



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

Case reference	:	LON/00AY/LVN/2015/0021
Property	:	Flats A, B and C, 5 Heyford Terrace, London SW8 1XT
Applicant	:	Mr I. Harvey (Red Brick Management Limited) (manager appointed by the tribunal).
Representative	:	Mr P. Mertens of counsel instructed by PDC legal, solicitors
Respondent	:	Thameside Investments Limited (landlords)
Representative	:	-
Type of application	:	An application made under section 24 Landlord and Tenant Act 1987 to vary an order made by this tribunal on 10 December 2013 appointing the applicant as a manager.
Tribunal members	:	Professor James Driscoll (Judge) Mr Stephen Mason (Tribunal Member)
Date and venue of paper determination	:	10 December, 2015
Date of decision	:	14 December 2015

DECISION

The Decision summarised

1. The order made by this tribunal dated 10 December 2013 appointing Mr Ian Harvey of Red Brick Management Limited as a manager of the subject premises (under section 24 of the Landlord and Tenant Act 1987) is varied by extending the appointment from 1 January 2016 for a further period of two years to 31 December 2018. We announced this decision at the hearing held on 10 December 2015. This decision should be read together with the directions we gave on the application by Mr Harvey for a determination of the service charges he is seeking to recover to fund repairs to the roof which are urgently required. These directions were given on 10 December, 2015.
2. No order is made under section 20C of the Landlord and Tenant Act 1985 limiting the landlord's costs in connection with this application as a service charge.

Background

3. The applicant applied to this tribunal on 20 November 2015 for an order varying the order made and referred to in paragraph 1 above by extending it by a period of two years. He supports the application by a statement dated 7 December 2015.
4. It is also supported by a written statement made by Mr Simon Toms who owns the top floor flat in the subject premises which is converted building consisting of three flats all held on long leases. The other two are held by Mr D. Gidden who is also the director of Thameside Investments Limited, the owner of the freehold, and the landlord under the leases. He is also a director of Aces Limited who were managing the premises before Mr Harvey's appointment by this tribunal.

The hearing

5. The matter was considered by the tribunal on 10 December 2015 at a case management conference. That conference also considered an application for the determination of service charges which had been transferred to the tribunal by order of the Croydon County Court. As will be seen there is a key relationship between the two applications.
6. Present at the hearing was Mr Harvey who was represented by Mr Mertens of counsel. The landlord was not represented although Mr Macleod-James of counsel was present as he was instructed by Mr Gidden (a director of the landlord company) in connection with the tribunal's

consideration of a linked dispute over service charges. Mr Macleod-James told us that he was not instructed in this matter although he had been informed by Mr Gidden that he strongly opposed the application and he would prefer it if once the existing order runs its course (it is due to expire on 31 December 2015) that management should revert to the landlord. Mr Macleod-James handed us a written statement dated 8 December in which Mr Gidden enlarges on his concerns.

7. Mr Harvey elaborated on his written statement dated 7 December 2015. He told us that despite the order of the tribunal made on 10 December 2013 (paragraph 2) that the landlord has failed to hand over the accounts, books, records and funds so he still has no idea how much monies are held by the landlord as service charges or how monies have been spent in the past.
8. He also told us that neither the landlord or Mr Gidden (who owns two of the three flats) have contributed anything by way of service charges (though Mr Gidden has paid £500 for 2014 and for 2015). This has prevented him from commissioning the works. The works include works to the roof and external redecorations. He has arranged for the installation of emergency lighting and an electrical inspection has been carried out. He has had to resort to county court proceedings to try and recover Mr Gidden's contribution to the proposed works.
9. The next step is to have the roof works carried out and he has carried out the statutory consultation process. He will also consult on the proposed re-decoration works.
10. He also told us that the leases for Mr Gidden's flats differ from Mr Toms in that it appears to limit service charge recovery to £500 each year. This was discovered after his appointment. If his appointment is extended he asks (with the support of his counsel) that we include a provisions allowing him, as the appointed manager, to set and recover service charges. As we pointed out to him, there is provision in the lease for these sums to be increased where it is clear that they will be insufficient to meet the costs during a particular service charge period. He should use these provisions to ensure that the costs of works can be recovered from the three leaseholders.
11. Mr Harvey also told us that because of the lack of repairs to the roof that Mr Tom's top floor flat was now uninhabitable. Mr Tom now lives in Australia and as he is no longer living in the flat he wishes to let it but he is

currently unable to do so. According to Mr Harvey, Mr Gidden lets both of his flats.

12. In a statement dated 8 December 2015 Mr Gidden states on behalf of himself and the landlord that he opposes any extension of Mr Harvey's appointment. He states that Mr Harvey has done nothing during the two years of his appointment.

Our decision

13. We have decided to vary the order made by this tribunal on 10 December 2013 by extending the period of the appointment of Mr Harvey as manager of the premises under the provisions in section 24(9) of the Landlord and Tenant Act 1987.

14. This is necessary as the very state of affairs that led to the original appointment has continued despite the efforts of the appointed manager. It is clear to us that Mr Gidden has sought to obstruct the proposed works and he has failed to contribute towards their cost even though it appears to be beyond dispute that the works are required.

15. The factors that persuaded the tribunal to appoint Mr Harvey as a manager were fully set out in the original decision given on 10 December 2013. What surprises us is that Mr Gidden who has (along with the landlord company of which he is a director) a significant financial interest in the building seems to want to prevent or delay substantive remedial works being undertaken. The two flats he owns are let and this investment will surely be damaged if the manager is unable to arrange for the works described above are not carried out soon.

16. It is, in other words, in everyone's interest that the manager is allowed to get on with the work and provided with the resources to do so.

17. Under section 24(9) of the 1987 Act the tribunal has the power to vary or discharge a management order. Section 24(9A) provides that *the court shall not vary or discharge an order under subsection 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.*

18. As we are satisfied that the variation will give the manager the chance to complete the works and that it is necessary in everyone's interest that this

is done as soon as practicable we make this order varying the original order by extending the appointment of Mr Harvey as manager for a further two years.

James Driscoll and Stephen Mason
14 December, 2015

Appendix of the relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
- (a) "costs" includes overheads, and
- costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

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.