



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

Case Reference : **MAN/00EU/LAM/2017/0002**

Property : **Cherry Court, Orchard Street,
Warrington WA1 2TE**

Applicant : **December Group Limited**
Represented : **by Mr Philip Green**

Respondent : **Cherry Court Management (2011) Company Ltd**
Represented by : **Regency Estates (the managing agents)**

Type of Application : **Application to appoint a manager under Section
24 Landlord and Tenant Act 1987**

Tribunal Members : **Mr J R Rimmer**
Mr I James

Date of Decision : **2 January 2018**

Decision

Order : The Application is refused for the reasons set out herein

A. Application and background

- 1 The Applicant is the current owner of Flat 2, Cherry Court, Orchard Street, Warrington which is one of 36 flats set in 3 conjoined blocks situated within a short distance of Warrington town centre. The Respondent is the management company with responsibility of managing the development; that management being carried out by the agents representing it in these proceedings. A partial copy of a standard lease for the flats is provided within the papers submitted to the Tribunal. It is granted out of a headlease for 999 years from 22nd June 2005.
- 2 The Applicant makes application under Section 24 Landlord and Tenant Act to have appointed as manager of the blocks EDGE property Management Company Limited, of Unit 5, Stiltz Building, Ledson Road, Wythenshawe, Manchester M23 9GP. The grounds upon which the application is based are set out within the application form Leasehold 2. There are seven of them and they are considered below.
- 3 The matter first came before a Deputy Regional Judge of the Tribunal on 17th February 2017 and the Tribunal is pleased to note the extent to which they have been complied with by both parties. Thereafter the matter was listed for a full hearing on 8th June 2017.
- 4 At that time it was however clear that a further issue had arisen. The original management company formed to manage the flats had been struck from the register of companies at Companies House and it was not clear what entitlement the Respondent had to act as the management company. The matter was therefore adjourned for further enquiry until such time as it became apparent that the obligations of the original company had been properly transferred to the Respondent following the winding up of the former. Appropriate information was in due course found to show the Respondent as the properly constituted management company, although with some differences as to the appointment of directors and officers when compared with its predecessor.

B The Law

- 5 The law relating to an application to appoint a manager is set out in Section 24 Landlord and Tenant Act 1987.

Subsection (1) allows an application to the Tribunal for the appointment of a manager to carry out in relation to any relevant premises such functions in relation to the management of the premises, or the functions of a receiver, or both, as the tribunal thinks fit.

Subsection (2) then provides that the tribunal may make an order in 5 specific situations where it is satisfied:

- A relevant person is in breach of any obligation owed by him to a tenant in relation to the management of the premises
- Unreasonable service charges have been made, or are likely to be made
- Unreasonable administration charges have been made, or are likely to be made
- There has been a failure to comply with a duty imposed by Sections 42 or 42A of the Act (relating to holding service charge monies in trust)
- Where there has been a breach of a management code of practice approved by the Secretary of State.

6 In each of the above cases there is an overriding consideration that even if such a ground, or grounds, are established it must be just and convenient in all the circumstances to grant the application.

7 The applicant must also serve an appropriate preliminary notice under Section 22, or seek a dispensation from that requirement, before making the application. It was clear in this case that such a notice had been served.

8 The seven specific grounds set out in the application would fall within two of the 5 situations outlined; those relating to breach of management obligations and breach of a code of practice. The expansion of those grounds within the "Scott Schedule" are set out in paragraph 12, below.

C Inspection

9 On the morning of 8th June 2017 the Tribunal inspected the exterior and common parts of Cherry Court. It is a single building constructed of brick under a tile roof, the construction of which was completed in 2005. It is sub-divided vertically into three blocks, of which two are 3-storey and the other 4-storey. There are entrances to each block leading to a common entrance hall, stairways and landings. The grounds consist of a large car park and smaller grassed and shrubbed areas. The development is set in a largely commercial environment within easy walking distance of Warrington town centre. Subject to the particular observations set out below it appears to be reasonably maintained by the managing agents.

D Evidence and submissions

- 10 The Applicant, having set out its case in the seven grounds within the application then expanded upon them within its statement in support of the application, to which the Respondent responded, and they were then reduced to a "Scott Schedule" to which both parties appended their observations. The Tribunal has taken all those observations made by either party into account in coming to its conclusions set out hereafter.
- 11 It was apparent to the Tribunal that there exists some friction between the Applicant and the Respondent, although the Respondent was at pains to point out that its criticisms only related to the managing agents to the extent that they were constrained by the instructions received from the Respondent. The view expressed was that the Respondent sought to keep service charge costs at current levels, without reference to the need to consider what was necessary to preserve the integrity of the building and probable increases in costs. In turn the Respondent appeared concerned as to the motives of the Applicant and the element of connectivity between the Applicant and the proposed new managers.
- 12 It became clear that there were a number of shortcomings in the management of the building identified in the written submissions of the Applicant, or elicited during the course of the hearing. They may be set out shortly as follows:
- Failure to comply with the repairing obligations placed upon the Respondent, with particular reference to guttering and rainwater goods, ACO drains to the car park, failure to record electrical inspection, failure to carry out a fire safety assessment, and window cleaning more infrequently than required by the lease. *There* is also an issue in relation to the physical whereabouts of the fire safety log book.
 - Failure to comply with the ARMA code of practice, or comply with the recognised RICS code and a failure to provide a documented health and safety risk assessment
 - Failure to provide service charge accounts, or budgets for the current year, in a timely manner
 - Apparently entering into a long term agreement (that between the Respondent and the managing agents) without utilising the provisions of section 20 Landlord and tenant Act 1985 (the consultation provisions)
 - The absence of an appropriate certificate (actually referred to in paragraph 14 of Schedule 4 to the lease as a written statement) supporting the service charge accounts
 - Failure to supply documents requested in a timely manner or provide the relevant summary of rights and obligations with the accounts
 - Failure to include terrorism in the risks covered by the insurance policy for the block.

