

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



Ss. 21-24 Landlord & Tenant Act 1987  
S. 20C Landlord & Tenant Act 1985

**DECISION AND REASONS**

**Case Number:** CHI/43UD/LAM/2010/0002

**Property:** Firfield Lodge  
17 Grove Road  
Guildford  
Surrey  
GU1 2HR

**Applicant:** Mr B Vorley

**Respondent:** Mrs J Wilkins

**In Attendance:** Mr A Russell (Gascoignes Chartered Surveyors)

**Date of Application:** 16 February 2010

**Date of Hearing:** 8 July 2010

**Tribunal Members:** Mr B H R Simms FRICS MCI Arb (Surveyor Chairman)  
Mr D Lintott FRICS (Surveyor Member)

**DECISION**

1. The Tribunal makes an order to appoint a Manager and Receiver in this case, namely Mr Andrew Russell BSc (Hons) MRICS of Gascoignes Chartered Surveyors, in accordance with the Management Order attached to this Decision.

## **BACKGROUND**

2. This is an application by Mr Vorley for the appointment of a Manager in respect of the property at Firfield Lodge in Guildford. Mr Vorley is the tenant of two long leasehold flats in the building, the remaining two flats being occupied by Mrs Wilkins the freeholder and her sons.
3. At the Hearing in July Mr Andrew Russell was nominated as a suitable person to be appointed as Manager in this case but he was unable to supply the Tribunal with sufficient information for it to properly consider a decision on whether or not to appoint him as Manager.
4. With the consent of the parties it was agreed that Mr Russell could supply further information to the Tribunal in writing and the parties were given an opportunity of commenting upon his proposals.
5. The Tribunal reconvened to consider the further information. This decision is based upon the evidence received at the oral hearing and the subsequent evidence available in writing.
6. The Tribunal did not inspect the property.

## **THE LAW**

7. The Tribunal's jurisdiction for the substantive issue derives from S.21-24 Landlord & Tenant Act 1987 as amended. There is a requirement that before an application for an order is made a preliminary notice is served in accordance with S.22. A Proper notice was served and is available to the Tribunal. S.24 provides that a Leasehold Valuation Tribunal may make an order regarding the management of the premises or the appointment of a receiver or both as the Tribunal thinks fit.
8. There is listed within S.24 specific obligations owed by the landlord to the tenant which if breached, and if the Tribunal is satisfied that it is just and convenient to do so, the order is to be made.

9. The Tribunal's jurisdiction in respect of costs derives from S.20C Landlord & Tenant act 1985 which provides that the Tribunal may make an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before it are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. The order may be made if the Tribunal considers it just and equitable in the circumstances to do so.

## **THE LEASES**

10. The Tribunal has a copy of the lease for both flats 3 and 3a which are drawn on similar terms.
11. In addition to the usual arrangements for payment of ground rent there is a specific provision for each lessee to pay one quarter of the insurance premium together with the payment of interest if payment is late.
12. There are the usual covenants for the lessee to maintain and decorate the interior of the demised premises in each case and to contribute one quarter of the costs and expenses incurred by the lessor in maintaining and repairing the building and common ways.
13. There is an arrangement for the managing agents for the lessor to estimate the annual contribution by each lessee and this is to be paid on 1 January in each year. As soon as possible after 31 December in each year, when the actual amount of the costs are known, there shall be balance paid or credited as the case may be. The managing agent's or an auditor's certificate shall be sufficient evidence of the amounts payable.
14. The lessors covenants are relatively straight forward and usual in that the lessor is responsible for insurance of the building, the maintenance repair and renewal of the main structure, service pipes, common areas, boundary fences and the garden area, with specific covenants to decorate the exterior of the building. The lessor is also required to supply to the lessee at least once in every calendar year a summary of the costs, expenses and outgoings and the account of the lessees liability or credit.

