9531

FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference :	CHI/00HB/LAM/2013/0011
Property :	19 Brigstocke Road, Bristol BS2 8UF
Applicant :	Mr Darren McGuinness (the Tenant)
Representative :	---
Respondent :	19 Brigstocke Road Management Company Limited; W Morgan & E Jarvis; J Rindom & C Vance and M Tobin
Representative :	---
Type of Application:	Application under Section 24 landlord and Tenant Act 1987 for the appointment of a manager
Tribunal Members :	Judge P J Barber — Chairman Mr M J Ayres FRICS — Valuer Member Mr M R Jenkinson — Lay Member
Date and venue of Hearing :	30th September 2013 — The Thistle Grand Hotel, Broad Street, Bristol BS1 2EL
Date of Decision :	21st October 2013

DECISION

Decision

1. The Tribunal determines that the Respondent is in breach of its obligations under Section 24(2)(a)(i) and Section 24(2)(ac)(i) of the Landlord and Tenant Act 1987 ("the 1987 Act"); however in all the circumstances the Tribunal determines that it is not just and convenient in either case to make the order under Sections 24(2)(a)(iii) and 24(2)(ac)(ii), and the appointment of Mr Ian Simmonds as manager is refused.
2. The Tribunal further determines in accordance with the provisions of Section 20(C) Landlord and Tenant Act 1985 that one half of the costs incurred by the Respondent / landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Reasons

BACKGROUND

3. This application for the appointment of a manager under Section 24(1) of the 1987 Act was made by Mr Darren McGuinness ("the Applicant"), in respect of the block comprising 4 residential flats situate at and known as 19 Brigstocke Road, Bristol BS2 8UF ("the Block"). The Block comprises a non-purpose built house believed constructed in or about the 1870s, comprising four flats arranged over 4 floors. The Applicant purchased the leasehold interest in the Top Flat at the Block in or about November 2012. Shortly after completing his purchase of the Top Flat, the Applicant became aware of problems arising in regard to water penetration, resulting in staining and marks to ceilings in various rooms adjacent to the outer walls; consequently the Applicant requested that the Respondent should carry out roof repairs to resolve those problems.
4. As required by Section 22 of the 1987 Act, the Applicant served a notice on the Respondent dated 24th April 2013, setting out the grounds for the application. The notice gave the Respondent warning of the Applicant`s intention to make an application to the LVT for the appointment of a manager, unless the remedial action and/or steps set out in the notice were satisfactorily resolved within a period of four weeks from the date of the notice. It is the Applicant`s case that not all of the required steps and/or remedial action have been taken by the Respondent.

THE LAW

5. Section 24 of the 1987 Act provides that the LVT may, on an application for an order under that section, appoint a manager to carry out in relation to the relevant premises, (a) such functions in connection with the management of the premises, or (b) such functions of a receiver, or both as the LVT thinks fit.

   In summary, by virtue of Section 24(2) of the 1987 Act the LVT may make an order in circumstances which include the following :

1. Where the LVT is satisfied that :

(a) The landlord is in breach of any obligations owed by him to the tenant under his/her tenancy and relating to the management of the premises in question or any part of them and that it is just and convenient to make the order in all the circumstances of the case.

Where the LVT is satisfied that :

(ab) Unreasonable service charges have been made, or are proposed or likely to be made, and that it is just and convenient to make the order in all the circumstances of the case.

Where the LVT is satisfied that :

(ac) The landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 and that it is just and convenient to make the order in all the circumstances of the case.

Where the LVT is satisfied that :

(b) Other circumstances exist which make it just and convenient for the order to be made.

INSPECTION

6. The Tribunal's inspection took place in the presence of the Applicant Mr McGuinness, and Ms Rindom from the Ground Floor Flat.

7. The Block is located on the corner of Brigstocke Road and Gwyn Street in the St Paul`s area of Bristol. The Block includes a Basement Flat, together with a flat on each of the ground, first and top floors. Externally, the Block is part rendered and part stone clad; there is a separate entrance to the Basement Flat only, obtained from a small yard at the rear; access to the remaining three flats is via a communal entrance door fronting on to Gwyn Street, leading to a compact hall, stairs and landing at the back of the Block believed to have been added in or about the late 1970s. The Tribunal noted that some of the external window headers or mullions were in poor condition with signs of crumbling and/or cracking. The Tribunal did not have access to the roof, but noted from visual inspection at street level, that there is a pitched roof structure within parapet walls located on the three outside walls of the Block. The render was breaking away in several places on the rear walls. There were bicycles stored under the stairs on the ground floor inside the communal entrance to the Block; the floors and stairs were laid with carpet which was noticeably worn; the walls were emulsion painted. There were 3 light fittings,

one on each of the ground, first and top floors but only the ground floor light appeared to be working.

