12389

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LAM/2017/0010**
Property	:	**32 Princes Avenue** **London N10 3LR**
Applicants	:	**Anita Sheridan** **Iain Sheridan**
Proposed Manager	:	**Jim Thornton MA CEng MICE MCIOB MIRPM**
Respondent	:	**Filiz Civale**
Representative	:	**Cavendish Legal Group**
Type of Application	:	**Appointment of manager**
Tribunal Members	:	**Judge Nicol** **Mr I Thompson** **Mr J Francis**
Date and venue of Hearing	:	**7th August 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17th August 2017**

DECISION

Decision of the Tribunal

The application is dismissed.

Relevant legislative provisions are set out in the Appendix to this decision.

Tribunal's reasons

1. The Applicants have been since 2002 the lessees of two flats at the subject property, one of which they occupy (Flat 6) and the other of which they rent out (Flat 5). The First Applicant managed the property herself between 2007 and 2012. The Applicants then went to live abroad, returning to live at the property in around November 2016.

2. The Respondent bought leaseholds of Flat 7 in 2008 and Flat 1 in 2010 and then bought the freehold in 2014 from Mr Theo Yorke. Mr Yorke continued to live at the property until his death in February 2016. The Respondent said he had a continuing life interest after the purchase but it was not clear what that consisted of. In any event, the Respondent also said she jointly managed the property with him until his death, since when she has been doing it alone.

3. On 29th January 2017 the Applicants applied to the Tribunal for a manager to be appointed under section 24 of the Landlord and Tenant Act 1987 (ref: LON/00AP/LAM/2017/0005). However, they had failed to serve a section 22 notice prior to issue and, by order dated 1st March 2017, the Tribunal dismissed the application on the basis that there were no grounds to dispense with such a notice.

4. On 6th March 2017 the Applicants served a section 22 notice on the Respondent and on 1st April 2017 re-applied to the Tribunal for the appointment of a manager.

5. The first application was based substantially on the fact that the Respondent had not reinstituted any buildings insurance after the existing insurance policy had been cancelled by those managing the estate of the late Mr Yorke in about April 2016. Eventually, the Respondent obtained insurance in February 2017 and its absence was no longer pursued as a ground for the appointment of a manager.

6. The section 22 notice gave five grounds for the appointment of a manager:

   (a) The Respondent had failed to repair the roof.

   (b) The Respondent had failed to fix the front door.

   (c) The Respondent had failed to keep the ground floor communal area clean and clear of objects.

   (d) The Respondent had installed a security light which interfered with the Applicants' quiet enjoyment of their flat by shining directly into their bedroom.

   (e) The Respondent had also breached the Applicants' quiet enjoyment of their flat by abandoning a car at the front of the property.

7. The second ground was not included in the application on the basis that the Respondent had addressed that issue.

8. The Applicants originally proposed the Second Applicant himself as the manager of the property, despite the fact that he is a barrister with no apparent property management experience. However, they later proposed Mr Jim Thornton MA CEng MICE MCIOB MIRPM. He provided a statement setting out his qualifications, experience and proposals for managing the property and also attended the Tribunal hearing to give further details. The Tribunal would probably have no qualms about appointing him as a manager of this property but, given that the application is being dismissed for reasons other than Mr Thornton's suitability, there is no need to go further into this issue.

9. The Tribunal inspected the property on the morning of the hearing. Both parties were present at the inspection with the Respondent accompanied by Mr Roberts of counsel. The Tribunal noted that the property is a three-storey period building converted into six flats. The Tribunal noted the replacement tiles in two locations to the front slopes of the main roof. It further noted the car parked to the left hand side of the front forecourt and the security light located on a structure within the rear garden. The Tribunal also noted that the Applicants' flats are situated on the first floor with the front windows set back from the main elevation overlooking a balcony. The property was generally in a poor decorative condition: externally peeling paintwork was evident together with timber decay, particularly to the front balcony. The internal communal areas were in very poor condition, with loose and cracked plaster, very tired decorations and worn carpet. It was, however, clean.