15. It was envisaged that there may be a delay in granting leases on the other flats in the building and at clause 5(c) the lease states:

*“That until such time as a lease similar in form to this Lease has been granted in respect of the other flats in the Building the Lessor will observe and perform covenants similar to the covenants contained in Clause 4 and the Second Schedule hereof in respect of the other flats”*

16. Clause 4 sets out the lessees obligations for repair and decoration and for the contribution to the maintenance charge. The Second Schedule relates to the use and enjoyment of the premises dealing with such things as playing of television and musical instruments and keeping pets etc.

17. Leases have not been granted on the other two flats.

#### **THE APPLICANT'S EVIDENCE**

18. Mr Vorley has owned flats 3 and 3a since 2006, since which time Mrs Wilkins has lived at 2 Firfield Lodge, and her sons at 4 Firfield Lodge the remaining two flats in the building.
19. Throughout Mr Vorley's period of ownership the lessor has failed to honour practically any of her obligations to the lessees. There has been no proper maintenance or service charge arrangements, demands, or accounts, and requests for documentation particularly a copy of the insurance policy have not been honoured.
20. As Mr Vorley was not satisfied that there was proper insurance on the property he had no alternative but to arrange for his own insurance in order to protect his properties.
21. Maintenance to the building has not been carried out and attempts to rectify the position have been obstructed. There has been no redecoration of either the interior common areas or the exterior of the building.

22. There has been no cleaning of any communal areas in any formal manner although it is accepted that on occasions Mrs Wilkins or her sons do carry out some cleaning. This is not to a satisfactory standard.
23. Lighting and power in the common ways is not separately wired or metered which means that Mr Vorley is responsible for the cost.
24. The garden has not been maintained.
25. Mr Vorley also considers that his right for peace and quiet enjoyment has been violated.
26. Substantial documentary evidence was produced in support of Mr Vorley's position and this was made available to the Tribunal in the form of a detailed bundle.
27. Following Mr Russell's written statement Mr Vorley confirmed that Mr Russell's terms were acceptable. He was concerned that the Respondent should be relieved of any responsibility of management and that she should co-operate in all respects with the new manager.

#### **THE RESPONDENT'S EVIDENCE**

28. Mrs Wilkins refuted Mr Vorley's suggestion that she had failed to provide information regarding the buildings insurance. Mrs Wilkins was able to produce a schedule from an insurance policy with cover with effect from 25 March 2010 but was unable to produce either to Mr Vorley or to the Tribunal any insurance arrangements prior to this date.
29. For some reason Mrs Wilkins seemed to be concerned that Mr Vorley had not provided her with details of his insurance.
30. Mrs Wilkins had sued Mr Vorley for non payment of monies but was unable to produce to Mr Vorley or to the Tribunal any of the statements of account, demands, or other documents, required by the lease in order to identify monies due.

31. Mrs Wilkins identified certainly anomalies in the insurance that Mr Vorley had obtained but did not provide information that she had the requisite insurance. Much of her statement and evidence related to Mr Vorley's failings rather than her assertion that she had the required insurance.
32. Regarding maintenance and repair Mrs Wilkins believed that the lease required Mr Vorley to submit funds in advance before she as landlord had any need to carry out work. She identified failures of Mr Vorley to conclude repairs that he had undertaken.
33. With regard to the cleaning of the common ways she asserts that this has been done by her and her sons. She does however complain that she has abuse from Mr Vorley's tenants and she stays away from the area.
34. The lighting in the hall is the same as it always has been although she states that the lights at the side of the house and the garage are from her electricity supply.
35. With regard to the garden maintenance Mrs Wilkins again states that unless she receives payment she does not consider that it is her duty to carry out the work. She does however do what she can.
36. In her written statement Mrs Wilkins provides some information in respect of monies spent, however, on questioning from the Tribunal and Mr Vorley, she admitted that she had never produced any annual accounts or proper demands.
37. The remainder of Mrs Wilkins' evidence relates to alleged damage caused by Mr Vorley or breaches of covenant by installing a satellite dish and other similar matters. She also asserts that because of Mr Vorley's wilful neglect there has been an escape of water into her flat caused by a lack of repair to his shower.
38. Following Mr Russell's submission Mrs Wilkins supplied a written statement, much of which related to evidence that she had given at the oral hearing.

