



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

Case Reference : LON/00BB/LVM/2014/0007

Property : 216 Romford Road, Forest Gate,
London E7 9HY

Applicant : Eileen Mary Campbell

Representative :

Respondents : Romford Road Freehold Limited
Gary Gibson (Flat 3)
Titllayo Ogun (Flat 6)

Representative : Mr Fowler of Scott, Page Stock

Type of Application : For the determination of the
Appointment of a manager under
Section 24 of the Landlord and
Tenant Act 1987

Tribunal Members : Ms M W Daley LLB (Hons)
Mr T Johnson FRICS
Mrs L Hart BA

**Date and venue of
Hearing** : 12th and 13th June 2014 at 10 Alfred
Place, London WC1E 7LR

Date of Decision : 6 August 2014

DECISION

Decisions of the tribunal

- a. The Tribunal determined that in all of the circumstances of this case that grounds existed for the variation of the order sought by the Applicant to under *section 24 (9A) of The Landlord and Tenant Act 1987* to the order made on 11 May 2011
- b. That the order be amended in the following terms, that Mr Wales be discharged as the Tribunal appointed manager.
- c. That Mr John Fowler be appointed as a manager for the premises for the extended period of 3 years
- d. That the terms of management be subject to the draft order put forward by Mr Fowler at the hearing, to be amended subject to the Tribunal decision at paragraph 84 and be sent to tribunal (in electronic form) which will then be attached as an addendum to this determination.
- e. **Within 28 days of this determination the former manager Mr Wales shall hand over all financial records and accounts pertaining to the premises known as 214 Romford Road, London**

The application

1. The Applicant by an Application dated 20 February 2014 sought an application under Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act) for the variation or discharge of an order appointing a manager.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. The Background to this Application was set out in the Directions dated 13 March 2014, which stated as follows:- "*... By order made on 3rd May 2011, the Tribunal appointed Bernard Wales FRIPM FIoD as the Tribunal's manager of the subject property for a term of 3 years in accordance with section 24 of the Landlord and Tenant Act 1987 ("the Act"). The Applicant on that occasion has not applied to vary that order by the further appointment of a different manager, complaining that Mr Wales has done an inadequate job in that little has changed and the subject property remains in an inadequate condition... By order made on 27 February and 11th March 2014, two other lessees, Mr Gibson and Ms Ogun have been added, at their request, as Respondents to this application. Unfortunately, they have not said why they wish to be Respondents in addition to the freehold company.*"

4. At the case management hearing which set out the Directions for the further conduct of this matter, the Applicant Ms Campbell attended along with her proposed manager Mr Kevin Usher. The Tribunal at the case management hearing noted that neither of the respondents or their representatives had chosen to attend the hearing.
5. The issues at the Case Management Hearing were set out in paragraph 3 as follows-: *The Tribunal will reach its decision on the basis of the evidence produced to it and upon assessment of the suitability of any proposed manager. The Tribunal has identified the following issues to be determined (1) Has the Tribunal been satisfied that the variation of the order will not result in a recurrence of the circumstances which led to that order being made and that it is just and convenient in all the circumstances to vary the order, in accordance with section 24 (9A) of the Act? (2) Would any proposed manager be a suitable appointee and, if so, on the terms and for how long should the appointment be made...?"*
6. At the Case Management hearing it was also directed that the Tribunal carry out an inspection of the premises prior to the hearing on 12 June 2014.

The Inspection

7. The Tribunal inspected the premises on 12 June 2014. In attendance at the premises was Ms Campbell the Applicant and her proposed manager Mr Kevin Usher. The Respondents did not appear and were not represented at the inspection. The property which is a semi detached building comprises 6 flats fronting a very busy main road. Access to the front door is via a very untidy front garden area. Externally the property is rendered with cracking visible. On entering the Tribunal noted poor paintwork, broken mail boxes, broken intercom buttons, lack of common parts lighting and spalling plasterwork. This general lack of maintenance was evident throughout the common staircase.

