



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

Case reference : **LON/00AW/LAM/2019/0008**

Property : **98 Highlever Road, London W10
6PN**

Applicant : **Ms JA Harborne (Flat 1)**

Representative : **In Person**

Respondent : **Sunsteep Residential Co**

Interested Parties : **Katie Turner (Flat 2)
Seija Tikkis (Flat 3)
Mary O'Shea (Flat 4)**

Type of application : **Appointment of a Manager**

Tribunal members : **Judge S Carrott and Mr J Barlow
FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **9 September 2019**

DECISION

Decision of the tribunal

(1) Application is withdrawn with the consent of all parties

(2) The application

1. The Applicant sought an order for the appointment of a manager pursuant to section 24 of the Landlord and Tenant Act 1987.
2. Prior to the conclusion of the Respondent's case we allowed the parties to hold discussions because it appeared to us that the issues aired by the parties meant that there was in fact no substantial difference between them in relation to the management of the building.
3. Nevertheless, given the withdrawal of this application we have provided a written decision for the purpose recording the areas of agreement between the parties and because we feel it necessary to indicate why it is that even if the tribunal were minded to appoint a manager, the Applicant's preferred manager would not have been appointed in this case.

The hearing

4. The hearing of this application took place on 5 August 2019. The Applicant appeared in person with the assistance of two friends, Ms Carol John and Ms Katherine Miller. Also in attendance on behalf of the Applicant was the proposed manager.
5. Ms Kate Turner (Flat 2), Ms Seija Tikkis, Ms Helen Tikkis (Flat 3) and Ms Mary O'Shea (Flat 4) appeared on behalf of the Respondent.

The background

6. The property which is the subject of this application is a building which was originally divided into 5 flats. It now comprises four flats, the Applicant occupying two flats, collectively known as flat 1.
7. The Respondent freeholder is a lessee owned company with all of the lessees being shareholders and, save for the Applicant, being directors. The Applicant was previously a director but was voted off the board of directors. As part of the compromise reached at the hearing she is to be reinstated as a director.

The issues and Background

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether there was a breach of covenant; and
 - (ii) Whether it was just and convenient to appoint a manager
9. We do not set out the various breaches of covenant that were alleged because as stated above, the application was compromised before the close of the Respondent's case.
10. Further, the two incidents which precipitated the application in this case were not related to the management of the building. The first incident was that the next door neighbours had erected a fence which affected the Applicant's access to flat 1 and the Applicant wished the Respondent to take action about this. The other lessees refused because they wished to be on good terms with their neighbour.
11. The Applicant had previously carried out the role of management on behalf of the Respondent for some 19 years, receiving a token payment for her services. In view of the refusal of the other lessees to confront the neighbour, the Applicant decided that she no longer wished to carry out this role. She sought legal advice and was advised that she could unilaterally appoint a managing agent on behalf of the Respondent. The managing agent was then duly appointed by the Applicant.
12. The Respondent lessees objected to the appointment of the managing agent and they sought various documents from him. They became embroiled in a dispute with the managing agent over access to the documents and were told that if they wanted copies of the documents that they would have to pay the managing agent's fees of £1200.00. The lessees refused because they had not appointed him.
13. In response the Respondent lessees passed a resolution removing the Applicant as a director of the Respondent company – the second incident which precipitated this application.
14. The relationship between the parties then deteriorated further following which the Applicant made this application to the tribunal to appoint the same managing agent as manager.
15. All of the parties were agreed about what works were necessary to be carried out to the building and so management of the building as such was not an issue.

The Compromise Reached Between the Parties

16. Given the apparent lack of difference between the parties as to the management of the building and that it was the erection of the fence in the entrance to the Applicant's flat as well as Applicant's removal as director which was at the heart of this application, the parties were asked to discuss their differences.
17. Following discussion, the parties advised the tribunal that they had settled their differences and therefore did not wish to continue with the application.
18. The parties agreed that —
 - (a) The Applicant would be reinstated as a director of the Respondent company;
 - (b) Ms Seija Tikki would carry out the role of manager;
 - (c) Ms Seija Tikki would consult with the other lessees over major works and would ensure that the fixed wire testing and asbestos testing would take place.
 - (d) All of the lessees would be responsible for cleaning of the common parts;
 - (e) No one lessee would write letters on behalf of the Respondent without consultation with the other lessees;
 - (f) A Solicitor would be appointed to act on behalf of the Respondent in order to apply for lease extensions;
 - (g) The parties would attend to a leak;
 - (h) The parties would open a bank account in order to maintain a reserve fund;
 - (i) All of the lessees would jointly pay the managing agents fees of £600.00, that being the sum that the managing agent had indicated to the other lessees that he should be paid if his management role was not to be continued.
19. Further, following the hearing, the parties sent an email to the tribunal setting out further details of their agreement, which we approve.
20. We should add that whilst the Applicant's preferred candidate was suitable in terms of expertise and qualifications, it is clear that he had become embroiled in the dispute between the parties and could not be considered impartial. If we were minded to appoint a manager, we would not have appointed this candidate because it is clear that the dispute between the parties would have continued. The preferred candidate had inserted himself in a contentious situation and it is clear that he had already taken instructions from the Applicant.
21. However, it is to the credit of the parties that they listened carefully to each other during the course of the evidence, were able to

understand each side's respective points of view and were able to appreciate that with some give and take they could reach agreement. This ultimately led the parties to reach agreement on this application.

22. We hope that the parties will continue to approach the management of this building with this same spirit of cooperation.

Name: Judge S Carrott **Date:** 9 September 2019