



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

Case Reference : CHI/00HH/LAM/2021/0008

Property : 2 Langstone Close, Babbacombe, Torquay,
Devon TQ1 3TY

Applicant : Ms J Ayres

Representative :

Respondent : Mr Malcolm Carter and Mrs Susannah
Segal as Trustees of the Locker Foundation

Representative : Ms R Cunningham, counsel
J B Leitch Solicitors

Type of Application : Application to appoint a manager

Tribunal Member(s) : Judge D. R. Whitney
Mrs J Coupe FRICS
Ms T Wong

Date of Hearing : 17th November 2021

Date of Decision : 11th January 2022

Decision

Background

1. The Applicant seeks an Order appointing a manager.
2. The Applicants are one of the leaseholders at the building. The Respondents are the freeholders.
3. Directions were issued by the Tribunal providing that this application would be heard immediately after the Respondent's claim in respect of service charges under case reference CHI/00HH/LIS/2021/0025.
4. At the hearing the Applicants attended in person and the Respondent's were represented by Ms Cunningham of counsel. Mr D Stocks the nominated manager also attended. Both parties gave evidence and made their respective submissions in respect of the application before the Tribunal and the Tribunal heard from Mr Stocks. The Tribunal confirmed to both parties it took account of its determination in respect of the service charges and all the evidence and submissions made.
5. A hearing bundle was supplied for use in both applications. References in [] are to pages within the hearing bundle.

The Law

6. The relevant law is contained within Section 24 of the Landlord and Tenant Act 1987 ("the Act") which states that:

Section 24 Appointment of manager by a leasehold valuation tribunal.

(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;

(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;

(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) 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 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 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, improvement or insurance of those premises.

The Hearing

7. The hearing took place remotely by video. Both parties confirmed at the conclusion that they had said everything they wished in respect of the application.
8. The Tribunal did not inspect the Property and no party invited them to do so. The Tribunal had descriptions within the bundle as well as having looked at the property via online resources.
9. This decision records the most salient parts of the hearing which the Tribunal took account of in reaching its determination. It is not however a transcript of all that took place.
10. Ms Cunningham confirmed that the Respondent's accepted that the Section 22 Notice [47 & 48] had been properly served.
11. Mrs Ayres confirmed none of her witnesses would be attending to give evidence.
12. Mrs Ayres submitted that the Tribunal had found some costs included within the service charges (see decision in CHI/00HH/LIS/2021/0025) were unreasonable. In her submissions the leaseholders do not get the service they are entitled to as the current manager is based a long way from the Property.
13. In particular Mrs Ayres took issue with the use of contractors who were not based in the Torquay area such as those who undertook works to lighting and installation of smoke alarms. In her submission the agents and contractors should be local so that they can easily visit and attend at the Property as and when required.
14. Mrs Ayres relied on the fact that the insurance commissions paid to the current agent are in her submission high being 14.9%. She also referred to struggling to obtain information and believed if a local agent was appointed this would be easier.

15. Mrs Ayres was questioned by Ms Cunningham.
16. Mrs Ayres confirmed she only had statements from 4 other leaseholders. She explained one other couple had sold their flat and one had passed away who may have supported her application.
17. Mrs Ayres was questioned by the Tribunal.
18. She stated that Tenant's committee had not been formed at the time of her application. She had applied as no one else was able to do so and many residents were afraid of the process. Other residents would struggle to take part in this process as some do not have internet connections and are too nervous of such proceedings.
19. Mr Stocks attended. He had not got his statement with him but the Judge shared his screen. He confirmed his statement at [143-151] was accurate. He confirmed to Mrs Ayres he does not take insurance commissions.
20. Ms Cunningham then questioned Mr Stocks.
21. He was an associate member of RICS and not a full member. He explained he had visited the site on two occasions. He confirmed his fees were as set out in his statement and these were the only fees he would charge.
22. Mr Stocks confirmed he would try and use local contractors. In his experience this was achievable for most works which are required. He has a list of contactors and confirmed he manages some 200 properties. He confirmed he would assess what works were required.
23. Mr Stocks was questioned by the Tribunal. He knew he was answerable to the Tribunal. He indicated at the time of hearing he had not been appointed but had a number of pending appointments. He confirmed he was the sole proprietor of Crown Property Management which company he would use to provide the day to day services.
24. Mrs Ayres confirmed this was her case.
25. Ms Cunningham relied upon her skeleton argument filed and in particular section 6.
26. In her submission whilst the Tribunal in respect of the service charge case had found certain charges were unreasonable these were minor breaches. The amounts involved were modest.
27. The claim was bought only by one leaseholder. The estate consist of 54 long residential leases. She submitted there was now in place a fledgling Tenants Association with whom the current agent,

