



**LEASEHOLD VALUATION TRIBUNAL for
THE LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1987 (as amended)

LON/00AW/LVM/2003/001

DECISION UNDER SECTION 20(9) OF THE LANDLORD AND TENANT ACT 1985

Property: 55/57 Melbury Road, London W14 8AD

Applicant: Fern Gully Limited

Represented by: Mr M Lewis & Mr A Cator

Respondent: Maycrown Developments Limited

Represented by: Radcliffes Le Brasseur Solicitors

Members of the Leasehold Valuation Tribunal:

Mrs V T Barran
Mr L Jarero BSc FRICS
Mr R Brown FRICS FARLA

Date 16 March 2004

Decision

1. The Tribunal determined that a variation of the management order dated 18 April 2001 should be made in the terms annexed.

Reasons for the decision:

Background

2. The Tribunal has received an application under section 24(9) of the Landlord and Tenant Act 1987 ("the Act"). This subsection provides that 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.

3. The application received was from the Receiver/Manager, Fern Gully Ltd. This is a tenants' management company. A previous Tribunal had made a management order under section 24(1) of the Act for a period of three years with effect from 18 April 2001. There had been a subsequent variation of the order made by the Tribunal dated 16 November 2001.

4. The applicant submitted a proposed variation to the order and simply asked the Tribunal to extend the order indefinitely.

Inspection

5. The Tribunal inspected the property on 18 February 2004 at 09.30 accompanied by Mr Lewis and Mr Cator for the applicants, Mr Minchington, resident caretaker, and Mr F Kateb of Esskay Management Services. ("Esskay") the Managing Agents. The Tribunal inspected the exterior of the property and the interior of Flats 5 & 6.

6. In March 2001 a previous Tribunal had inspected and had noted various items of disrepair, which the applicant and the managing agent have now addressed. These are:

1. The back bin area has been improved with the installation of a door and all the timber has been renewed, the rear gate has been made safe.
2. The exterior repair and decoration has been carried out.
3. Weed growth has been removed and all gutters and down pipes cleaned and maintained.

4. Damp stains in the covered walkway and hall have been properly resolved and these areas redecorated.
5. Flat 3 was not inspected internally but works have been done to the conservatory roof.
6. All dado and rotted timber wood to Flat 5 has been repaired.
7. The terrace to Flat 6 has been stripped and recovered.
8. The lift appeared to be fully operational with safety telephone.
9. A new video entry phone and CCTV have been installed.
10. The front external gate has been repaired and made secure.
11. The lighting to the access hallway has been enhanced.
12. A toilet for the use of porters and visiting workmen has been installed in the rear yard.

7. It was evident to the Tribunal that Fern Gully Ltd are working effectively with their Managing Agent, Esskay to maintain and improve the fabric of the building.

The Applicant's Case

8. The applicant produced a helpful and well ordered bundle. Mr Lewis and Mr Cator attended the hearing and amplified the written representations. They pointed out that since the management order had been made, substantial maintenance works and many improvements had been carried out which have raised the quality of the building. The lessees did not want the responsibility of management to revert to the Respondent headlessees, whom they stated had neglected the property over a period of fifteen years.

9. The lessees intend to purchase the freehold of the property although this is unlikely to be achieved for at least two years. There were still problems with collection of arrears on flat 6 but the applicant hopes that given time this will be resolved, particularly as the lessees of flat 6 have expressed the desire to join in the purchase of the freehold. Finally the applicant considered that the management of the property is now stable and virtually routine and the focus can in future be on economising the service costs and thus reducing demand on lessees. The services of Esskay have been retained and have been invaluable. The applicant wishes to continue to use Esskay as managing agents for the property.

The Respondent's Case

10. Messrs Radcliffes Le Brasseur wrote on behalf of the respondent. They stated that whilst their clients do not accept the adverse statements made about their management of the property in the past, they nonetheless have no objection to an order being made in the terms sought to enable the applicant to continue as manager and receiver of the property. They added that they considered it was for the applicant to pursue the arrears of the service charges owed by the lessees of Flat 6. In order to save costs they did not propose to attend the hearing, but offered to provide further information if required by the Tribunal.


Decision

11. The Tribunal determined that it would be just, convenient and desirable for the management order to be extended. As the inspection notes above show, the fabric of the building had been well maintained and improved during the last three years. The manager has appointed chartered accountants to carry out annual audits of both its own accounts and the service charge accounts of Esskay. The resident porter Mr C Minchington is still employed by the manager and his service is held in high esteem by all.

12. The manager had demonstrated an ability to manage the property well. The respondent had indicated via their solicitor that they had no objection to the application and the freeholder, Ilchester Estates had also indicated no opposition.

13. The Tribunal decided on balance not to extend the management order indefinitely, but to extend it by five years. This is because the company comprises lessees who may move on and sell their properties and the present focus could perhaps be lost. The Tribunal also noted that the lessees anticipate purchasing the freehold of the building, which may render a management order unnecessary in the future.

14. The Tribunal finally considered the remuneration that Esskay should receive. The current order provides that Esskay currently can receive a management fee of £2,500 p.a for duties as set out in paragraph 2.5 and 2.6 of the RICS Management Code (with the exception of repairs/alterations projects costing more than £5,000). The applicant proposed that fee should increase to £3,000 (including VAT) per annum with effect from 1 April 2004. The Tribunal accepted this as reasonable, but considered that the fee could in future increase annually in accordance with any rise in the Retail Prices Index.

Chairman 
Mrs V T Barran BA (Oxon)

Date: 16 March 2004