10. At the hearing, the Second Applicant expanded on the application. He asserted that it would be just and equitable for a manager to be appointed in the light of two over-arching considerations:

    (a) Trust.

        i. The Second Applicant started his submissions with an assertion that the Respondent's husband, whom she uses as a handyman for various work at the property, spoke very little English and that he was concerned that her husband would not understand the consequences of these proceedings. The Tribunal was having difficulty understanding the relevance or significance of this point. The Second Applicant made several attempts, some with the help of the First Applicant, to explain himself but, since his attempts consisted mostly of saying the same words at a slightly slower speed, the Tribunal's understanding did not grow. In the end, he said he was abandoning the point.

ii. The Second Applicant handed up a list of nine quotes from various emails (not included in the hearing bundle) and the Respondent's witness statement which he said showed that the Respondent was lying "continuously". Without the emails from which these quotes were taken, it is not possible for the Tribunal to understand the full context. Having said that, none of the quotes appear to be reasonably capable of being described as lies. The Respondent did fail to provide information about insurance which she promised but this is way short of proof that she lied about her intention to provide it. Similarly, she proposed weekly hoovering when, in fact, the cleaning visits did not always include hoovering. Further, she said the roof had been repaired at a time when only one of two problems had been resolved (see further below). There is nothing to suggest that she did not believe what she was saying at the time she said it. One of the quotes referred to the Applicants changing their minds about seeking the Second Applicant's appointment as a manager – far from being a lie, it was a statement of fact.

(b) Bullying. The Second Applicant argued that there was an imbalance of power between the parties and that the Respondent's actions should be seen as bullying given that she was operating from a position of strength. While it is possible for the lessor/lessee relationship to contain such a power imbalance, the Tribunal cannot see it here. The Respondent is not a professional landlord or managing agent. Her ownership of a greater part of the legal interests in the property does not, of itself, give her undue power or control over those of the Applicants. In any event, the Second Applicant gave the following examples of the Respondent's alleged bullying:

i. In about November 2016 the Respondent had installed a security light in the rear garden. It was located in a place that meant it shone directly into the Applicants' bedroom whenever it was triggered at night, for example by a fox. At the Applicants' request, the Respondent disabled the light in March 2017. In the Tribunal's opinion, the arrangement for the security light was, at most, thoughtless. It cannot reasonably be characterised as bullying.

ii. The Applicants were apparently granted a verbal licence by Mr Yorke to park their car on the left-hand side of the forecourt at a cost of £200 per year. The Respondent was unaware of this. She parked her son's car while he is away at university on the same spot to discourage residents of a neighbouring property from cutting across the forecourt. The Second Applicant did not base his objection to the car on any breach of licence but that the car was such an

eyesore that it constituted a breach of the covenant for quiet enjoyment. Further, he said that the only rational view to take of the car was that it was not for the Respondent's son but that it had been abandoned – he pointed to the moss growing on the ground near the car. The Tribunal is unable to understand the Applicants' case in relation to the car. The car does not look abandoned, it looks parked. It is not near the Applicants' property and not even in their line of sight. The Second Applicant objected strongly to the fact that he parks his car ¼ mile away but admitted that he has never actually asked the Respondent if he could use any part of the forecourt to park it. The fact that he believes that his view of the situation is the only viable possibility says far more about his inability to understand the viewpoints of others than it does about the parking arrangements for the car.

iii. The Respondent left furniture in the hall between 28th December 2016 and 28th January 2017. According to the Second Applicant, some of the Respondent's tenants objected to this as much as he did. The Tribunal was shown photos which showed that the stairwell and hall were partially blocked but still usable. However, again, the Tribunal cannot see how this would amount to bullying. Blocking the hallway is objectionable and potentially unsafe but there is no evidence that it was significant enough to found the Tribunal's intervention, either by itself or when taken together with the Applicants' other points.

iv. The Respondent left a large amount of rubble outside on the forecourt for four weeks from 28th November to 23rd December 2016. The Tribunal were shown photos of it and agree with the Applicants that, at the very least, the Respondent should have hired a skip rather than allowing it to spread over a communal area. However, again, it is inappropriate to characterise such temporary thoughtlessness as bullying. It was unsightly and could have been a hazard if left for any significant period of time but, again, it is not enough to found the Tribunal's intervention.

v. The Second Applicant alleged that the Respondent said things which amounted to verbal bullying. The only example he came up with was that she allegedly said, "Do you want a key to your front door?" The Tribunal is unable to follow the Second Applicant's allegation on this point.

vi. The Second Applicant alleged that the Respondent is a "profit-maximiser" with insufficient consideration for the health and safety of the occupants of the property. In contrast, the Respondent said she wanted to nurture the

building and its residents and that her method of informal management was aimed at achieving that. She said that she intends to move in in the near future. Having heard both parties, the Tribunal preferred the evidence of the Respondent. Although, as recorded below, the Tribunal has concerns about her management practices, she came across as well-intentioned and credible, in contrast with the Second Applicant's fraught, exaggerated and unevidenced claims.

