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

Case Reference : CHI/29UN/LAM/2016/0002
CHI/29UN/LSC/2016/0008

Property : Flats 1-8 Rimpleton Court, 10 Reading
Street, Broadstairs, Kent CT10 3BD

Applicants : 1) Mr Andrew Harvey
2) Ms Sally Proudfoot
3) Mr Fred Spencer

Representative : Mr Andrew Harvey
Alex Simel (daughter of Mr Spencer)

Respondent : Mr William Harvey

Representative : Mr McCarthy, counsel

Type of Application : Liability to pay service charges &
Appointment of Manager

Tribunal Member(s) : Judge D.R. Whitney
Mr. C. Harbridge FRICS

Date of Directions : 26th October 2016

DECISION

1. This matter concerns two applications by three leaseholders, Mr Andrew Harvey, Ms. Sally Proudfoot and Mr Fred Spencer of Rimpton Court, 10 Reading Street, Broadstairs, Kent CT10 3BD (“the Property”). The first is in respect of determination of the leaseholder’s obligation to pay certain service charges and the second being an application to appoint Mr Oliver Pope as a manager.
2. Both applications were dated 15th January 2016. Various sets of directions were given with the last set being dated 8th August 2016. All the parties had substantially complied with the same. The tribunal had been supplied with a bundle for the hearing prepared by Mr Andrew Harvey and references in [] are to page numbers in the bundle supplied.

INSPECTION

3. Immediately prior to the hearing the tribunal inspected the premises. There was no person present on behalf of the Respondent. On behalf of the Applicant there was Mr Andrew Harvey and Ms. Paula Napper (Flat 2) and Mrs Alex Simel and Mr Ian Simel, daughter and son in law of Mr Spencer (Flat 3). Mr Nigel Pope, the nominated manager, was also present.
4. The Tribunal was advised that Rimpton Court was built in about 1900 as a local authority school, and was converted to 8 self-contained residential flats in about 1989, when the adjoining outbuilding, was sold off and converted into a residence, Burr Cottage.
5. Rimpton Court is a detached multi-storey property constructed with rag-stone walls and rendered plinths, beneath a pitched and gabled roof, finished with decorative front gables and bays, and with the roof clad in slate. The main roof pitches have dormer windows in both the front and rear slopes. Window openings are framed in timber, except to the dormer windows which are of Upvc construction. In the front of the building is a tar-macadam drive which accommodates residents cars and, at the rear of the property, is a bin-store. There are gardens around the perimeter of the property which include some mature trees. The boundaries of the property incorporate stonework and brick detailed walls.
6. The Tribunal inspected the communal ground floor entrance hall and flats 2&3, and externally around the property and its grounds. This inspection, indicated the presence of penetrating dampness around some window openings, residual dampness at the base of some walls, a non-certified fire alarm system, poor external paintwork, with localised wet rot, and with areas of defective pugging to the stonework. Guttering was blocked locally and a rear lobby extension had separated from the main wall of the house. The garden and yardage was ill-tended and some trees, it was suggested, needed trimming. The stonework to the front wall of the property was cracked in places and brickwork to the

side gate piers loose. There was also evidence of rainwater ponding to the courtyard at the front of the property.

7. The property was in only fair condition for a building of its age and character, and the grounds and gardens in poor order.

THE LAW

8. The relevant law is set out in Section 27A of the Landlord and Tenant Act 1985 and Section 24 of the Landlord and Tenant Act 1987.