8. The Tribunal (but not Ms Rindom) inspected the interior of the Top Flat at the invitation of the Applicant; stain marks consistent with damp ingress were noticeable on the ceilings close by the outer walls inside the Top Flat. There were also some stain marks near the window in the back bedroom; Mr McGuinness said he had not attempted to re-paint since first noticing the problem.

HEARING AND REPRESENTATIONS

9. Mr McGuinness represented himself and was accompanied by Mr Ian Simmonds the proposed manager. Mrs Tobin (Basement Flat) and her son were in attendance as were Ms Rindom and Mr Vance (Ground Floor Flat) and Mr Morgan (First Floor Flat). For the most part, Mrs Tobin the company secretary, represented the Respondent company but with submissions also being made by those other Respondents present, from time to time during the course of the hearing.

Breach of Covenant & RICS Code of Practice

10. Mr McGuinness described how he had purchased the Top Flat in November 2012 with the aid of a Home Buyers Report which had indicated that the roof was likely to be in some need of attention; he added that when severe rain storms occurred in late November 2012 it became very obvious that there was a problem with water ingress via the roof and possibly also through the defective window headers; he said there was also a problem with small stone pieces from the window headers falling to the ground. Mr McGuinness said that a meeting was held with the other flat owners in December 2012 to discuss the roof problem; by then, Mr McGuinness had obtained an estimate for repair but it was not from a roofing specialist. Mr McGuinness said that a meeting of the leaseholders occurred on 12th February 2013; the other leaseholders present at that meeting, tentatively agreed there was a problem with the roof, but the cost of the repair was questioned by them. Mr McGuinness said the other issues relating to hall lighting, an insecure communal front door and health & safety concerns regarding storage of bicycles in the communal lobby were also discussed at the meeting.

11. Mr McGuinness said that on 19th February 2013 he issued a written proposal to the Respondents calling for formal agreement to instruct a surveyor and to carry out repairs, but that no written response had been received. Mr McGuinness said that by March 2013 he decided to commission his own condition survey; he added that the survey report identified a number of areas where work was required; he said he tried without success to arrange a further meeting with the other lessees. By 24th April 2013, Mr McGuinness said that in the light of guidance and advice offered to him by various professional contacts and friends, he felt the only way forward was to pursue matters formally and accordingly he issued a notice under Section 22 of the 1987 Act and made the application under Section 24, to the Tribunal, for a manager to be appointed to take over from the Respondent company.

12. Mrs Tobin said that she had acted as company secretary to the Respondent company until 2009 but then owing to ill health, had resigned. From 2009 onwards, Mrs Tobin said that a previous lessee, Mr Ottolang had been company secretary but it appeared by 2012, after Mr Ottolang had moved away, that there was a hiatus situation in regard to the company secretary role. By early 2013 Mrs Tobin indicated that there was an urgent need for a new company secretary since

company returns were due by 31st March 2013 and accordingly she resumed the role. Mrs Tobin said that when the meeting was held on 12th February 2013, the other lessees apart from Mr McGuinness felt they did not want to incur the cost of a full survey and that it was not entirely necessary; she said they felt that the estimates obtained were not all in respect of the same works and that in any event a competent small local builder ought to be able to advise on what was required.

13. Mrs Tobin said she had spoken to Mr McGuinness`s surveyor who had told her that adherence to the RICS Code of Practice was not mandatory. The other Respondents submitted that they were all agreed that work was outstanding, but said they were disconcerted by what they described as an "escalation" of matters by Mr McGuinness following the meeting on 12th February; they submitted that they had found delivery of legal documents by recorded delivery with deadlines for response, to be very alarming. Mrs Tobin said the Respondents had not made any response to Mr McGuinness`s written proposal of 19th February 2013 because they had felt intimidated. The Respondents added that they were "dumbstruck" later, to receive the Section 22 Notice and notice of application to the Tribunal and consequently sought and obtained their own legal advice in late May 2013. Following that legal advice, Mrs Tobin said that the Respondent issued a Notice of Intention to Carry Out Works, to all lessees in the Block pursuant to Section 20 Landlord and Tenant Act 1985 ("the Section 20 Notice").

14. Mr McGuinness said he had not responded to the Section 20 Notice since he considered that owing to possible company irregularities, such notice may be invalid. Mr McGuinness said he had not suggested or nominated any contractor of his own, in response to the Section 20 Notice and from whom an alternative estimate might be obtained, for fear of thereby endorsing the validity of the Section 20 Notice.