11. In relation to the roof, it appears that a tile slipped in two separate locations. One was repaired in about March 2017 and the other in about June 2017. The Second Applicant asserted that this was unreasonable delay and could have resulted in damage to the building. The Tribunal was compelled to dismiss this complaint because the Applicants simply had no evidence to support it. Of course, slipped tiles should be attended to and holes should not be left in the roof. However, there was no evidence that these particular problems could or should have been dealt with earlier or that there had been any adverse consequences from any delay. The Respondent said that, in relation to the second repair, the roofer who had done the first repair refused to return to the property because of things the Second Applicant had said to him and so there was delay in instructing a new roofer. The Tribunal is inclined to believe the Respondent but is unable to judge the veracity of what the roofer said and so does not criticise the Second Applicant on this point.

12. The Tribunal were given pause for thought by two matters. Firstly, the building had been left uninsured for 10-11 months. As the freeholder, it was the Respondent's responsibility to ensure insurance was in place. Her lack of knowledge of the situation is partially explained by the arrangements in place at the time of Mr Yorke's death but this is not an excuse.

13. Secondly, the Tribunal asked the Respondent about her approach to carrying out the major internal and external decorative and repair works which are obviously needed. Her knowledge of health and safety legislation and in particular the regulations surrounding fire safety was found to be wanting. She seemed unaware of best practice on how to proceed and her only plan to fill the gap in her knowledge was to attend a generic course provided by the National Landlords' Association. She would be well-advised to seek professional assistance. She is concerned that appointing a full-time property manager would over-professionalise the management of this building and incur unnecessary expense but it is still possible to seek the advice of suitable professionals from time to time without such an appointment.

14. However, the Tribunal cannot appoint a manager based on concerns which coincidentally arise at a hearing. A respondent to this kind of application needs to know in advance the case they have to meet. The

fact is that the Applicants chose to base their application on a series of matters which either they have not made out at all or, when viewed in their proper light, cannot justify making an order.

15. The Respondent objected to some alleged flaws in the section 22 notice, including one of the Schedules not being attached to the copy they received. In the light of the Tribunal's findings above, it is not necessary to reach a conclusion on this point.

Name: NK Nicol **Date:** 17th August 2017

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 22

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served by the tenant on—

(i) the landlord, and

(ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.

(2) A notice under this section must—

(a) specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which any person on whom the notice is served may serve notices, including notices in proceedings, on him in connection with this Part;

(b) state that the tenant intends to make an application for an order under section 24 to be made by the appropriate tribunal in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the requirement specified in pursuance of that paragraph is complied with;

(c) specify the grounds on which the tribunal would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;

(d) where those matters are capable of being remedied by any person on whom the notice is served, require him, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

(e) contain such information (if any) as the Secretary of State may by regulations prescribe.

(3) The appropriate tribunal may (whether on the hearing of an application for an order under section 24 or not) by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person, but the tribunal may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

(a) a notice under this section has been served on the landlord, and

(b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage, the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

Section 24

(1) The appropriate tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part 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.

(2) The appropriate tribunal may only make an order under this section in the following circumstances, namely–

(a) where the tribunal is satisfied–

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii) . . .

(iii) that it is just and convenient to make the order in all the circumstances of the case;

(ab) where the tribunal is satisfied–

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(aba) where the tribunal is satisfied–

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(abb) where the tribunal is satisfied–

(i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

(ac) where the tribunal is satisfied–

(i) that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.

(2ZA) In this section "relevant person" means a person–

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A) For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable–

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(3) The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.

(4) An order under this section may make provision with respect to–

(a) such matters relating to the exercise by the manager of his functions under the order, and

(b) such incidental or ancillary matters,

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5) Without prejudice to the generality of subsection (4), an order under this section may provide–

(a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;

(b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;

(c) for remuneration to be paid to the manager by any relevant person, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

(d) for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding–

(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or

(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3).

(8) The Land Charges Act 1972 and the Land Registration Act 2002 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land.

(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.

(10) An order made under this section shall not be discharged by the appropriate tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies.

(11) References in this Part to the management of any premises include references to the repair, maintenance, improvement or insurance of those premises.