accordance with section 24(9A), that the variation will not result in a recurrence of the circumstances leading to the order being made, and that it is just and convenient in all the circumstances of this case to vary the Order.
54. Towards the end of the hearing Ms Zanelli sought a further variation to the Management Order in the 'Schedule of Additional Fees'. This had not been mooted before and would come as a surprise to the parties. It raised a clear point of procedural fairness with the Applicants, in particular, unable to prepare a response. Accordingly, no variation is made in this regard.

Name: Judge K. Seward

Date: 27 January 2025

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).