15. Mrs Tobin said that a meeting was arranged on 1st July 2013 at which the Respondent wished to consider any estimates and/or proposals of alternative contractors from whom estimates might be obtained; she said that Mr McGuinness attended but had not proposed any contractor of his own, given his view that the Section 20 Notice may have been invalidly served. Mrs Tobin said that the Respondents favoured DD Builders who were recommended local contractors, for the carrying out of the proposed work. Mrs Tobin said they asked their builder to try to obtain access to the roof, via the Top Flat but that this proved impossible since Mr McGuinness was away in late July 2013. Mr McGuinness said he did not respond to the request for permission to access the roof via his flat, since he felt that to do so would prejudice his application to the Tribunal.

16. Mrs Tobin said that the Respondents had historically always tried to arrange works informally through amicable discussion and were frightened by Mr McGuinness`s legalistic approach; she admitted there had been some initial "wobbles" in February 2013 but they could not understand Mr McGuinness`s unwillingness to engage by the date of the meeting in July 2013. Mr McGuinness submitted that he had been trying to get the problems resolved for eight months and that any escalatory steps he had taken were necessary and under advice; he said he felt that the Respondent was simply not capable of overseeing and arranging works of this type and value.

Appointment of a Manager

17. Mr McGuinness submitted that owing to the scale and complexity of the proposed works, a professional manager was needed; he said that the way in which the Respondent company is currently run is completely unsatisfactory in his view. Mr McGuinness further submitted that the appointment of a competent professional in these circumstances was reasonable and not an undue expense. The proposed manager Mr Ian Simmonds of BNS Management Services ("BNS") of Downend, Bristol, was present and gave evidence to the Tribunal regarding his professional qualifications and experience. Mr Simmonds said that he is a director of BNS which is a limited company having one office. Mr Simmonds said that he has a business degree from Portsmouth University; he said that he has been a director of BNS for the last 7 years; however neither BNS nor Mr Simmonds have any experience of appointment as manager, pursuant to Section 24 of the 1987 Act. Mr McGuinness submitted that BNS had nevertheless given him various references in regard to their appointment generally as managing agents for residential leasehold blocks. Mr McGuinness further stated that he had carried out extensive due diligence checks before selecting Mr Simmonds as his proposed manager. Mr Simmonds was unable to produce a form of contract specific to any engagement pursuant to Section 24 of the 1987 Act; he said that the charging rate proposed of £150.00 & VAT per unit was reasonable and would include a full manager package, including arranging and overseeing the proposed major works to the Block. The Tribunal asked Mr Simmonds what form of training or other preparation he envisaged in order to ensure his suitability as the proposed manager of the Block, given his lack of any previous direct experience in this regard. Mr Simmonds admitted that it would be a new process for him, but he had no additional preparatory steps in mind. When asked why his proposed budget for the Block for the year from 1st October 2013 included no provision for major works, save for a £500.00 contribution to reserves, Mr Simmonds indicated that this was an oversight, but could be amended when detailed estimates for the major works became available.

18. The Respondents submitted that they themselves collectively had more relevant experience than Mr Simmonds and questioned him as to why in 7 years at BNS no such appointment had previously been made for any other premises managed by BNS. Mr Simmonds said this was not particularly odd given the rarity of the Section 24 manager appointment process.

19. In closing, the Respondents submitted that they felt collectively better qualified than Mr Simmonds to manage the Block, but they would welcome assistance in this task from Mr McGuinness rather than as they saw it, him putting his energies into undermining them. The Respondents added that they had relevant business experience among them but would welcome an opportunity to wipe the slate clean and start again with Mr McGuinness, working together to achieve what is required. The Respondents said the relationship had become strained for example because Mr McGuinness had contacted the insurer of the Block direct to question the insurance cover arrangements.

20. In his closing, Mr McGuinness said he considered the Respondents to be incapable of operating the Block in a legally sound environment. Mr McGuinness referred to the delay he had experienced in having the share in the Respondent company transferred into his name after he completed his purchase of the Top Flat; he said he had tried to be measured, but on occasion the Respondents were

hostile and aggressive towards him. Mr McGuinness submitted that there were many potential benefits available from having a professional managing agent including the potential for cheaper deals on insurance and other arrangements. Mr McGuinness said he had discovered that the Block insurance policy was of a type to cover a single house, not a property converted to multiple flats; he submitted that this was another example of categoric failings by the Respondent company. Mr McGuinness said he thought nothing would have happened at all, had he not issued the Section 22 Notice. As regards the proposed appointment of Mr Simmonds as manager, Mr McGuinness said he had tried to follow all the proper channels in making his selection.

CONSIDERATION

21. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of both parties.