The hearing

8. At the hearing the Applicant appeared in person, along with Mr Usher. In attendance on behalf of all the Respondents was Mr John Fowler, he was there in a dual capacity to represent the Respondents, and also had been put forward by the Respondent as their proposed manager.
9. Mr Fowler was asked by the Tribunal for an explanation as to why neither the respondents, nor Mr Rosenfield, who was the director of the Respondent Company, had chosen to attend the hearing. Mr Fowler

stated that Mr Rosenfield had found the previous hearing “*a bit of an ordeal*” as he had received criticism from the tribunal and this might have played some part in his decision not to attend the hearing. He was however authorised to act on behalf of the company and the two leaseholder respondents.

10. The Applicant in her statement of case set out the grounds upon which a variation of the order was sought she stated as follows-: “*There have been long standing issues regarding the management of the Property known as 216 Romford Road Forest Gate London ... This resulted in the Applicant making an application under section 27 and 20c of the Landlord and Tenant Act 1987.. The Applicant made a further Application on 21 2011 for an LVT appointed manager. Mr Wales was appointed as LVT manager on 12 May 2011 for a period of three years... This arrangement is coming to an end; as such the Applicant seeks to appoint a new manager.*”
11. The Tribunal had referred to the hearing bundle and had noted that each of the leaseholders owned a share of the freehold, and that prior to the appointment of a manager, the freehold company through Mr Rosenfield had taken responsibility for managing the premises. The history leading to the appointment was one of disagreement between Ms Campbell and the other leaseholders, and there had been an issue with the lack of maintenance of the premises.
12. The full background was set out in the determination of the Tribunal determination LON/OOBB/LAM/2010/007 and LON/LSC/2010/388 which had led to the appointment of Mr Wales.
13. The Applicant then set out the history of her dealings with Mr Wales since his appointment. Ms Campbell stated that there had been only one meeting at the property in June or July 2011 and that following that meeting there had been a service charge demand served in the sum of £2800. This demand had not been broken down in any way nor did it specify which year or years it related to. The Applicant had paid the sum, however she had become concerned that she did not know whether any of the other leaseholders had paid the above demand. There had been no further demands. The Applicant had attempted to query this with Mr Wales who had informed her that “*...he was not answerable to her*”. She stated the services provided to be cleaning and maintenance of the front and rear gardens.
14. In November 2011 the manager Mr Wales sent an email attached to which was a report on the *Health, Safety and Fire Risk Assessment of the premises*.
15. The Report raised several issues of concern, notwithstanding this none of the issues which included the lack of fire alarm in the common parts, and no recent asbestos survey had been attended to. The Applicant was

also aware that there were issues with repairs at the premises, although these issues had led to the appointment of a manager, they had not been attended to.

16. The Applicant in her statement of case stated:- *“There have been reoccurring leaks in the communal areas and individual flats, and these have not been addressed. The premises requires a new roof, Mr Wales has not explained why he had not replaced the roof despite informing the Applicant on at least three occasions during his time as manager that he was about to serve section 20 notices regarding works to be done concerning the roof...The Applicant’s ceiling in Flat 4 collapsed upon the tenants in November 13 and despite asking for details of who has carried out the works to ensure tradespersons were suitably qualified no information has been forthcoming...”*
17. The Tribunal noted that as a result of miscommunication Mr Wales had not attended the hearing. The Tribunal was concerned about this as Mr Wales had been appointed by the Tribunal and as such was answerable to the Tribunal and ought to have been called to account for any failings.
18. The Tribunal were also informed about the fact that there was subletting at the premises, and the number and extent of this was a concern. There was also a somewhat complicated history involving the basement flat, which had been subject to a lease and was now owned by the Freehold Company, although Ms Campbell had not contributed to the cost of this acquisition and was therefore not considered by the other leaseholders to have a share. Nevertheless Ms Campbell considered that the Respondents ought to give account for the rent. This was one of the matters that Ms Campbell wished to be determined and subject to the order for appointment.
19. In her statement of case the Applicant stated - : *“...The Applicant still has no information regarding the basement flat, which the Freehold Company has repossessed. The Applicant does not know if she is expected to pay a service charge for the basement flat? The Applicant would like to know who is managing the basement flat for 216 Romford Road Freehold Ltd and to whom rent is being paid and how is this accounted for within the service charge accounts. The Applicant understands that following Mr Wales’s appointment that Mr Wales made a further application to the LVT for a variation of the management order with regard to the service charges for the basement flat, but is not privy to those details...”*
20. The Applicant set out details of numerous problems that existed at the property which had not been resolved by Mr Wales such as the fact that the building insurance had expired at the property and it was unclear who had contributed to the cost of renewal. Any repairs carried out to the roof had always been temporary. Mr Wales had informed the