- 13 It became common ground that a number of matters had been addressed during the course of the application before the tribunal and particularly in the period between the hearing on 8th June and that on 29th November. The Tribunal noted a fire risk and safety assessment had been carried out, a defective meter cupboard door secured, the car park drainage re-configured and the 2016 accounts provided within time and, eventually, with the correct notice to the Applicant.
- 14 There was no suggestion from the Applicant that there were any inherent fire or other safety issues existing within the development and no evidence of any fire service inspection criticisms, or anything of a similar nature.
- 15 Equally a number of matters remained outstanding, for example rainwater goods remained defective, window cleaning remained at three monthly intervals, and terrorism was still not included in the insurance cover. The managing agents indicated the first two issues were still pending in view of cost (likely to include scaffolding or cherry picker for the downspouts and additional cleaning costs for the windows) and the latter because of advice received from the insurance broker dealing with the policy (not reduced to any written advice).
- 16 Mr Green on behalf of his applicant company noted with some approval the work that had been done, but still concern that in relation to fire and safety the situation in relation to what had been done was unclear in so far as policy was not clearly outlined or conveyed to interested parties. Notwithstanding expressions of intent it was not yet clear the extent to which the management company complied with any code of conduct.
- 17 The Tribunal echoes Mr Green's concerns that at the second hearing there was no director from the management company to answer any questions, or confirm the instructions given to the managing agents as to how services were to be provided. Notwithstanding the valiant efforts of Mr Holt from the agents to avoid the direct questions upon the point the Tribunal was left with the clear impression, apparently supported by Mr Green's note of the last tenants' meeting, that the management company was driven by instructions, whether they be express or implied, that the agents were to seek to keep costs from any significant increase.
- 18 The Tribunal also noted that a questionnaire had been circulated to the leaseholder of other flats on the development and there were apparently unanimous, within the limits of the questionnaire, that no change to management was necessary or desired. Whilst treating the responses with some caution the Tribunal must give them some weight, particularly as the Applicant, notwithstanding the passage of some time, remained a lone voice within the application

Determination

- 19 It is clear to the Tribunal that the situation at Cherry Court needs some improvement. There are clear failings in the management of the development that need addressing and need addressing within a fairly short timescale. The Tribunal has made the following assessments of the issues, or perceived issues that exist at present:
- The general appearance of the property and its state of repair, particularly given its local environment are good. Most outstanding issues of repair may be easily addressed, if not done so already.
 - The managing agents are mainly responsive, if sometimes slowly, to matters raised with them, for example in relation to the car park and the need for appropriate fire and safety assessments
 - Other continuing omissions appear to relate to the determination of the Respondent to keep the costs of services to a minimum, for example the reduction in window cleaning from the regularity expressed in the lease and the choice of repair options for the car park drainage, where the Tribunal has accepted the evidence of Mr Green and his recent inspection
 - Progress is being made in relation to safety issues, but work has still to be done to crystalise appropriate policies and disseminate them. The Tribunal noted the further matter of the correct maintenance of the fire log book. This is a matter that many managers have in relation to the compromise between its security and its availability that is not easily settled.
- 20 The Tribunal were impressed by both Mr Green, on behalf of the Applicant, and Mr Holt of the managing agents, on behalf of the management company, in the way that they presented their cases; neither of them being professional advocates. Neither of them sought to overemphasise their respective positions and respected the views of their opponents. Mr Green was nevertheless clear in his wish to see a change in management. Mr Holt gave the clear impression of wishing to do better.
- 21 Striking the correct balance in such a situation is not easy for the Tribunal, but it is none the less the duty with which it is tasked and which it must carry out. It has weighed in the balance all those matters set out above and it is not yet of the view that it is just and convenient to make an order such as requested by the Applicant. The Tribunal has inserted the word "yet", in the sentence above, deliberately. The Tribunal is concerned that the equilibrium between the cost of services and what needs to be provided has been struck, particularly where the lease makes express provision for certain matters (e.g frequency of window cleaning, although monthly intervals seems to the tribunal to be excessive). Had there been any evidence to suggest direct and immediate concern with safety issues the decision would have been different. On the other hand the Tribunal is satisfied that in many respects the services provided appear to be more than adequate and this is not a development, which from its overall appearance and state of repair, cries out for intervention from the Tribunal.

- 22 The Tribunal would also venture to suggest that in the unfortunate eventuality of this matter needing to be returned to the Tribunal it might be useful for the current members to sit, having the knowledge they now have of the situation at Cherry Court.
- 23 It is also the case that the Tribunal has assessed the situation as it is now and not when the Applicant commenced these proceedings, or, indeed, set the matter down for hearing. Upon reflection, the Tribunal takes the view that the tribunal fees paid by the Applicant should be shared, and not fall solely upon the Applicant. One half should therefore be re-imbursed by the Respondent. As this was not a matter aired directly at the hearing the tribunal will consider any representations made within 14 days of the publication of this decision.