THE HEARING

9. The Hearing took place following the inspection. As well as those persons who attended the Inspection Mr William Harvey, the freeholder, attended together with Mrs Pitts and was represented by Mr McCarthy of counsel.
10. Immediately at the start of the hearing Mr McCarthy looked to introduce a skeleton argument upon which he sought to rely. The tribunal explained to the Applicants the purpose of the skeleton argument and that it was to set out the legal arguments Mr McCarthy was going to make.
11. The tribunal requested Mr McCarthy to clarify whether his client wished to pursue his argument that the application for appointment of a manager was defective on the basis that the Notice pursuant to Section 22 of the Landlord and Tenant Act 1987 was not served until after the application. Mr McCarthy was also asked to clarify the clause of the lease he was relying upon.
12. The tribunal adjourned for ten minutes for the parties to consider the various points.
13. Upon the re-commencement Mr Andrew Harvey (referred to for ease as "AH") confirmed he had had read the skeleton.
14. Mr McCarthy for Mr William Harvey (referred to for ease as "WH") confirmed his client was not seeking to challenge the tribunals jurisdiction to determine the Appointment of the Manager and conceded that the tribunal could dispense with service of the Section 22 Notice given one was served dated 30th June 2016 [31-34] after the commencement of the application but prior to the final hearing.
15. The tribunal confirmed it would deal with the Section 27A application first. It reminded the parties that in accordance with the directions this determination was restricted to the years 2013, 2014 and 2015.

16. AH relied upon his statement [173 & 174]. In short his case was that the lease allowed for a company known as Rimpleton Court (Broadstairs) Limited to undertake maintenance and demand service charges. This company had been struck off approximately 20 years ago and since that time the maintenance had been undertaken by WH or an entity called Rimpleton Court Management. AH contended on behalf of the Applicant that any service charges paid were not paid in accordance with the lease and were not therefore payable.
17. He explained he had suffered two leaks into his flat from the flat above which had belonged to WH. It was clarified that WH had sold 4 of the 5 flats he had owned in the building and was in the process of selling the last.
18. The leaks had damaged AH flat. AH explained that supposedly the decorator appointed by WH had been told to do no work to AH's flat until AH had paid service charges supposedly owing. AH contends that the buildings insurance should have covered any damage caused by this leak. AH referred to the accounts [197-199]. AH contends he has never seen a copy of the bank statement for the development.
19. AH said no formal demands as such have been issued save for a demand issued on 3rd October 2016. A copy of this was shown to the tribunal. The demand attached a summary of rights and obligations and purported to be given by WH. The demand sought a monthly amount of £55/month.
20. AH explained that at one point in his ownership he had bought the account up to date to ensure that a re-mortgage he was organising could complete.
21. AH contends that there was no properly constituted association to undertake the maintenance. He referred to the statement of Mr Spencer [187 & 188] and stated Mr Spencer had felt compelled by WH to take part. AH explained that Mr Spencer was not in attendance as he was elderly.
22. AH contends none of the monies claimed are due and payable as a service charge under the lease.
23. Mr McCarthy called WH. WH had given a statement [160-162].
24. WH explained that the association to run the building had been set up by Fred Spencer who did not like the idea of a limited company. A bank account had been opened at HSBC and it was the same account as used today. Originally all parties had agreed that each flat would contribute £50 per month. After about 3 years Mr Spencer transferred the running of the association to WH. WH continued running the association in the same way as Fred Spencer. The other two leaseholders had essentially taken no part. WH stated he did works as and when required. Problems started when AH purchased his flat.

