

IN THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1987 Section 24

<u>Property:</u>	26-32 High Street Yiewsley West Drayton, Middlesex UB7 7DP
<u>Applicants:</u>	Mr Andrew Quaif Miss S Roberts-Steadman
Represented by	Mr Andrew Quaif
<u>Respondents:</u>	Mr R B Sharma Mrs S A Boone
Represented by	Mr R B Sharma acting for himself. Mrs Boone did not appear
Tribunal	
Mr P L Leighton LL.B(Hons)	
Mr F Coffey FRICS	
Mr O Miller	
Date of Hearing	10th 11th October 2005
Date of Decision	26th October 2005

Introduction

- 1 On 1st July 2005 the Applicants applied for an order under Section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager for the premises at 26-32 High St Yiewsley West Drayton which is a block of 10 flats known as St Stephen's Court situated over three shops in Yiewsley High Street. The freehold owners of the block are Mr Ravi Sharma who owns No 28 and 30 and flats 1,2,5,6,7 and 10 ,and Mrs Sylvia Boone who owns No 26 and flats 3,4,8 and 9

- 2 The Applicants seek the removal of Mr Sharma as a manager of the flats and wish to replace him with Mr Quaif, the first Applicant and Mrs Boone.
- 3 A pre trial review was held on 1st August when none of the parties attended and at which the Tribunal gave directions for the future conduct of the proceedings. In particular directions were given to ascertain whether other leaseholders supported the application and whether Mrs Boone was willing to act as manager with Mr Quaif.

Inspection

- 4 The Tribunal inspected the premises on 10th October 2005. They consist of 3 shops on the ground floor, namely a computer shop, a hairdresser and a funeral director, with 10 flats above which are reached by a door situated at the rear of the shops and approached by an alleyway leading from the high street. There was a sign at the entrance to the alleyway indicating the flats, which bore the address 32 High Street. The Tribunal was informed that 8 of the 10 flats were studios and Flats 5 and 10 were one bedroom. All of the flats were let on long leases but only three of the leaseholders were resident namely Mr Quaif (Flat 9) Miss Roberts Steadman (Flat 10) and Mr and Mrs Nicholls (Flat 5). The remaining flats were let on short tenancies.
- 5 At the rear of the premises was a car parking area, which had 22 parking spaces, of which 10 were allocated to the flats, 6 to the shops and a further 6 for visitors to the shops. There were wooden boundary fences on each side of the premises, which appeared to be in reasonable condition at the time of the inspection.
- 6 Just behind the shops was a bricked enclosed area, which was used for bin storage, although there were no bins and rubbish appeared to be deposited in plastic sacks and gave a rather unsightly and

unhygienic appearance. The entrance door to the flats and the adjoining wall had marks of graffiti, which also gave a run down appearance to the block.

- 7 The flats were situated on two floors with five flats on each. The lower flats at the front of the building had a veranda above the frontages of the shops. The roof was made of concrete tiles and appeared to be in reasonable condition when seen save that there was some vegetation visible in the gutters and at least one of the gutters appeared to have become broken.
- 8 The entrance door to the flats had an entryphone for security and there were further entryphones inside the building regulating entry to each floor. The entrance hall and staircase were carpeted to a reasonable standard.

The Leases

- 9 The ownership of the block was rather unusual. The freehold had been owned jointly by Mr and Mrs Boone until their divorce in about 2000 when the property was divided between them. Mr Boone retained shops 28 and 30 and Flats 1,2,5,6,7 and 10 and Mrs Boone acquired the freehold of shop 26 and Flats 3,4,8 and 9. The original title was divided so that Mr Boone held title No MX 173730 and Mrs Boone obtained Title No MX231121. It appeared from the land certificates that the building had been divided vertically so that Mrs Boone retained the flats over shop 26 and Mr Boone retained the flats above shops 28 and 30. There is no separate registration showing No 32 High Street.
- 10 In 2002 Mr Boone sold his part of the property by auction and Mr Sharma purchased it. Following Mr Boone's refusal to complete on the agreement Mr Sharma obtained an order of the High Court for specific performance and the property was conveyed to him and registered in December 2003.