Applicant that he had “*dipped his hands into his own pockets*” in order to fund the insurance and roof repairs.

21. Mr Wales had informed the Applicant that he would prepare a financial statement but had failed to do so. There were also issues with lack of electricity in the common parts. The service charge demand that had been sent was not legally compliant. Mr Wales had on at least two occasions informed the Applicant that he was preparing Section 20 notices and nothing had been forthcoming.
22. The Applicant was also aware that Mr Wales had changed business premises and had not informed the parties of his new address. The appointment was due to expire and the Applicant was concerned that no progress had been made at the premises, and the same circumstances now existed at the premises, as when the appointment was made.
23. Mr Rosenfield by a letter dated 20 May 2014 made a very short reply on behalf of the Respondents, which acknowledged that it was necessary to appoint a manager at the premises. However the Respondents questioned whether any appointee put forward by Ms Campbell was likely to be suitable, the Respondent stated:- “*...I write with respect to the Application to the First-tier Tribunal ...for the appointment of a manager by the applicant Eileen Mary Campbell, we would question the suitability of her proposed new manager, based on the previous experience of her chosen manager, who proved unsuitable... Furthermore, we believe that it is unreasonable for her proposed manager to charge fees of £7,200 plus VAT per annum for a property of this size... I am therefore suggesting the appointment of Stock Page Stock for the management of 216 Romford Road, London, E7 9HY...*”
24. Mr Fowler of Stock Page Stock, in his representations to the Tribunal, asked the Applicant to confirm whether Mr Wales had ever produced a budget or prepared a statement of account, whether he had provided certified accounts, and whether he had served demands that complied with the summary of rights and obligations in compliance with the 2007 Regulations. Ms Campbell confirmed that he had not complied with any of these matters which are required under the RICS code for Residential Management of premises.
25. Mr Fowler on behalf of the Respondents submitted that whilst it was accepted that a new manager ought to be appointed, the Respondent did not have any confidence in the suitability of Mr Usher as they considered that Ms Campbell had a poor track record in selecting a manager, and they also considered that the basement flat should not be managed by the appointed manager but by the Freehold Company so as to keep these two management functions separate

26. In reply the Applicant rejected the submissions of the Respondents. Ms Campbell provided the Tribunal with the background to the appointment with Mr Wales. Ms Campbell stated that prior to putting forward Mr Wales she had looked at the Leasehold Valuation Website and had noted that Mr Wales had previously been appointed as a manager on behalf of the then Leasehold Valuation Tribunal, she was aware that he was based in Southampton, and on reflection it had been *"... a tall task to manage the property from Southampton"* However he had agreed to the appointment.
27. Ms Campbell was satisfied that Mr Usher had the necessary experience to be appointed as a manager, in addition she was impressed by his straightforward no nonsense approach, and the fact that he was direct in his views and did not hesitate to disagree with Ms Campbell if he thought that she was wrong. In addition, his business is based relatively locally.
28. The Tribunal were informed by Ms Campbell (and it was confirmed on the Respondent's behalf by Mr Fowler) that the basement had been subject to a lease, and as a result of default by the then leaseholder, (in circumstances that were not clearly set out for the Tribunal). The three other members of the Respondent freehold company had retained the interest in the premises for the benefit of the shareholders of the freehold company. However Ms Campbell was not included in the members of the Freehold Company who had a share in the basement flat, as the other members had contributed towards the legal cost of establishing title, whereas Ms Campbell had not.
29. Ms Campbell also stated that the tribunal had previously amended the management order to require the basement flat to contribute to the service charges. Ms Campbell could see no reason why the flat should be excluded from the management order.
30. The Respondents' proposal was that the basement flat would be separately managed and the rental income would be accounted for by using it to off-set the cost. The Respondents accepted that the service charges should be deducted from the rental income, after that the income should be used to pay the costs that had been incurred by the members of the freehold company who had incurred legal fees, in recovering the property.
31. The Respondents also agreed that a manager should be appointed, however they considered that the manager chosen by them Mr Fowler of Stock Page Stock should be considered in place of Mr Wales.