25. WH said that he had paid all that was due for his flats into the account. Due to the other leaseholders withholding payments the funds in the account had dwindled. WH confirmed he had paid the insurance. WH stated that he managed to the best of his ability.
26. WH stated that Fred Spencer was the principal person for setting this arrangement up. He was not here. WH and Fred Spencer had agreed this approach. Fred Spencer had not wanted to make annual returns. WH could not remember how the company was dissolved. WH accepts that demands have been verbal or via email. He confirmed the name on the bank account is Rimpton Court Management. WH confirmed he has a good working relationship with Fred Spencer.
27. In cross examination by AH WH accepted that he was not aware of the Section 20 Consultation process. He accepted works had been undertaken which may have exceeded a cost per flat of £250.
28. WH explained he had been involved in the construction industry as a decorating contractor. He had seen Rimpton Court, purchased it, and then undertaken the redevelopment, selling the adjoining Burr Cottage and three flats and retained 5 flats as an investment.
29. WH explained he believed he had run things in an honest way. He simply got on and ran the property as best he could.
30. WH explained the demand sent at the beginning of October should have been in the name of Rimpton Court Management and it was a mistake if in his name. He accepted he was the only signatory for the account but the account was for the association which had always been known as Rimpton Court Management.
31. Mr McCarthy states that it was by agreement that collection would be monthly. He did accept there was no provision for a reserve or sinking fund in the lease but relied on the Fourth Schedule, clause 24 [64] and clause 6(m)[52]. Mr McCarthy relies on Clause 10 [55] and that the association, Rimpton Court Management, is a successor in title to the original company having taken over the maintenance liabilities upon the dissolution of the Management Company.
32. The hearing then moved on to determine the appointment of the manager.
33. The tribunal heard from Mr Nigel Pope. He was a director of Miles and Barr and was an ARLA regulated agent and member of NfOPP and the Property Ombudsman. He founded a letting agency called Belmont in 1994 and merged his business with Miles and Barr in December 2015. Miles and Barr has 13 offices. He has about 4 staff involved in block management and himself. Currently they have under management two blocks. One consisting of 6 flats and 3 shops and the other 2 shops and

4 flats. As a whole the agency manages about 1800 properties in Kent although most are in short terms lets.

34. He explained his business is keen to expand into block management. He had not met AH before today and understands that as the appointed manager he needs to be independent. He sees his role as being the go between to smooth the way and knows that as manager he will often be unpopular. He recognised the need to set up an arrangement to get money in and arrange maintenance.
35. He explained that he has over 20 years' experience and owns more than 30 units personally in Kent. Through this he knows about the processes and notices required. He accepted he might need to use an external surveyor and has a relationship already with a firm. He is the nominated manager for 22 selective HMO licences.
36. On questioning by the tribunal he advised he would have to check that his agencies indemnity insurance would cover his personal appointment by a tribunal. He had never been to the tribunal prior to today. He confirmed his fee would be £225 plus vat per annum per unit. He would also charge 10% plus vat on the cost of any repairs exceeding £1000. He explained he would generally expect to visit once a quarter. He did confirm that prior to today he had not visited the property nor seen any of the Property leases.
37. He explained he had seen today that the Property has been neglected. He would want to sit down with the leaseholders and agree the way forward. As part of this he would try to let them know the potential costs.
38. AH explained that in his opinion WH was too far away. There had been a lack of management. The Property needs work and requires a professional to oversee and undertake the works. AH explained that the leases now being sold by WH included reference to a new management company which was also called Rimpton Court Broadstairs Limited. This was however a different, recently incorporated company to that referred to in the leases held by the Applicants. A copy of the new form of lease was in the bundle [71-113]. AH believes the leases should have a common form. He also understands that WH intends to transfer the freehold to Rimpton Court Broadstairs Limited on completion of the sale of the last of his flats. AH contends that various legal requirements have not been undertaken by WH.
39. Mr McCarthy explained that WH is not in principle opposed to the appointment of a manager.
40. The tribunal adjourned at this point to allow the parties to consider if agreement could be reached.

41. No agreement was reached. WH confirmed the building is currently insured.
42. Mr McCarthy contends that the test under Section 24 is that there must be a breach of the statutory obligations. WH has no obligations under the lease as the obligation are upon the management company which has been struck off. Therefore he cannot be in breach and an order cannot be made as the management company does not exist.
43. At this point the hearing concluded and the tribunal made the two following directions:
 - The Respondent shall within 7 days of the hearing file and serve documents confirming that the Property is insured;
 - The Applicants will within 14 days of the hearing file and serve a statement from Mr Pope confirming his full name and business address, attaching a copy of his terms of business he intends to use for his appointment, full details of his proposed fees, a copy of his Indemnity Insurance showing that the same covers him personally and details of what terms he would like to see covered in any order appointing him.