The Chairman advised her that only those matters relating directly to Mr Russell's statement would be taken into account.

39. Mrs Wilkins was concerned that before any Manager was appointed there were numerous matters that need to be resolved. She objects to Mr Russell being appointed but offers no statement or reasons why this should be the case.
40. Mrs Wilkins considers that the proposed fees by Mr Russell are excessive but again supplies no evidence or suggestion as to what a reasonable fee might be.

#### **STATEMENT BY MR RUSSELL**

41. By a letter dated 2 August 2010 Mr Russell confirmed that he had inspected the property and would be willing to accept an appointment as Manager and Receiver, subject to confirmation from his insurers to which he did not anticipate any difficult issues.
42. He proposed an initial fee for setting up the management in the sum of £950 plus VAT particularly as there was no established management procedure, accounts, reserve fund, or any basis on which to initiate proper management.
43. The annual basic management fee would be a fixed charge of £1,500 plus VAT which would be renewed annually. Any additional comprehensive work, for example extensive roof works, would involve additional fees for administration of the work.

#### **CONSIDERATION**

44. Mr Vorley had clearly suffered continuing problems with the management of this building from the time that he purchased the flat to the present day. He had been unable to establish a working relationship with Mrs Wilkins and clearly communication between the two parties has broken down.

45. Mrs Wilkins was under the mistaken impression that she could ignore her responsibilities under the terms of the lease simply because Mr Vorley had failed to provide her with funds in advance. She has no concept of the application of the terms of the lease or her responsibilities in managing the building. This was apparent from her written statements and also from the detailed questioning by the Tribunal members during the course of the oral hearing.
46. This building urgently needs proper management which must be carried out in accordance with the terms of the lease.
47. The Tribunal has no hesitation in making the necessary Order.

#### **SECTION 20C**

48. The Applicant seeks a direction to the effect that no costs in these proceedings should be recoverable against him as part of the service charge.
49. The Tribunal considers that so far as the application for the appointment of a Manager is concerned the application was wrongly resisted and the Applicant has been successful in the application.
50. The Tribunal considers that it is appropriate to make, and does make, an ORDER under Section 20C of the Landlord & Tenant Act 1995 preventing the lessor from recovering costs incurred in connection with the proceedings before the Tribunal as part of the service charge.

2 September 2010

[signed Brandon H R Simms]

Brandon H R Simms FRICS MCI Arb  
Chairman



**MANAGEMENT ORDER****ORDER UNDER S.24 LANDLORD & TENANT ACT 1987**

1. The Tribunal appoints Mr Andrew Russell BSc (Hons) MRICS of Gascoignes Chartered Surveyors, 2 Gillingham House, Pannells Court, Guildford, Surrey GU1 4EU as Manager and Receiver of the premises known as Firfield Lodge, 17 Grove Road, Guildford, Surrey. With effect from 29 September 2010 for a period of 2 years or until further order.
2. The Manager shall manage the property in accordance with the terms of the leases and the RICS Service Charge Residential Management Code approved by the Secretary of State and all relevant legislation.
3. The Manager shall be entitled to remuneration as set out in his letter to the Tribunal dated 2 August 2010 (see attached). The initial fee is confirmed at £950 plus VAT with a basic annual management fee initially at £1,500 per annum plus VAT for the first year.
4. For the avoidance of doubt the Manager shall be entitled to appoint Gascoignes Chartered Surveyors or such other appropriate managing agent to assist him in so far as maybe necessary in the day to day management of the property.
5. The Manager shall be entitled in the course of carrying out his duties under this order to employ such accountants, solicitors, and other professional persons as he may deem fit in accordance with the terms of the leases in order to undertake such duties as are required by the leases.
6. Initially the Manager is to prepare a budget in accordance with clause 4(c)(ii) of the leases and shall be entitled to raise a demand immediately for any sums required for the remainder of the current financial year.
7. When preparing the budget and service charge account the Manager shall treat the lessor in the manner envisaged by clause 5(c) of the leases and

shall collect appropriate funds from the lessor into the service charge account as if the lessor were a lessee of the remaining two flats.