- 11 The lessees hold on leases for 125 years from 24th June 1989 at a variable ground rent currently £75 per annum until 2014. By clause 4(4) of the lease the lessee covenants

“to pay the interim charge and the service charge at the times and in the manner provided in the fifth Schedule hereto both such charges to be recoverable in default as rent in arrear”

- 12 By clause 5 (5) the lessor covenants as follows:-

“Subject to and conditional upon payment being made by the tenant of the Interim charge and the Service Charge at the time and in the manner provided hereinbefore

(a) to main(tain) and keep in good and substantial repair and condition

- (i) the main structure of the building (including the principal internal timbers and the exterior walls and foundations and the roof thereof*
- (ii) all such gas and water mains and pipes drains, wastewater and sewage ducts and electric cables and wires*
- (iii) the common parts*
- (iv) the boundary walls and fences of the building*
- (v) all other parts of the building (not included in (i) to (iv) and not included in the tenants demise)*
- (vi) all accessways leading to and from the lessor's development*

(b) to paint the building as and when the Lessors shall deem necessary

(c) to insure the building

(d) “to keep clean and where appropriate lighted the common parts

(g)(i) to employ at the lessors discretion a firm of managing agents and chartered accountants to manage the building

(ii) to employ surveyors architects, builders engineers and tradesmen or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the building

(l) to set aside (which setting aside shall for the purposes of the Fifth Schedule be deemed an item of expenditure incurred by the lessors such sum of money as the lessors shall reasonably require to meet such future costs as the lessors shall reasonably expect to incur of replacing repairing maintaining and renewing those items which the lessors have hereby covenanted to replace repair maintain or renew.”

- 13 The Fifth Schedule of the lease defines the expenditure for the purposes of the service charge, specifies the accounting year which runs to 31st December of each year and provides for two interim payments to be made on 24th June and 25th December in each year.
- 14 The interim charge is determined at the landlord's discretion as to what is fair and reasonable and if it exceeds the amount of the actual service charge as specified in the final account it is carried forward to the next accounting year but if it is insufficient then the lessee must pay the balance forthwith

The Hearing .

- 15 The hearing took place on 10th and 11th October 2005. Mr Quaif and Miss Roberts--Steadman appeared for the Applicants. Mr Sharma appeared in person but Mrs Boone did not appear. Mr Quaif informed the Tribunal that she was on holiday in Portugal The Tribunal received evidence from Mr Quaif and Miss Steadman Roberts for the applicants and Mr Sharma for the Respondent although none of them had given a witness statement in accordance with Paragraph 11 of the directions. The witnesses were cross examined by the other party and by the Tribunal and closing submissions were made to the Tribunal. At the conclusion of the hearing the Tribunal informed the parties orally of its decision to dismiss the application and stated that it would produce written reasons at a later stage.

The Law

16 Section 24 of the Landlord and Tenant Act 1987 enables the Tribunal to appoint a manager at the request of a tenant. Section 24(1) of the 1987 Act permits the leasehold valuation tribunal to make an order appointing a manager to carry out the functions of a manager or a receiver as it thinks fit. The tribunal may only make such an order where one or more of the conditions under sub section 2 are complied with and in each case where it is just and convenient to do so. The condition in subsection 2 are;-

(a) where the tribunal is satisfied

(i) either is in breach of any obligation owed by him to the tenant under this tenancy and relating to the management of the premises

(a)(b) where the tribunal is satisfied

(i) that unreasonable service charges have been made or are likely to be made

(a)(c) where the tribunal is satisfied

that the landlord has failed to comply with the provisions of any code of practice approved by the Secretary of State under Section 87 of the Leasehold Reform..... 1993 Act or

(b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made

16 It should be noted that only a tenant of the landlord can apply for the making of an order. Mr Quaif is a tenant of Mrs Boone and can apply for a management order in respect of the freehold property held by her but not in respect of the freehold property owned by Mr Sharma

17 Miss Roberts-Steadman, however, is a tenant of Mr Sharma and can apply for a management order in respect of the freehold title held by him but not in respect of the title held by Mrs Boone. What the tenants wanted, however, was a management order which would enable them to manage the whole of the block, whereby Mrs Boone retained control

of the 4 flats owned by her but that Mr Sharma would be deprived of control of the 6 flats owned by him.

