



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

Case Reference : **MAN/36UG/LVM/2024/0001**

Property : **Kirbys Flats, East Terrace, Whitby, North
Yorkshire YO21 3HB**

Applicant : **Mrs. R Abel**

Respondents : **(1) Kirbys (Whitby) Limited (KWL)
(2) Various Long Leaseholders**

Type of Application : **1. Application under section 24(9) of
the Landlord and Tenant Act 1987 to
discharge a management order**

Tribunal Members : **Regional Surveyor N. Walsh
Judge J. Holbrook**

Hearing Date & Venue : **12 July 2024 – Remote Video Hearing**

Date of Decision : **15 July 2024**

DECISION

DECISION

The Tribunal considers it just and convenient to discharge Mrs Abel as the Tribunal appointed manager with effect from 12 August 2024, subject to the following conditions:

- (1) That Mrs Abel prepare closing service charge accounts as at the date of discharge and send copies to KWL and individual leaseholders by 19 August 2024.**
- (2) That Mrs Abel transfers on 12 August 2024 all remaining service charge monies and reserve funds to the account(s) nominated by KWL to hold monies on trust for the leaseholders.**
- (3) That Mrs Abel provides details to KWL of all ongoing contracts which have not been terminated prior to the hand-over date.**
- (4) Mrs Abel must answer any queries from KWL or individual leaseholders concerning the accounts or monies transferred within 21 days.**

Background

1. The Tribunal received an application dated 5 April 2024 from the current Tribunal appointed manager, Mrs Rosalie Abel, of Kirbys Flats, East Terrrace, Whitby, North Yorkshire YO21 3HB (the Property) seeking to be discharged from the role with immediate effect. Despite her appointment having only relatively recently been extended at a hearing on 31 October 2022, Mrs Abel considers that she is now unable to continue in the role of manager for health reasons.
2. Mrs Abel's application is not opposed by any leaseholders. The leaseholder owned management company, KWL, is supportive of the application and is keen to regain management control of the building. At a leaseholder meeting on 13 April 2024 approximately 75% of the leaseholders supported KWL regaining responsibility for managing the Property and also appointing a professional management agent, Mr Liam Parker of Pure Block Management. Ms Middleton, the leaseholder of flat 15, opposed the Tribunal discharging the Management Order and the Tribunal relinquishing management control to KWL, while not opposing Mrs Abel's application to be discharged personally.

2. Mrs Abel provided the Tribunal with a short update report prior to the Tribunal and written representations were also received from a number of Leaseholders and KWL.

The Statutory Framework

3. These applications are made pursuant to s.24(9) of the 1987 Act which provides that:
 - (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.

Hearing, submissions and evidence

4. The Tribunal is grateful to the Applicant, Mrs Abel, and for the leaseholders who attended the video hearing which included Mr E. Neville, Ms Middleton accompanied by Mr Mark White, Mrs Sarah Price by telephone, and Mr and Mrs Carmichael.
5. The Tribunal outlined that it considered the appointment of a Tribunal manager to be a step of last resort and the Tribunal's preference is always for a Property to be managed in accordance with the terms of the Leases whenever possible. Clearly when the Tribunal previously appointed Mrs Abel, it did not consider that it was appropriate to do so. The Tribunal advised the parties that absent an application to appoint a replacement manager, the decision for the Tribunal on the application before it was a binary one. Namely, to discharge Mrs Abel or not.
6. The Tribunal is grateful to Mrs Abel for her attendance and work in undertaking this challenging role, and particularly for her attendance at the hearing to explain the background to her application and to advise as to the current situation at the Property. Mrs Abel outlined that as a sole practitioner she had engaged the services of Sanderson Weatherall to prepare a tender exercise for the phase 2 works, which comprised
 - window and door refurbishment/replacement

- installation of a secure bin store
 - siting of CCTV cameras and satellite dish and redesign of rear porches
 - refurbishment of ground floor railings, basement access steps and ground/basement, external decoration, balcony repairs and railing refurbishment
 - front and gable render repairs, rear re-pointing and weatherproofing by means of external redecoration.
7. Mrs Abel advised that given the very significant building price inflation experienced over the last couple of years, the estimated tender prices significantly exceeded the provisional estimates provided to leaseholders and that this caused considerable distrust between her and the leaseholders. Despite offering to hold individual and 'town hall' style meetings with leaseholders, Mrs Abel was unable to garner the necessary support and monies from leaseholders. Mrs Abel outlined that the stress and strain of managing such a challenging situation has taken its toll on her health and well-being. Mrs Abel considered that the position had reached an impasse and that she is unable to continue in the role because of the impact that the stress is having upon her. She also felt unable to secure the funds from leaseholders to proceed with the works.
 8. Mrs Abel confirmed that Sanderson Weatherall had been paid £22,785 for their work in connection with the tendering exercise. This contract was now completed, it was stand alone and finished and that there were no further monies due. All the other remaining contracts were standard day to day maintenance contracts, such as cleaning, which could be brought to an end upon either party giving a months' notice.
 9. Mr Neville, who as chairman of KWL was the spokesperson for many of the leaseholders, provided his understanding of developments since the last Tribunal hearing. He advised that he had seen a significant and marked change at the development. He outlined that the position at Kirby Flats had changed markedly over the last two years since he took over as chairman of the leaseholder management company. Over 75% of the leaseholders were now in agreement as to the next steps required in respect of the proposed refurbishment works. Mr Neville stated that KWL was better organised and was being run on a more professional footing. It now had a chairman, a secretary and agreement to appoint a professional management agent, Mr Liam Parker of Pure Block Management.
 10. Mr Neville claimed that KWL was now working in a coordinated and effective fashion. He advised that it had held a number of meetings with Sanderson Weatheralls to address concerns over the window designs and drawings, and its member were completely committed to upgrading and improving the Property. It had devised a plan to phase the works required into urgent and non-urgent works, should it be successful in regaining the responsibility for managing the Property. It had made a planning application for the windows and proposed to replace the windows in 9 flats working in conjunction with the local conservation officer on this and in respect of the other urgent works, which included the railings and porches.