Breach of Covenant & RICS Code of Practice

22. The Tribunal noted from the inspection that there were significant damp ingress problems inside the Top Flat, consistent with defects to the roof, requiring repair. The Tribunal further noted that the Respondent company had by early June 2013 issued a Section 20 Notice of intention in regard to carrying out essential repairs to the roof, although that was some six months after the problem had first been raised by the Applicant. Nevertheless the obligation at Clause 4; Seventh Schedule of the Lease is that "*The Lessor shall keep the Reserved Property ...in a good and tenantable state of repair decoration and condition...*" The Second Schedule of the Lease provides that the Reserved Property includes "*...the main structural parts of the Building including the roofs...*" The Tribunal noted the admission by the Respondents that there had been some early "wobbles" concerning the issue of effecting roof repairs and that there appeared to have been a period when the company secretary role was vacant and an apparent lack of clarity as to how the Respondent company was being effectively managed and directed in order to comply promptly and properly with its various obligations arising under the Lease. Similarly the Respondent company is obliged under Clause 6; Seventh Schedule of the Lease to "*...keep the hall stairs landing and passages forming part of the Reserved Property properly cleaned and in good order and shall keep adequately lighted all such parts of the Reserved Property as are normally lighted or which should be lighted...*" The Tribunal considers it is significant that there is no lighting to the first and top floor landings of the Block and that such arrangement which appears to have endured for a number of months, represents a significant risk to the personal health and safety of persons using those stairs, particularly during hours of darkness or poor external light. Consequently the Tribunal is satisfied that the Respondent company is in breach of obligations owed to the Applicant under the Lease.

23. In regard to the front door, little direct evidence was offered at the hearing and the Tribunal makes no specific determination in reference to such door. In regard to the RICS Code of Practice, the Tribunal is also satisfied that the Respondent company has failed to comply fully with the requirements of Part 13 of the Service Charge Residential Management Code 2nd Edition, in that for example Paragraph 13.5 requires *"You should deal promptly with tenant`s reports of disrepair, the remedy of which is the landlord`s responsibility, in a manner appropriate to*

their urgency". The Tribunal is of the view that water ingress in virtually all rooms within the Top Flat, was an urgent disrepair which should have been dealt with more urgently than it was by the Respondent company. The Tribunal is satisfied as to the statutory requirements in this regard despite the suggestion made by Mrs Tobin to the effect that compliance is not mandatory.

24. However in order to be satisfied so as to make an order, the Tribunal must in all the grounds cited in the application, be satisfied that it is just and convenient in all the circumstances of the case. In regard to the proposed appointment of Mr Ian Simmonds, the Tribunal is not so satisfied that Mr Simmonds is a suitable and proper person to be appointed. The Tribunal notes that Mr Simmonds has no formal directly relevant professional qualifications and no previous experience of appointment as a Section 24 manager, during his 7 years as a director of BNS. The Tribunal further noted the absence of any proposed form of contract for such appointment, the lack of a budget to address the subject major works, and similarly the lack of any clarity or suggested detailed terms being put forward to qualify or otherwise regulate any such appointment. Consequently and in all the circumstances, the Tribunal is not satisfied that it it is just and convenient to appoint Mr Simmonds.

25. The Tribunal notes the animosity between the Respondents and the Applicant; no doubt however the Respondents will take very urgent steps so as considerably to improve the operating efficiency and effectiveness of the Respondent company and the way in which it is managed, organised and directed. The Tribunal notes the admission of the Respondents as regards "wobbles" in early 2013, and expects that urgent action will now be taken both organisationally as regards the practical and day to day running, and also the practical and operational functioning of the Respondent company - and also so as to address and action with appropriate urgency, the works necessary to the Block and in respect of which the Respondent company is currently in breach of its` obligation as identified above. The Tribunal would expect not only urgent rectification of the situation by the Respondent company, but also that in 12 months time, all the works and other shortcomings which gave rise to this application or were referred to during the course of this hearing should have been properly addressed and remedied; should it not be so, it would of-course be open to the Applicant to make such further application or applications in the matter as he may then see fit.

26. In regard to the application in respect of the landlord`s costs made by Mr McGuiness in his application under Section 20C of the 1985 Act, the Tribunal invited written submissions from the parties after the hearing. The Tribunal has considered the letter from the Respondents dated 11th October 2013 in which objection is made to any order being applied under Section 20C; in summary the letter states the Respondents` view that there was no need for the original application to have been made, that the matter could have been resolved amicably and that the Respondents are faced with a legal bill of their own in the region of £1,000.00 and also that the eventual costs for carrying out the work will be higher owing to further deterioration as a result of the passage of time. Nevertheless the Tribunal has concluded that there has been a breach of covenant, albeit that the appointment of Mr Simmonds as a manager could not be agreed owing to his lack of experience. Accordingly in all the circumstances, the Tribunal considers it would be just and equitable to make an order that one half of the Respondents` costs in connection with these proceedings are not to be regarded as relevant costs to be

taken into account in determining the amount of any service charge payable by the Applicant.

27. We made our decisions accordingly.

Judge P J Barber

Chairman

A member of the Tribunal appointed by the Lord Chancellor