- 18 Although Mr Quaif was not entitled to bring the application in respect of the property owned by Mr Sharma, if the Tribunal decided to make a management order in respect of that property Mr Quaif would be eligible to act as manager if the Tribunal found him capable of performing that function.
- 19 As the hearing proceeded, however, it became apparent that Mr Quaif did not possess the relevant experience or expertise to perform the functions of a manager in the manner, which the Tribunal would require, and he became aware of this and decided to withdraw as the proposed manager.
- 20 With regard to Mrs Boone the other proposed manager, she had provided a statement dated 21st September in which she stated that she had co managed the property for 5 years with MB Services (which was in fact her daughter and had arranged for the re carpeting of the common parts. However, she gave no other details of her experience, knowledge or competence and from certain features of the evidence in the case the Tribunal had reservations about the wisdom of appointing her manager of the block.

The Evidence

- 21 Following Mr Sharma's purchase of the property in late 2003 there was some discussion between him and Mrs Boone regarding the management of the block. He drew up a document for agreement as to management (p44) whereby he agreed to manage the block and she would pay him 36% of the expenses incurred. Each party would collect the service charges from their own tenants.

- 22 In February 2004 Mrs Boone wrote saying that she would not sign the agreement (p54) as it would constitute a legal document but was prepared to enter into an informal agreement with Mr Sharma in similar terms whereby he would be primarily responsible for the management of the block.
- 23 A number of complaints were advanced by the tenants as indicating a breach of obligation by Mr Sharma in the management of the property Those complaints related to the following main areas:-
- (i) failure to maintain a separate account for monies received by way of service charge from the tenants
 - (ii) failure to account for monies which he had received from Mr Boone for the sinking fund at the time of his purchase
 - (iii) delay in carrying out necessary repairs to the block, in particular the replacement of slates to the roof of Miss Roberts-Steadman's flat, the delay in repairing in a broken window in the common parts of the premises and delay in replying a damaged boundary fence
- 24 Mr Sharma stated that he acknowledged the receipt of £1,300 from Mr Boone, which was credited to the service charge account. He agreed that he had not kept a separate account because he did not know he had to. He denied undue delay in carrying out repairs stating that he had carried them out within a reasonable period of being informed of them. he also stated that Mrs Boone was not co-operating in the management of the block because she would not pay regularly her contribution of 36% out of the service charges received by her tenants.

The Tribunal's findings

- 25 The Tribunal accepted that there had been some failures on the part of Mr Sharma in the management of the block, although such failings as were demonstrated had arisen mainly from a lack of knowledge rather than deliberate misconduct. With regard to the repairs these had been

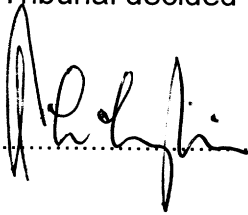
completed and there was no history of serious neglect or refusal to carry them out.

- 26 The Tribunal did point out to Mr Sharma that the management fee of £1400 per annum did not appear to be recoverable under the provisions of the lease. The landlord was permitted to charge the costs of employing an agent but not specifically for managing the property himself. However, this was not stated to be one of the grounds relied upon by the applicants and it is possible that a management fee was charged by MB Services, which was in fact the daughter of Mr and Mrs Boone and the evidence appeared to be that she never visited the property as Mr Quaif had never seen her. Mr Sharma stated that he visited the property regularly as he lived nearby and the lessees accepted this was the case.
- 27 Mr Sharma also indicated to the tribunal that where he had been shown to have made errors in the past he would put those matters right by setting up a separate account for service charge and sinking fund monies. He also stated that he would consult with the tenants regularly on the repairs and any improvements needed for the security of the block.
- 28 Whilst Mr Sharma may arguably have breached some of his obligations under the lease, the Tribunal reminded itself that the making of a management order was a serious step in depriving a property owner of the right to manage his property. The Tribunal therefore concluded that it would not be just and equitable to make a management order based on the evidence which it had heard.
- 29 In particular the Tribunal could not see the benefit to the tenants of replacing a manager who visited the premises regularly with Mrs Boone who never visited them at all and had put no proposals before the Tribunal for the appointment of a professional manager.

30 The Tribunal indicated to the parties that if there were serious breaches established in the future, the Tribunal's advice was ignored, and a satisfactory replacement manager was put forward before the Tribunal it might be just and equitable to make an order. The evidence would, however, need to be of a sufficiently serious weight to justify such a course.

31 In the circumstances the Tribunal decided to dismiss the application

Chairman .Peter Leighton

A handwritten signature in black ink, appearing to read 'P. Leighton', written over a dotted line.

Date 26th October 2005...