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		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/OOAP/LAM/2013/0007
Property	:	Avondale, 109 Truro Toad, London N22 8DP
Applicant	:	Ms G. Simpson (leaseholder)
Representative	:	In person (accompanied by Mr Mozes of KMP Solutions)
Respondent	:	Rhinestone Properties Limited (landlords)
Representative	:	Mr J. Thornton of Hulford Salvi Carr Property Management Limited (managing agents)
Type of Application	:	Application for a manager to be appointed under Part II of the Landlord and Tenant Act 1987
Tribunal Members	:	Professor James Driscoll, solicitor, (Tribunal Judge), Mr Philip Tobin FRICS and Ms Jackie Hawkins
Date and venue of Hearing	:	The hearing was held on 24 June 2013 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	22 July 2013

DECISION

The Decision summarised.

1. The application for a manager to be appointed is dismissed.
2. This decision was given orally to the parties after the close of the hearing. This written decision sets out our reasons for the decision.
3. A copy of the relevant statutory provisions is contained in the appendix to this decision.

Background to the application

4. This is an application made under Part II of the Landlord and Tenant Act 1987 seeking the appointment of a manager. It is made by Ms Simpson who is a leaseholder of flat 1 Avondale, 109 Truro Road, London N22 8DP. The respondents are the owners of the freehold of the premises which consists of twelve flats all held on long leases.
5. Ms Simpson lives in her flat. We understand that in the case of nine of the twelve flats that the owner of the lease has sublet it. On 21 December 2012 she gave a preliminary notice under section 22 of the Act to David Allen and Steven Matthey who she took to be the landlords. A copy was also given to Mr Michael Richards who was then managing the property.
6. Her complaints, that is the grounds on which she gave the preliminary notice, are (a) the landlord is in breach of obligations owed to the leaseholders under the lease, (b) that unreasonable service charges are being made (and have been made in the past), (c) the landlords have broken the Code of Practice for the management of leasehold properties and (d) that other circumstances exist that make it just and convenient to order the appointment of a manager.
7. In the third schedule to the preliminary notice she sets out at some length (twenty-two pages) a chronology of her complaints alleging mismanagement of the premises over the years 2004 to 2012. She proposed a firm called Canonbury to take over the management.

The application to the tribunal

8. Her application was received by this tribunal on 19 February 2013. She seeks the appointment of a new manager under the provisions in Part 2 of the Act. Directions were given by the tribunal on 9 April 2012. A two day

hearing was fixed for 24 and 25 June 2013 to be preceded by an inspection of the premises. (In the event the inspection and the hearing were both conducted on 24 June 2013. After the hearing the tribunal adjourned to consider its decision. After this adjournment we gave our decision dismissing the application orally to the parties).

The inspection and the hearing

9. We attended the premises on the morning of 24 June 2013, we met Ms Simpson and we inspected the premises externally and we also viewed the internal common parts. Overall, the exterior of the premises showed signs of disrepair and the decorative condition of the common parts was also poor. It was also apparent that neither the front or the rear garden have been attended to. Rubbish bins are to be found at the front of the building which are unsightly. There were also estate agents boards advertising flats for rent. The premises are in a poor state of repair and contrast unfavourably with other properties in the street.
10. At the start of the hearing Ms Simpson told us that she has approached Mr Mozes of KMP a firm of managing agents who is willing to be appointed a manager if the tribunal decides to make an order under Part II of the Act. He was present and later answered questions about his suitability to manage the premises. The landlords were represented by Mr Thornton whose firm have been appointed by the landlords to manage the premises. He had previously been approached by Ms Simpson but when he discovered that she has failed to pay service charges, and that many of her complaints have already been dealt with by an earlier determination of service charges by this tribunal, he decided not to put himself forward as a potential manager. Instead he has been appointed a manager by the landlords.
11. This brought us to that determination under case reference LON/OOAP/LSC/2011/0602 involving the same parties when Ms Cherriman of Michael Richards & Co, the then managing agents represented the landlords. In that application Ms Simpson sought a determination of service charges for the years 2004 to 2012. That tribunal noted that Ms Simpson has not paid service charges since June 2008.
12. After a two day hearing the tribunal determined that all of the disputed service charges were payable in full. The tribunal also decided that the landlord should pay the sum of £376 because of an item of disrepair which Ms Simpson is entitled to set off against the service charges she owes. Ms Simpson applied to this tribunal for permission to appeal. The application was refused. She has applied to the Upper Tribunal for permission to appeal.
13. We heard from Mr Mozes who told us that he is one of the directors of his company KMP, a firm of managing agents. He has worked for them for two and one-half years. They currently have some twenty blocks of flats which they manage. He is part of a team of four people and he has experience of all aspects of leasehold management including service charge

consultation and dealing with service charge arrears. His company is a member of the Association of Residential Managing Agents and the company has indemnity insurance. Mr Mozes also told us he has experience with the right to manage. He added that managing these premises will be a challenge but his firm 'likes a challenge'.

