

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION FOR THE APPOINTMENT OF A
MANAGER UNDER SECTION 24 OF THE LANDLORD AND
TENANT ACT 1987**

LON/00AG/LAM/2004/0009

Property: Oakford Court
2 Nassington Road, London NW3 2UE

Applicant: Mrs Anna Merton

Respondent: Mr Tony Rothon (Flat 4)
Mr Jeremy Herman (Flat 3)
Mr Khalid Rahim (Flat 2)
All of Oakford Court Management

TRIBUNAL: Mr J M Deaner LLB MPHIL
Mr C Kane FRICS
Mr T Sennett MA FCIH

BACKGROUND

This is an application by Mrs Anna Merton the lessee of Flat 1 Oakford Court, Nassington Road, London NW3 for the appointment of a Manager under section 24 of the Landlord and Tenant Act 1987 ("the Act"). At the oral pre-trial review on 1 July 2004 the issues to be determined were identified as follows:-

- (1) Whether the Applicant can establish grounds for an order appointing a manager in relation to the premises under section 24 of the Act.
- (2) If the Applicant establishes such grounds whether Mr Paul Chater Chartered Surveyor of County Estate Management, 9 Harley Street, London W1G 9QF should be appointed as manager in respect of the premises.

The Applicant served a notice dated 29 July 2003 under the provisions of section 22 of the Act 1987 stating that she intended to apply for the appointment of a Manager but would not do so if the matters specified in the application were remedied within two months of the date of the notice.

The lease of Flat 1 produced to the Tribunal imposed obligations on the freeholders to insure to the full reinstatement value (to be agreed between the lessors and lessees) the policy to be produced to the lessees on demand, to maintain the building (other than the parts demised) in good repair, to keep the internal common parts cleaned and lighted and to maintain the garden and pathways.

A hearing took place on 9 September 2004 which was attended by the applicant, Ms Broadbent her representative, and Mr Paul Chater.

The Respondents did not attend and were not represented at the hearing. They did not provide any written submissions.

The Applicant's Submissions

The Applicant in her witness statement referred to her previous ownership of the freehold of Oakford Court until January 2002 when the Respondents effected collective enfranchisement following a disagreement regarding garden maintenance. Since acquiring the freehold the Respondents had failed to carry out their obligations under the terms of the lease. The matters specified in the Applicant's documents headed "Particulars of Claim" and "Particulars of Breach" included the following:

- (1) Failure to provide the policy of insurance
- (2) Failure to keep communal areas in good repair. Work was required to the fire escape, the front wall and other areas.
- (3) Failure to paint the exterior
- (4) Failure to keep the staircases and landings properly cleaned and lighted
- (5) Failure to maintain the garden.
- (6) Failure to provide management accounts in breach of section 21(1) Landlord and Tenant Act 1985.

The Applicant in her witness statement complained that since acquiring the freehold the Respondents had done little to maintain the fabric of the building and communication with them had been very difficult. Insurance particulars were only supplied after numerous requests and delays. No service charge accounts or statements were received and cheques paid for ground rent were not presented.

The Applicant complained that the front garden and other outside communal areas had been neglected. Works required included repairing or replacing the fire escape, painting the exterior, and repairing walls at the front and the boundary between numbers 2 and 4 Nassington Road.

She also referred to the cleaning of internal common parts which was no longer carried out, with the exception of the entrance hall area which was cleaned by her daughter who lived in Flat 1.

Her statement was supported by evidence contained in a witness statement provided by her daughter Lydia Kan who lived in Flat 1. She was also concerned at the condition of the front garden wall, the fire escape and the other matters referred to in the Applicant's statement which required attention.

The bundle of documents produced by the Applicant included letters from the Applicant to the Respondents requesting insurance particulars, expressing concern at the lack of maintenance of the communal areas, proposals for arranging a meeting (which were not taken up by the Respondents), and suggestions for better management. The Respondent's replies were terse and despite stating in a letter of 21 April 2003 that "all maintenance issues are being dealt with by the freeholders" no action was taken to address the Applicant's concerns.

Inspection

The Tribunal inspected the exterior of Oakford Court, the communal garden area and the internal hall and staircase on the morning of 9 September 2004.

The front garden was overgrown and parts of the front and side walls (dividing numbers 2 and 4) were cracked and in need of repair.

Some parts of the exterior were in need of decoration. The condition of the fire escape was of particular concern. The central support of the staircase had rusted and it was clearly structurally unsound.

The Tribunal inspected the interior common areas and noted that the staircase carpet had not been cleaned recently and there were cobwebs on the stair walls.

The Applicant's proposal that Mr Paul Chater Chartered Surveyor be appointed Manager of Oakford Court.

The Applicant stated at the hearing that Mr Chater had been recommended to her as a suitable manager. Mr Chater, a director of County Estate Management referred in his witness statement to his considerable management experience and his inspection of Oakford Court from which he concluded that the landlords had failed to comply with their obligations.

At the hearing he stated that his company managed about 7,000 flats in blocks of varying size. His company complied with all relevant requirements in respect of the holding of clients money and complaints procedure.

He would make a basic charge of £250 for each flat. He accepted that on one occasion where his company had been appointed manager as a stop gap he had been removed from the position but this was an isolated situation.

The Tribunal's Decision

Section 24(2) of the Act provides for the appointment of a manager in the following circumstances:-

- (1) Breach of obligations owed by a landlord
- (2) Unreasonable service charges having been made
- (3) Failure by a landlord to comply with relevant provisions of a Code of Practice
- (4) Other justifying circumstances

and where in any case it is just and convenient for an order to be made.

The Tribunal having heard the evidence of the Applicant, which was not disputed by the Respondents, and having inspected the exterior and common parts of Oakford Court, decided that the Respondents were in breach of their obligations under the terms of the lease. They had failed to insure the building in accordance with clause 3(1) of the lease (requiring the reinstatement value to be agreed with the lessee) and to produce the policy on demand. They had neglected garden maintenance (required under clause 3(5)) and the cleaning of common areas required under the provisions of clause 3(4). Particularly serious was their failure to repair or replace the fire escape and the broken parts of the garden walls, in breach of clause 3(2).

They had failed to comply with the Tribunal's direction paragraph 2 of which required preparation of a statement and had not responded to the Applicant's notice under section 22 of the Act (designed to inform the landlord of his shortcomings and to give him an opportunity to mend his ways). Their refusal to respond to reasonable proposals put forward in correspondence was cavalier. Accordingly the Tribunal decided that there were grounds for appointing a manager and it was just and reasonable for an order to be made.

The Applicant invited the Tribunal to appoint Mr Chater as manager. Among the requirements for a manager are experience and probity.

Mr Chater had admitted at the hearing that he had on a previous occasion been removed from the position of manager. However he had failed to draw their attention to the outcome of a hearing relating to Cumberland Court W1. (5 November 2003 LVT/SC 014/049/03 – LVT/SCC/014/022/03). The Tribunal decided in that case not to allow County Estates Management Ltd (County) to continue its management of Cumberland Court and their Reasons included a finding of conduct in contravention of the RICS Code management, failures and what was described as a "lack of transparency" on the part of County. Accordingly the Tribunal did not consider that Mr Chater was a suitable person to be appointed as a manager.

The Tribunal were minded to appoint a manager of Oakford Court but in the circumstances decided to defer making an order for a period of three months to allow the Applicant to re-apply, nominating a person acceptable as manager to the Tribunal.



CHAIRMAN

16-10-04