8. The Manager shall be entitled to prosecute such claims as are appropriate for the proper execution of his duties.
9. In the event of monies available in the service charge account or reserve fund being insufficient to enable the Manager to properly to discharge his duties and to manage the property he shall be entitled to borrow the necessary funds and to charge the costs including such borrowings to the service charge account.
10. Nothing in this order shall prevent a party from applying to the Leasehold Valuation Tribunal for a determination of payability and reasonableness under S.27A of the Landlord & Tenant Act 1985.
11. The Manager shall account to the freeholder with any ground rents collected in the course of his management of the building.
12. The Manager may apply for further directions in accordance with S.24(4) of the Landlord & Tenant Act 1987. The Tribunal reserves the right to vary suspend, or terminate this order,

2 September 2010

[signed Brandon H R Simms]

Brandon H R Simms (Chairman)

Attached – Letter Gascoignes dated 2 August 2010



Commercial Agents  
Surveyors and Valuers  
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2<sup>nd</sup> August 2010

Mr Anthony J Peach  
Case Officer  
Residential Property Tribunal Service  
1<sup>st</sup> Floor, 1 Market Avenue  
Chichester  
PO19 1JU

RPTS

SOUTHERN

Our ref: AR/LJI/FirfieldLodge

Dear Mr Peach

Premises: **Firfield Lodge 17 Grove Road Guildford Surrey GU1 2HR**  
Case No: **CH/43UD/LAM/2010/0002**

Thank you for your letter dated 26th July together with directions.

I can confirm that I have inspected the subject property and I am willing to accept an appointment as manager and receiver based upon the draft order and to manage the property in accordance with the terms of the leases, the RICS Service Charge Residential Management Code and relevant legislation thereto.

**Initial fee:**

I can confirm that our proposed fee tariff will take the form of an initial 'set-up' fee in the sum of £950.00. We further confirm that during the initial period, we will arrange for an inspection and survey at the property to address all items affecting Health & Safety such as fire procedures and so forth and will arrange for specialists to inspect the property whereby we will arrange for the implementation of works as directed. In this respect we should make the point that our initial 'set up' fee is clearly exclusive on any 'works' and hence additional costs that will apply to ensure that the property complies with current legislation and is presented in a manner that we consider appropriate for a property of this type and nature.

**Annual management fee:**

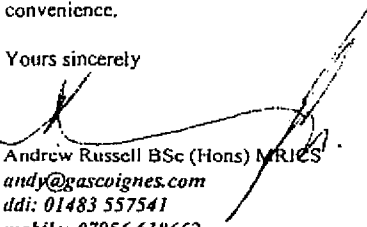
Our basic annual management fees will be levied by way of a fixed charge of £1,500.00 which will increase depending upon the extent of what is required in a given year. For instance if the property is due for a comprehensive works to the roof, this will involve site inspections, liaison with contractors and so forth and is clearly over and above what would be considered part of a normal management role.

Note: Our fees are exclusive of VAT where applicable and disbursements and will be subject to annual review.

We should also point out that we are still awaiting confirmation from our Insurers that we are able to take on the work described but broadly, we do not anticipate any issues in this respect.

Finally there may be a number of issues that need to be clarified as regards the nature of our appointment and we would be pleased to discuss any points upon which your require further clarification at your convenience.

Yours sincerely

  
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Gascoignes is a trading name for Gascoignes Commercial Ltd, which is registered in England No. 4810377. Registered Office: 2 Gillingham House, Pannells Court, Guildford, Surrey GU1 4EU