14. We were impressed by what Mr Mozes told us and we consider that he would be a suitable person to be appointed a manager. However, as we explain below, we do not consider it appropriate to appoint a new manager.

15. Mr Thornton told us that his firm is very experienced in managing blocks of flats. He has a twelve month contract with the landlords which is a renewable contract. Because of the provision in clause 34 of the lease there are major restrictions on the charging of management fees. This means that the landlord cannot recover in full the costs of employing a managing agent. This may require an application under Part IV of the Act for a variation of the lease.

16. He told us that he accepts that the premises are not currently being managed properly but that he has planned a programme of works and he expects the past management difficulties to fade away in due course. One of his priorities is to recover any unpaid service charges. We were also impressed with Mr Thornton who appears to have the experience to manage the premises satisfactorily.

Our decision

17. After considering the evidence and the papers we have little hesitation in deciding that the application for the appointment of a manager under Part II of the Landlord and Tenant Act 1987 should be refused.

18. As we explained to the parties at the hearing such an appointment can only be made if (a) one of the grounds set out in section 24 of the Act is proved **and** (b) 'that it is just and convenient to make the order in the circumstances of the case' (emphasis added).

19. The leaseholder set out her complaints in the section 22 notice she served on the landlords on 21 December 2013. They amount to the complaint that the landlord is in breach of obligations under the lease (section 24(2)(a)(i) and the complaint that unreasonable service charges are being made (section 24(2)(ab)(i) of the Act.

20. As the tribunal has made determinations on the service charges we clearly cannot order the appointment of a manager under section 24(ab)(i) of the Act.

21. So far as other breaches are concerned, those representing the landlord at the hearing accepted that there have been breaches in the past and as we explained above we were far from impressed at the way in which the property is currently managed. In principle this could justify an appointment under section 24(2)(a)(i) of the Act. However, we do not

consider that it would be just and convenient for a manager to be appointed in the circumstances of this case. The landlords have only (the previous managing agents having resigned) recently appointed a new manager which has already taken steps to prepare a plan for providing services, repairs and any other necessary works for two years. We do not think it appropriate or necessary for the tribunal to make such an order.

22. Ms Simpson's application for a manager to be appointed is dismissed.

James Driscoll
22 July 2013

Appendix of the relevant legislation

Section 21 Tenant's right to apply to court for appointment of manager.

The tenant of a flat contained in any premises to which this Part applies may, subject to the following provisions of this Part, apply to a leasehold valuation tribunal for an order under section 24 appointing a manager to act in relation to those premises.

(2)

Subject to subsection (3), this Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

(3)

This Part does not apply to any such premises at a time when—

(a)

the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or

(b)

the premises are included within the functional land of any charity.

(3A)

But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.

(4)

An application for an order under section 24 may be made—

(a)

jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section, and

(b)

in respect of two or more premises to which this Part applies; and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to a single tenant shall be construed accordingly.

(5)

Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under section 24 in respect of those premises may be made by any one or more of those tenants.

(6)

An application to the court for it to exercise in relation to any premises [any jurisdiction] to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 24 appointing a manager to act in relation to those premises.

(7)

References in this Part to a tenant do not include references to a tenant under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

Section 22 Preliminary notice by tenant.

(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 a leasehold valuation 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)
A leasehold valuation 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 23 Application to court for appointment of manager.

(1) No application for an order under section 24 shall be made to a leasehold valuation tribunal] unless—

- (a) in a case where a notice has been served under section 22, either—
 - (i) the period specified in pursuance of paragraph (d) of subsection (2) of that section has expired without the person required to take steps in pursuance of that paragraph having taken them, or
 - (ii) that paragraph was not applicable in the circumstances of the case; or
- (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

- (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
- (ii) no direction was given by the tribunal when making the order.

(2) Procedure regulations shall make provision—

- (a) for requiring notice of an application for an order under section 24 in respect of any premises to be served on such descriptions of persons as may be specified in the regulations; and
- (b) for enabling persons served with any such notice to be joined as parties to the proceedings.

Section 24 Appointment of manager by the court.

(1) A leasehold valuation 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) A leasehold valuation 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;

(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).]

(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 1925 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)

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; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, the tribunal] may by order direct that the entry shall be cancelled.

(9A)

the court 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 a leasehold valuation 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 or insurance of those premises.