The tribunal's decision on whether grounds exist for the Management order to be varied by (1) appointing a new manager (2) the extension of the order dated 11 May 2011.

32. The Tribunal determines that Mr Wales should be released from his appointment. The Tribunal noted with some concern that Mr Wales, had not applied to the Tribunal of his own volition to be released from the appointment, and had proceeded on the basis that he was not required to provide a written account of his management of the premises, or separately set out why he had been unable to comply with the management order.
33. The Tribunal noted that both parties accepted the need for a Tribunal appointed manager; nevertheless it was for the Tribunal to apply its judgement having heard evidence and submissions from the parties and considered all of the documents provided as to whether to extend the order granted on 11 May 2011 and if so the terms upon which to grant the extension.
34. The tribunal considers that the circumstances that exist at the premises, set out in the Tribunal's inspection and in the report prepared on behalf of Mr Wales, are such that grounds exist for the continuing appointment of a manager, as specified in section 24(2) of the 1987 Act.
35. The Tribunal noted that the issues at the premises which led to the appointment of Mr Wales have not been resolved, as he had not been able to put forward a management program nor take the necessary steps to resolve the long term underlying issues which existed at the premises.
36. The Tribunal noted that Mr Wales was no longer willing or suitable to be appointed. Given this, it was entirely appropriate that the existing order should be varied so that a new manager ought to be appointed.
37. The Tribunal are also satisfied that the circumstances that exist between the Applicant and the Respondents are such that they are unable to agree upon the manager to be appointed.
38. The Tribunal were however very concerned about the manner in which the previous appointment had broken down. Given this, the Tribunal determined that it was appropriate to consider the test in extending the order should be whether it was just and convenient to do so. The Tribunal were satisfied that the circumstances at the property were the same if not worse than when the order was originally made. Given this and the fact that the parties were not agreed on the manager to be appointed, the Tribunal considered that it was reasonable to extend the order to give effect to the original purpose of the Tribunal in appointing a manager.
39. On the question of who should be appointed, in reaching that decision The Tribunal considers that it should determine which, of the two managers proposed if either, was considered by the Tribunal to be a suitable appointee upon what terms, and for how long the appointment

should be made. Only if the Tribunal were satisfied that the terms of the appointment were realistic and that the appointment would lead to the issues being addressed at the premises would the Tribunal determine that one of the proposed managers was suitable to be appointed. The Tribunal noted that if either manager was unable to satisfy the Tribunal that they were suitable, then the hearing would be adjourned and both parties would be invited to put forward alternative managers for consideration.

40. The Tribunal had standard questions that were asked of each of the proposed managers. In order to ensure that the process was fair the Tribunal would hear from Mr Usher, in the absence of Mr Fowler and then Mr Fowler. This would ensure that there was no advantage to Mr Fowler in having an opportunity to rehearse his answers.
41. The Tribunal noted that this approach was not ideal as he was also at the hearing as the representative of the Respondents. However the Respondents had chosen to voluntarily absent themselves from the hearing, in circumstances where they would have been entitled to hear the evidence put forward by both managers.

Mr Kevin Usher

42. Ms Campbell was asked why Mr Usher had been put forward and she explained that there was no business or personal relationship between herself and her proposed manager. The Applicant had looked at the ARMA website which had listed residential property managers who were located within reasonable distance of East London. Of the 13 enquires made by her only three managers had indicated that they might be prepared to manage the premises, and of those Kevin Usher was the only person who had actually met with her. She said that she had carefully considered his experience and credentials.