Proxim Property Management Limited, was in discussions. She suggested it was noticeable that no other leaseholders had sought to join or attend to give evidence in support of the application.

28. In her submission the appointment of a Tribunal manager is an option of last resort. It should be used in cases of serious mismanagement and in her submission this case does not even come close to reaching that high threshold.
29. Ms Cunningham confirmed her client reserves the right to make an application under Rule 13 in respect of unreasonable costs.
30. All parties confirmed they had said everything they wanted. The Tribunal adjourned to consider matters and on resumption confirmed it was not satisfied that a manager should be appointed and full reasons would follow.

Decision

31. The Tribunal thanks all the parties for their assistance and helpful submissions. We have had regard to all that was said and included within the bundle and skeleton arguments.
32. The hearing of this application did follow our determination of a claim in respect of service charges issued by the freeholder against Mrs Ayres in the County Court and transferred to this Tribunal. Prior to our hearing this application we had explained our determination in that case to the parties. Essentially, we found that the majority of sums were due and payable by Mrs Ayres save for certain charges levied by the managing agent Proxim Property Management Limited which we found to be unreasonable.
33. The freeholder had issued proceedings against Mrs Ayres which she defended. These were transferred to this Tribunal and she did subsequently issue her application for a manager to be appointed. It is against that background that this case is approached.
34. Ms Cunningham accepted a determination that service charges were unreasonable may provide a gateway under Section 24 of the Act. The Tribunal must however be satisfied that it is just and convenient to appoint a manager.
35. We have had regard to the statements from other residents produced by Mrs Ayres. As we advised her at the hearing the weight which such carry is limited given Ms Cunningham had no opportunity to cross examine such witnesses.
36. A large part of Mrs Ayres case focussed upon the fact that the agent is based in the West Midlands and so some distance away. Their property manager for the development is based in Salisbury. Mrs

Ayres is frustrated by the use of contractors who also appear to be based a long way from the Property and which in her submission leads to increased costs.

37. Ms Cunningham and Ms Andrews, the director of Proxim Property Management Limited deny that any issues of distance impact upon the management. Evidence was given in the service charge dispute that the property manager visits every two months. Whilst it is accepted that certain contractors are used who appear not to be based in the locality these are national contractors of specialist services such as undertaking fire safety works. Further Ms Andrews evidence was that given the portfolio of properties her company manages it is able to achieve costs savings by using such companies for works at blocks it manages.
38. The Tribunal also took account that there did now seem to be a Tenants Association with whom the manager was now working. It appeared Mrs Ayres was not working with the same.
39. This Tribunal notes that on the face of the evidence the very large majority of leaseholders do not support any change to the management arrangements. Further we accept the submission of Ms Cunningham that whilst our finding of unreasonable service charges may provide a gateway to making an order the breach so found is not sufficiently serious to justify the same.
40. A Tribunal will only appoint an order in the most serious of circumstances. The right to appoint a manager is a right of the freeholder and it for them to determine whom is appropriate.
41. On the evidence before us we were not satisfied that it was just and convenient to appoint a manager. This Tribunal therefore dismissed the application.
42. Finally we thank Mr Stocks for his statement and taking the time to attend the hearing and be questioned.

RIGHTS OF 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 by email to rpsouthern@justice.gov.uk 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.