

9698



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

Case Reference : CHI/00MW/LAM/2013/0016

Property : 4 Hill Street
Sandown
Isle of Wight
PO36 9DB

Applicant : Mr Michael F Bryant &
Mrs Lisa M Bryant

Representative : Mr & Mrs Bryant

Respondent : Ms Rebecca Dennis
Mr Nicholas Bohn
Ms Cynthia Carretero

Representative : Mr L Johnston
Mr N Bohn

Type of Application : Appointment of Manager
S24 Landlord & Tenant Act 1987
S20C Landlord & Tenant Act 1985 (Costs)

Tribunal Members : Mr B H R Simms FRICS MCI Arb (Chairman)
Mr P D Turner-Powell FRICS (Surveyor Member)

**Date and venue of
Hearing** : Friday 22 November 2013
The Broadway Centre
Sandown
Isle of Wight

Date of Decision : 04 December 2013

DECISION

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- 1 The Tribunal orders that Mr Chris Hills of Bridgeford & Co, 13 Quay Hill, Lymington, Hampshire SO41 3AR be appointed as Receiver and Manager of St Clare, 4 Hill Street, Sandown, Isle of Wight PO36 9DB (The Property) commencing on the date hereof. The terms of the said appointment are set out in the appendix to this Decision.

BACKGROUND

- 2 By an application dated 5 September 2013 Mr & Mrs Bryant (The Bryant's), the long leasehold owner of flat 6 at the property applied to the Tribunal for the appointment of a Manager for the Property.
- 3 A Notice under S22 of the Landlord & Tenant Act 1987 had been served by the Applicant setting out in detail various breaches of the management of the property including breaches of covenant, failure to manage at all, breach of unapproved code of practice, failure to repair, and failure to insure. Failing a remedy of these various breaches it was stated that the intention was to apply to the Tribunal for the appointment of a Manager.
- 4 Directions for the conduct of the case were issued dated 9 October 2013 in response to which the Tribunal received a document headed "Response to the Claims made by Mr & Mrs Bryant". This document was undated and unsigned but is understood to have been prepared by Mr Johnston, the long lessee of flat 1 at the Property.
- 5 The Tribunal was provided with various bundles and documents, including copies of emails between some of the parties but no Statement of Case by the Respondents as required by the Directions. Although there was a lack of formal documentation it is understood that the freehold is owned by Mr Bryant and the three Respondents. There are two other leaseholders, Mr Johnston of flat 1 and Mr I Edwards of flat 2, who do not own a share of the freehold.

THE LAW

- 6 Section 24 of the Landlord and Tenant Act 1987 ("the Act") provides, amongst other matters that:-
- 7 (1) A leasehold valuation tribunal [since 1 July 2013 a First-tier Tribunal (Property Chamber)] may, on application for an order under this section, by order...appoint a manger to carry out in relation to any premises...
- (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.

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(2) A 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 is in breach of an obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or part of them....and

(iii) 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 the 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.

8 Section 22 of the Act requires a preliminary notice to be served upon the landlord and any person (other than the landlord) by whom obligations relating to the management of the premises are owed to the tenant under his tenancy, before such an application is made. This notice must specify the tenant's name and address, that he intends to make an application for an order appointing a manager but that he will not do so if the requirements to remedy the matter are complied with, specify the grounds on which the tribunal would be asked to make an order and state a time within which the matters capable of remedy are to be remedied and the steps to be taken to remedy them.

9 The Tribunal's jurisdiction in respect of Limitation 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 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.

INSPECTION

10 Members of the Tribunal with Mr & Mrs Bryant, Mr Hills and Mr Johnston, inspected the property prior to the Hearing.

- 11 The building is a two storey structure of part brick, part rendered walls under a pitched slate covered roof. There are areas of flat roof at the rear and side. It was built in about 1890, but later extended and converted into six flats in approximately 1991. To the front there is a concrete standing area for parking. There is a side pedestrian walkway to the rear garden which has been divided up into individual plots for each flat. Access to the flats in the main building is by the communal hall, stairs and landing. Flat 1 has its own front door from the side. It stands in a residential street towards the centre of Sandown, within reasonable distance of local facilities.
- 12 It is apparent that the property is out of repair, there are substantial areas of wet rot to external timbers to the rear verges of the roof and a general impression of neglect. The paved parking area is uneven and broken down. External decorations are in need of renewal.

LEASE

- 13 The Tribunal was provided with a photocopy of a lease dated 30 April 1991 of flat 6, the Bryant's flat.
- 14 The lessor's covenants are contained within clause 6 and require the building to be kept and maintained in good and substantial condition with specific obligations for redecoration externally and maintenance of common ways. There is also an obligation to keep proper books of accounts and have these audited and to present annual statements showing the costs and expenses and other outgoings.
- 15 The Tribunal has had regard to all the terms of the lease in making this Decision.

HEARING

- 16 Mr Johnston and Mr Bohn attended the Hearing. Mr Johnston appeared to be speaking for all the freeholders although he was not a freeholder himself. He could not produce any sufficient evidence that he had the authority to speak on behalf of all the freeholders but he confirmed that he had prepared the written response that was in front of the Tribunal on behalf of the freeholders but excluding Mr Bryant. Mr Bohn added details as and when required.
- 17 The property had been managed on an informal basis by a committee identified as St Clare Management Trust ("the committee"). No evidence could be produced of the status of this committee and there was no evidence of minutes of meetings or other similar documents in support of its functions and structure.
- 18 It was confirmed that the general arrangements were informal and were adjusted to take account of the ability of the individual lessees to pay funds for the freeholders' obligations. There are several inaccuracies in the freeholder's statement, for example the annual service payment is stated to be £200 for each flat whereas the copy lease in the Tribunal's possession shows an amount of £150.