11. Mr Neville concluded by stating that KWL was now in a strong position to manage the building and to oversee the works required, having secured the support of the majority of the Leaseholders.
12. Ms Middleton advised the Tribunal that she still had significant concerns about KWL's ability to address the works required, and considered the building to be in crisis which required the oversight of a Tribunal Management Order to ensure that the necessary works were completed. Ms Middleton did not doubt that the members of KWL and Leaseholders were well meaning but she did not believe they were committed to providing the funding required to do the works needed. Ms Middleton wished the application to be adjourned and for the Tribunal to find and appoint a suitable replacement manager. Ms Middleton advised that Mr Neville had previously stated to her that Mr Parker would be willing to act in this capacity.
13. The Tribunal also heard helpful contributions from Mr and Mrs Carmichael and Mrs Price, who endorsed Mr Neville's comments. They outlined that they did not consider the building to be at a crisis point and that the leaseholders had the will, commitment, and the individual funds to complete the works in a reasonable timescale.

Conclusion

14. The Tribunal was conscious of the health impacts that this matter was having upon Mrs Abel and that all parties were anxious for certainty and a determination of the application as soon as possible. Accordingly, the Tribunal adjourned for fifteen minutes to deliberate and to see if it was possible to provide the parties with an oral determination, which would then be confirmed in writing at a later date.
15. Having conferred the Tribunal reconvened and confirmed orally that it did consider it just and convenient to discharge Mrs Abel from the role with effect from 12 August 2024. The Tribunal explained that the health impacts that the role was having upon Mrs Abel meant that she could not undertake this role effectively long term and it was therefore untenable for her to remain in this position. A discharge date of 12 August 2024 would allow Mrs Abel and KWL to prepare for an orderly transfer and to take the necessary steps to ensure same, such as preparing closing accounts and KWL formally engage and instruct Mr Parker as KWL's management agent.
16. The Tribunal outlined that the Property had been subject to a Tribunal appointed manager for some eight and half years and that while some important work had been completed in that time, such as the roof repairs, we did not consider the Property to be in crisis today. KWL is now organised in a more structured way, has filled key posts and secured the support of the majority of the leaseholders. Importantly, KWL has agreed to appoint a professional managing agent, having undertaken a selection exercise and interviewed three different potential firms. We do not consider it likely that discharging Mrs Abel and the Management Order will result in the re-occurrence of the circumstances which led to the order being made previously.

17. It seems to the Tribunal that KWL are now in a much stronger position to resume the management of the Property, with professional assistance in place, and should be given the opportunity to do so. Mrs Abel is clearly unable to do so for health reasons and no alternative manager has been proffered. It is also a good time, given these changes in circumstances, to give KWL this opportunity. No building contracts have been entered into yet for the phase 2 works which allows KWL the opportunity to tender, phase and complete the work in consultation with the majority of the leaseholders wishes. It is worth stating for clarity however that having a professional manager appointed is not the same thing as having a Tribunal appointed manager. Any new manager shall be acting as the agent of and reporting to KWL.
18. The Tribunal urged all parties to take this opportunity to work together, constructively and with due consideration to the wishes and views of all leaseholders. We outlined that there was nothing preventing a leaseholder bring a fresh application to seek the appointment of another Tribunal appointed manager if the performance of KWL be regarded as being defective. However, the Tribunal cautioned against any such application being made prematurely and gave its steer that it would not consider it to be 'just and convenient' to appoint a manager without first giving KWL sufficient time and opportunity to manage the Property and to demonstrate whether it is indeed capable of managing the Property and overseeing the necessary refurbishment works.
19. The Tribunal's Management Order varied and dated 31 October 2022 is cancelled with effect from 12 August 2024, discharging Mr Abel on the following conditions:
- (1) That Mrs Abel prepare closing service charge accounts as at the date of discharge and send copies to KWL and individual leaseholders on the day of discharge.
 - (2) That Mrs Abel transfers on 12 August 2024 all remaining service charge monies and reserve funds to the account(s) nominated by KWL to hold monies on trust for the leaseholders.
 - (3) That Mrs Abel provides details to KWL of all ongoing contracts which have not been terminated prior to the hand-over date.
 - (4) Mrs Abel must answer any queries from KWL or individual leaseholders concerning the accounts or monies transferred within 21 days.

Niall Walsh
Regional Surveyor 15/7/2024