Size of practise and staff levels

43. Mr Usher informed the Tribunal that he practised from the Barbican in the city, and that he was part of a two person practice. He had a degree in Estate Management and was a Fellow of the Royal Institution of Surveyors (FRICS), was a corporate member of ARMA, and was a fixed charge receiver. He had qualified in 1972 and had practised since that time.
44. The Tribunal asked about his practice and whether given the size of his infrastructure he was able to respond effectively. Mr Usher stated that in terms of communicating with the leaseholders he did not believe in giving his mobile number out as a point of contact. He corresponded using SKYPE and by providing a SKYPE PIN he stated that he was assisted by Yalena who worked in his firm as an accountant and that he did not have any complaints about not being accessible.

Experience of previous appointment and Residential Property Management

45. Mr Usher confirmed that he had not previously been appointed by the Tribunal. He did however consider that he had relevant experience. He managed a new build that consisted of 72 apartments a development of mixed social housing and private landlord. He also managed commercial units and an office complex in the isle of Dogs.

Management Plan

46. Mr Usher stated that the current client was dysfunctional and that one of the first steps would be to educate them on their shortcomings. He would immediately set up a dedicated client account and prepare a budget for the financial year. He would then attend to the health and safety, and the fire risks identified. He would instruct a building surveyor or architect or engineer if necessary to inspect the roof. He would carry out regular inspections at the property. His approach was to be proactive.
47. Mr Usher would also ensure that the service charges were paid. He had a firm of solicitors who acted on a no win no fee basis, his personal philosophy was "I don't care if you don't like me as long as you respect me."
48. Mr Usher confirmed that he understood the RICS Code and also understood his duties to the Tribunal.

Remuneration and duration of management order

49. Mr Usher stated that his fee for management of the premises would be £7200.00. The Tribunal queried the fee that was proposed by Mr Usher and whether it was reasonable and affordable to the leaseholders. Mr Usher stated that the block managed by him had problems in terms of anti-social behaviour and issues with non-payment of rent and he had resolved these. Mr Usher considered the fee which had been paid to Mr Wales was unrealistic and he also considered the fee that Mr Fowler proposed to charge to be unrealistic. Mr Usher considered that the first year or two would mean that he would have his work cut out, and after putting proper systems in place it would be possible to keep things ticking over.
50. Mr Usher stated that his hourly rate would be £300.00 and his fees for major work would be 20% of the cost of the work. At 1.13-1.20 of his management agreement Mr Usher set out the matters which were not included in the £7200 fee.
51. In answer to the question asked by the Tribunal concerning his immediate priorities, Mr Usher confirmed that his priority would be the

lighting at the premises which had immediate health and safety implications, and also the emergency lighting at the premises. There were also fire safety issues such as ensuring that the doors are compliant with requirements and the removal of gates to individual flats which would prevent access in the event of a fire, and there was also a need to ensure that there was a proper smoke/fire detecting alarm.

52. Mr Usher also considered that the roof would then need to be attended to as part of a three year plan.
53. Mr Usher was asked about his professional indemnity insurance he stated that he had enclosed a copy of the policy certificate which confirmed that his indemnity limit was £2,000,000.00.
54. The Tribunal then invited Mr Fowler in his capacity as representative to ask questions on the Respondent's behalf.
55. Mr Fowler asked about Mr Usher's experience of managing residential properties and he confirmed that he managed a complex mixed social and shared ownership dwelling in E1 and two units at Julian Place.
56. He was asked if his fee included VAT. He stated that his firm was small and he was not VAT registered to the full extent of the VAT register
57. He was referred to clause 6 (9) of the lease which stated "*... the Lessor may for the purpose of carrying out any repairs or maintenance and for the purpose of carrying out any repairs or maintenance and for the purpose of generally managing the Building employ such person or firm...[the person employed] shall be entitled to management fees to be paid annually out of the Maintenance Fund to total Management fees such not exceed ten per cent of the expense incurred by the Maintenance fund in each year*"
58. Mr Fowler wanted to know whether Mr Usher would comply with the terms of the lease.
59. Mr Usher in reply stated that "*That may be a problem in engaging my services*"
60. Mr Fowler asked what was meant in 1.15 where it was stated that the fee would be not less than 20%. Did that mean that it could be more? Mr Usher stated that it meant 20%.