- 19 Mr Johnston confirmed that there were never sufficient funds to carry out the works of repair and other obligations required.
- 20 Mr Johnston and Mr Bohn accepted that the property was out of repair although they debated the extent of this. They also confirmed that the Committee did not follow the statutory RICS code but felt that it was sufficient to follow their own code of practice.
- 21 There was an assertion that funds collected were held in a registered Trust Fund identified as a Nationwide Building Society account in Shanklin but no details of this account or the signatories were supplied to the Tribunal. The amount held was in excess of £2,000.
- 22 The Bryant's had set out in some considerable detail in their S.22 notice their concerns regarding the poor management at the property. Mrs Bryant explained that they had been forced to take the action of bringing a case to the Tribunal as attempts to sell their flat in the past had been thwarted by the poor management.
- 23 None of the specific points and issues raised in the S.22 Notice had been satisfied. The Bryant's solicitors produced to the Tribunal prior to the Hearing written detailed representations in response to the Respondent's statement.
- 24 The Bryant's accepted that there was an insurance policy currently in place but were concerned that the insured were stated to be St Claire Residents Committee and this "committee" was not a legal entity. The insurance policy should have been in the name of the individual freeholders as a group. The legal advice they had received was that because of this anomaly the insurance could well be invalid.

CONSIDERATION

- 25 The Tribunal carefully considered the evidence and documents before it. The written response prepared by Mr Johnston made it clear that the freeholders did not want an agent appointed, however, it was unclear to the Tribunal how this assertion could be made without any authority of the specific freeholders. Mr Bohn who attended the Hearing confirmed this assertion. The responses indicate that the freeholders would rather have an informal arrangement not following the terms of the lease in any way, but simply dealing with management issues as they arose. They accept that the property could be better maintained but to collect funds that some of the lessees could not afford was not something they wanted to do.
- 26 It was accepted that there was no formal management code followed although Mr Johnston asserted that there was no obligation to follow a statutory code.
- 27 The Tribunal has no hesitation in determining that there are numerous grounds why a Receiver and Manager should be appointed including the following:

- The landlord is in breach of its covenants under the lease.
- The freeholder does not have in place any proper management scheme to undertake the specific terms of the lease.
- The freeholder does not follow the approved Code of Practice.
- The Property is out of repair contrary to the repairing and decorating covenants.
- It is unclear whether the current insurance is enforceable.
- Regular accounts are not produced in accordance with the terms of the lease and they are not audited. No detailed accounts of the amount of funds held have been provided.

APPENDIX

28 Mr Chris Hills, Director of Bridgeford & Co, 13 Quay Hill, Lymington, Hampshire SO41 3AR is hereby appointed by the Tribunal to be Receiver and Manager in respect of 4 Hill Street, Sandown, Isle of Wight PO36 9DB from the date hereof with the following powers and responsibilities.

- 1 To collect the service charges as defined in the leases and as amended in accordance with this Order.
- 2 Effect buildings insurance for the whole of the building at the Property on the best terms reasonably available for the full cost of reinstatement and to collect one sixth of the cost thereof from the lessees of each flat at the property.
- 3 To immediately assess on an annual basis the amount required for the repair and maintenance at the property and to collect in advance the amount of £200 from the lessees of each flat in order to create an initial fund for immediate expenses.
- 4 To receive all the funds currently held by St Clare Management Trust, in the order of £2,000, held in the Nationwide Building Society account and put this towards expenditure on service charges.
- 5 To collect in advance from each of the lessees the appropriate proportion of service charges due by each lessee and subsequently on 25th day of March and 29th day of September in each year an estimated amount in advance in order to undertake the lessor's obligations as set out in the leases.
- 6 To prepare at the end of each accounting year a statement of account showing how expenditure has been effected during the year and, having taken account of monies received in advance, to collect any balance due for the sums expended.

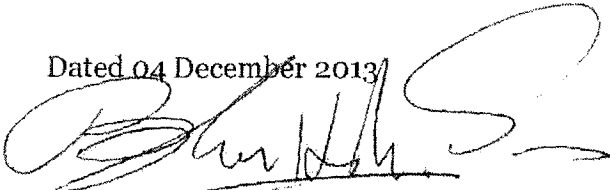
- 7 If the Manager deems it appropriate to establish a reserve and sinking fund to provide for future expenditure and require the lessees to contribute in the proportions provided for in the lease thereto an amount that the Manager in his discretion considers reasonable.
 - 8 To carry out a fire risk assessment and implement the findings thereof.
 - 9 To arrange for an appropriate inspection under the Control of Asbestos Work Regulations and implement the findings thereof.
 - 10 To charge a management fee of £160 plus VAT per flat per year. For major work administered by and organised to be administered by the Manager a fee of 12% plus VAT of the contractors' net charge for preparing the specification, obtaining competitive tenders and supervising the works, all in accordance with the terms of business attached to the application made to the Tribunal.
 - 11 If necessary and appropriate in the Manager's discretion to take any action including court action to recover any charges or fees outstanding from any lessee at the property.
 - 12 To apply to the Tribunal for any additional powers the Manager considers necessary in the reasonable management of the property.
 - 13 At all times to manage the property in accordance with the provisions of the service charge residential management code in force at the time approved by the Secretary or State under S.87 of the Leasehold Reform Housing & Urban Development Act 1993 or any subsequent legislation which replaces it.
- 29 This appointment shall exist for a period of 3 years from the date hereof subject to renewal with the permission of the Tribunal following an application from any party.

PERMISSION TO APPEAL

- 1 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 2 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 3 If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Dated 04 December 2013



Brandon H R Simms FRICS MCI Arb
Chairman