DETERMINATION

44. This is an unfortunate case. Under the Applicants lease the management company included therein has not existed for more than two decades.
45. This tribunal is satisfied that on the proper construction of the Applicants leases the requirement to maintain the Property and recover a service charge vests with Rimpleton Court (Broadstairs) Limited and not the freeholder WH. We are not satisfied that Clause 10 [55] applies in these circumstances. It was being suggested that Rimpleton Court Management as some form of unincorporated association was the successor in title to the Management Company and that under Clause 10 of the lease they could step into the Management Companies' shoes.
46. On the dissolution of the Management Company and the establishment of the association we preferred WH's evidence to that of Mr Spencer in his statement. We record that Mr Spencer did not attend to be cross examined. WH did attend and was cross examined by AH. We accept that at the time Mr Spencer and WH agreed to the dissolution of the Management Company and then between themselves agreed matters including the formation of the association. In this tribunals determination the association did not manage in accordance with the Management Company's covenants under the lease.
47. As a result of the above we determine that none of the sums claimed (or paid) for the years in question were service charges and were not payable as such. Neither the association, Rimpleton Court Management,

nor WH were entitled to demand or collect service charges under the lease.

48. We do record for good order that we do not have jurisdiction to determine whether any sums paid should be re-paid and that this would be a matter entirely for the County Court and if any party is unclear they should take their own independent advice. We have simply determined that the sums referred to in these proceedings bought by these three Applicants were not service charges recoverable as such under their leases.
49. The Respondent provided by email dated 26th October 2016 proof that there was in place Buildings Insurance for the Property.
50. AH responded on 10th November 2016. Mr Pope had withdrawn from being considered to be appointed as a manager. In the alternative AH requested the tribunal to consider the appointment of Arrow Leasehold Management Limited or himself.
51. The tribunal formally records that following the concession offered by WH the tribunal dispensed with the need to serve Notice under section 22 of the Landlord and Tenant Act 1987 on the basis that such a notice was served upon WH during the course of this application as referred to above.
52. The Tribunal on balance was satisfied that a manager should be appointed. In reaching this decision the tribunal had regard to the fact that following the dissolution of Rimpton Court (Broadstairs) Limited there are no persons under the lease obligated to maintain the Property. Clearly this is an unsatisfactory state of affairs and all parties with an interest in the Property are affected by the same.
53. In this tribunals opinion the Management Company as defined by the lease is a relevant person. The fact the legal entity itself does not exist does not stop this being a relevant person pursuant to Section 24 of the Landlord and Tenant Act 1987. The tribunal has dispensed with service of the need for a notice to be served.
54. The tribunal is satisfied that it would be just and convenient, for all parties whether Applicant or Respondent for a manager to be appointed.
55. Turning then as to whether there is any one whom the tribunal can appoint. The Applicants nominated Mr Pope. He attended and gave evidence as to his skills and experience but subsequently he withdrew his nomination. AH has suggested he could stand or an alternative company.
56. It would not be appropriate to appoint a company as the tribunal appoints a named individual. Without commenting on AH's ability to manage we are unable to consider his appointment under this

application. It is for the Applicant to make a nomination prior to the final hearing. This allows the tribunal and any interested party then to have the opportunity to question the person nominated. This did not take place at the hearing.

57. In light of this we decline to appoint a manager in this case.

58. We would urge the parties to try and communicate with each other to reach a resolution. WH seems to wish to divest himself of any interest in the Property and it must be in the interests of all leaseholders (whether the Applicants or any of the other leaseholders purchasing from WH) to reach some form of agreement. Everyone appears to accept that under the current leases held by the three Applicants no person currently is responsible to maintain the Property. The parties must of course rely upon their own advice as to what avenues are open to them.

Judge D. R. Whitney