Mr Fowler

61. Mr Fowler was asked about his relationship with the Respondents. Mr Fowler stated that there was no relationship at the current time. He stated that the Respondents had approached Bruce Maunder Taylor who was well known as a Tribunal appointed manager. Bruce Maunder Taylor had declined the opportunity to be proposed as a manager in this case. He had, however referred the respondents to Stock Page Stock, of which his brother Christopher Maunder Taylor was a director 20 years ago. Mr Fowler had no previous business relationship with Bruce Maunder Taylor. Although he had been asked to manage the premises by the Respondents he had never met Mr Rosenfield.
62. Mr Fowler had also been recommended by Mr Maunder Taylor in relation to a previous LVT appointment.

Size of practise and staff levels

63. Mr Fowler stated that there were four directors and three employees, a property manager and managing director and David Feifeld an administrator. There were also two consultant surveyors, one of whom specialised in major works. The company was about 20 minutes away by public transport.

Experience of previous appointment and Residential Property Management

64. Stock Page Stock managed 33 blocks all inside the M25 made up of 560 units. The premises varied from a small block made up of two dwellings to a block of one hundred units. Mr Fowler set out that his firm currently managed two blocks as a result of being appointed to manage those premises by the Property Tribunal; one two and a half years ago and in respect of the other, the appointment had been made the previous week. Mr Fowler had had 40 years' experience as a property manager.
65. One of the premises which were subject to an appointment involved a block of 9 flats and 4 commercial units. As a result of the dispute between the two types of tenured property Mr Fowler had been appointed to manage the premises and part of his responsibility was to collect the rents from the commercial units.
66. In answer to a question by the Tribunal he confirmed that he would manage the basement flat if this was part of the order of the Tribunal.

Management Plan

67. Mr Fowler stated that his first priority would be to hold a meeting with all of the leaseholders and he would set a budget which was in the best interest of all the parties. He stated that he would point out the clause in the lease which stated that each premises was to be occupied by one

family only. In respect of the major work he confirmed that the work would be managed for a fee of 10% of the cost of works if Stock Page Stock were involved. If a specialist surveyor were to be required they tend to charge 10% so in that case Stock Page Stock would charge 1% of the cost of the work.

68. His top three priority repairs were based on the surveyor's report. Mr Fowler admitted that he had not inspected the premises internally. However he felt that he had a clear idea of the issues from the survey. They were (i) the Repair of the Flat roof and ensuring the building was water tight (ii) the fire safety and smoke alarm system and (iii) the emergency lighting.
69. He stated that he understood from the lease that the service charges were payable quarterly in advance. In respect of inspecting the property he would carry out inspections quarterly, "*normally on a Saturday and Sunday*". In the short term he would inspect *more frequently that quarterly initially at no extra cost*.
70. Mr Fowler confirmed that he understood the RICS Code and also understood his duties to the Tribunal.
71. His firm's public indemnity insurance was in the sum of £2,000,000.

Remuneration and duration of management order

72. He stated that in his view the length of the agreement should be three to four years. His remuneration would be £225.00 per unit plus VAT. His additional work rate was £80.00 per hour, although he was confident that the per unit fee, would cover most of the work. Mr Fowler stated that the fee would be higher for any representation at Tribunal hearings.
73. On behalf of the Applicant, Mr Usher wanted to know whether there had been any internal inspection of the property. Mr Fowler accepted that he had not inspected internally although he had seen the exterior of the building and he had seen the report. He stated that he very experienced property manager who had worked for Stock Page Stock for over 18 years, who was very experienced in undertaking the management of transferring blocks.
74. Ms Campbell asked why he wanted to manage the property. Mr Fowler stated that "*...It is our business to manage properties that is what we do.*"
75. In answer to a question from Ms Campbell Mr Fowler set out the process that he would use for collecting arrears and also for dealing with breaches of the lease. He stated that he sends a reminder after one

month, followed by another reminder letter after two months. If the arrears remain unpaid a "14 day letter" is sent and after 21 days, the collection would be passed over to J D Leitch who were very experienced property solicitors who would undertake the work and collect their fees out of the judgement sums. In his experience this was very effective.

76. Ms Campbell asked about method of contact as she had tried to contact Mr Fowler and it had gone to voice mail. Mr Fowler stated that his preferred method of contact was email, and that he would normal answer as soon as possible.
77. Both parties briefly addressed the Tribunal by way of closing submissions, the submissions set out the merits that they offered as Tribunal appointed managers.

The Decision of the Tribunal and Reasons for the tribunal's decision

78. The Tribunal considered that both Mr Usher and Mr Fowler had positive attributes which the Tribunal consider would address the issues that existed at the property. However although Mr Usher was a FRICS surveyor, who had some residential property management experience, the Tribunal noted that his current portfolio of residential property was small and that he had no experience of being a Property Tribunal appointed manager and his fees were considered by the Tribunal to be prohibitive both for day to day management and also for major works.
79. This was in all probability reflective of the fact that he was an experienced manager of commercial properties. The fees were considerably outside the range charged in the experience of the Tribunal even for high end properties within London.
80. The Tribunal noted that although Mr Fowler was not a chartered surveyor he was however a very experienced property manager who impressed the Tribunal with his clear understanding of the lease, and the survey report and what was needed at the premises.
81. The Tribunal noted that Mr Fowler had the support of three of the leaseholders at the premises, and this would assist in helping

improvements in communication which may further assist in the effective management of the building. The Tribunal were however concerned that Mr Fowler had not inspected the interior of the building, and felt that this was a shortcoming. The Tribunal noted however that his plans accorded with the Tribunal's knowledge of what was needed at the premises, which was based on an inspection and on the surveyors report. The Tribunal noted the fee put forward by Mr Fowler and were concerned that this might not be adequate to meet the demands of the premises in its current condition.

82. The Tribunal in balancing this decision noted that Mr Fowler had substantial experience of residential property management, and his firm's infrastructure would enable better support for the management of the premises. The Tribunal also noted that Mr Fowler had experience of being appointed as a Property Tribunal appointed manager. Although Mr Usher was an experienced property professional, the Tribunal considered that Mr Fowler's experience and arrangements for management would be more effective in matching the needs of the premises in its current condition.

83. The Tribunal determine that Mr Fowler ought to be appointed for 3 years. That a review of the appointment shall be undertaken by the Tribunal by way of a hearing, to ensure that suitable arrangements are in place for the management of the premises **on 15 June 2015**.

84. That the management of the premises should include receiving rents from the basement flat to cover the service charge contribution.

The Tribunal were satisfied that the management order drafted by Mr Fowler was suitable, subject to an amendment to set out the fee to be charged for attending Tribunal hearings (by setting out the hourly rate) and that the order should reflect the Tribunal's decision that the basement flat should be managed by Mr Fowler, in terms of (i) contribution to the service charges (ii) any external repairs that effected the exterior of the premises (iii) ensuring that the short term lettings complied with the leaseholders obligations under the lease.

85. The order shall be effective from 6 August 2014 to 5 August 2017 **Application under s.20C and refund of fees**

86. At the end of the hearing, No application was made for a refund of the fees that Ms Campbell had paid in respect of the application/ hearing¹. The Tribunal would ask that Ms Campbell should she be minded to make an application do so within 21 days.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Name: Ms M W Daley

Date: 6 August 2014

Appendix of relevant legislation

Section 24 Landlord and Tenant Act 1987

(1) A leasehold valuation tribunal may, on an application for an order under section 24 of the Act, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which Part II of the Act 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.

(9) A Leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; ... (9A) The tribunal shall not vary or discharge an order under section (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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).