

SOUTHERN RENT ASSESSMENT PANEL
AND LEASEHOLD VALUATION TRIBUNAL

Case no CHI/43UD/NSI/2002/0003
CHI/43UD/NAM/2003/0004

DECISION AND ORDER

Re: Fiona House 67 York Rd Guildford Surrey GU1 4DG (the Premises)

Between: Miss M Muggeridge and others (the Applicant)

And

Purewish Ltd (the Respondent)

- 1 An application had been made by the Applicant and the other tenants of the building known as Fiona House 67 York Rd Guildford Surrey GU1 4DG (the property) for a determination of the reasonableness of services charges payable under their respective leases of which the Respondent is currently the landlord. The Application was made under s 19 (2A) of the Landlord & Tenant Act 1985 relating to the years 1999-2002 coupled with an application under s 20C of the same Act for a declaration that the costs of the litigation should not be added to the service charge payable by the tenants.
- 2 A further application was made by the same Applicant for the appointment of a manager to the property .
- 3 These two applications were heard together and this decision and order relates to both .
- 4 A Tribunal had inspected the property on a previous occasion on which they had considered this case and no further inspection took place on the day of the hearing.
- 5 The Tribunal heard from Mr Burton on behalf of the Applicants and Mr Gordon on behalf of the Respondent . They also heard evidence from Ms Campbell , a tenant/Applicant and Mr Faulkner, the proposed manager.
- 6 Although detailed directions had been issued by a Tribunal in relation to the management of this case, they had not been complied with fully, but an agreed bundle of documents (page numbers referred to below) was presented to the Tribunal for their consideration.
- 7 S 19 (2A) of the Landlord and Tenant Act 1985 provides that : ‘ a tenant by whom A service charge is alleged to be payable may apply to a Leasehold Valuation Tribunal for a determination whether the costs incurred for services , repairs, maintenance , insurance or management were reasonably incurred, whether services or works for which costs were incurred were of a reasonable standard or whether an amount payable before costs are incurred is reasonable’.
- 8 Although the Applicant’s application was generic, in that it purported to challenge all service charges incurred in the years 1999-2002, it had emerged during a previous hearing that the only item which the Applicants actually sought to challenge was that in respect of fire alarm inspections and no evidence relating to any other items was presented to the Tribunal by the Applicant.

- 9 In relation to this item the Applicant's argument was that the Respondent's handling of this matter infringed British Standard 5839 (page 19), and the manufacturer's requirements . Further that there had been no consultation with the tenants over the appointment of a third party to undertake the inspections, no attempt had been made by the third party to gain access to any individual flat to test the alarm and that the third party employed by the Respondent was not the correct person to undertake the inspections. An addendum to Mr Burton's witness statement contains an alternative third party quotation for this work . The Tribunal also heard from Ms Campbell, the only tenant in residence in the block , who said she was prepared to undertake the weekly fire alarm checks.
- 10 Some doubt was raised by the Applicant as to whether the third party had carried out all of his duties correctly. In the absence of evidence to substantiate this the Tribunal is unable to make a finding of fact on this issue.
- 11 The Respondent argued that although prior consultation with the tenants might have assisted, the situation was that only one tenant was resident in the block, the other flats being sub-let on frequently changing sub-tenancies. The Respondent had a duty to ensure that in a multi-occupation house safety was paramount. The Respondent had an overriding duty under the law and in contract (the lease) to ensure that matters were dealt with properly. The tenants were not available on site to deal with the fire alarm testing and the Respondent had been trying to behave responsibly and to do the best it could given the available circumstances. The third party who had been engaged to carry out the fire alarm checks (Ripley Property Services) visited the property weekly to check and report to the Respondent on the general state of the property as well as testing the fire alarm. Clause 12 of the lease (page 51) required the Respondent to maintain insurance on the property and the Respondent's insurance required fire safety equipment to be installed and maintained at the property. Further the lease gave the Respondent an absolute discretion to carry out his obligations as it thought fit (page 43). The present charges of approximately £30 per week represented approximately one and three quarters hours' time spent by Ripley Property Services at the property, of which approximately half could be attributed to the disputed fire alarm check costs. The Respondent said that no offer for a tenant to carry out the checks had been made previously and felt that it was unacceptable for Ms Campbell to carry out the checks because she was the only tenant in full time occupation of the property and there were no satisfactory alternative arrangements in the event that Ms Campbell could not carry out the tests.
- 12 Section 20C of the 1985 Act provides that 'a tenant may make an application for an order that all or any of the costs of proceedings incurred or to be incurred by the landlord in connection with proceedings before ...the Leasehold Valuation Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person specified in the application'.
- 13 In relation to this section the Applicant contended that the Tribunal should make an order under this provision because had matters been raised at an appropriate time the matters in dispute could have been compromised. Mr

- Gordon had been inaccessible and had made pre-trial negotiations difficult.
- 14 For the Respondent Mr Gordon said that the Applicant had made no attempt to arrange a meeting with him. The Applicant had raised a variety of queries and had submitted a volume of material which had made it difficult to get to the hub of the issue. The issue had been blown out of proportion. It could have been dealt with quickly and reasonably at an earlier stage but no attempt had been made to do so. The flavour of the Applicant's correspondence was litigious. Mr Gordon had been asked by the Respondent to advise because the Respondent had been snowed under by the correspondence from the Applicant and needed experienced support. Costs had been incurred because of the Applicant's intransigence and refusal to deal with outstanding service charges.
- 15 Under s 24 Landlord and Tenant act 1987 a Leasehold Valuation Tribunal may ... appoint a manager to carry out in relation to any premises to which this part applies such functions in connection with the management of the premises or such functions as a receiver or both as the Tribunal thinks fit.
- 16 Having inspected the property on 14 May 2003 and having had the benefit of hearing the parties on that occasion the Tribunal formed the view that the relationship between the parties had broken down irretrievably. The Tribunal had therefore indicated to the parties that it felt that the appointment of a manager might provide a solution to their problems but were not satisfied on that occasion by the evidence adduced by the Applicant in relation to his proposed appointee. The Respondent had indicated that they would not oppose the appointment of a suitable person as manager.
- 17 At the resumed hearing on 11 June 2003 the Tribunal was able to hear from and to question Mr Faulkner (who was not the person proffered as manager at the previous hearing). The Tribunal was satisfied with Mr Faulkner's qualifications and experience.
- 18 Having retired to consider the evidence the Tribunal's decision is as follows:
- 19 The Applicant's application under s 19 (2A) is refused. The Respondent as landlord is entitled to exercise its absolute discretion under the terms of the lease as to how it fulfils its repairing and maintenance obligations (clause 2 (d) page 43). Further, the Tribunal accepts the Respondent's evidence that the insurance policy effected by the Respondent under his lease obligations require the installation and maintenance of a fire alarm system. We find that it is within the Respondent's discretion to employ a third party to test the system bearing in mind that four out of the five flats in the block are sub-let and that there is therefore no guarantee that any tenant would be able to fulfil this obligation. It is in any event not possible for the Respondent to pass this obligation to the tenants and would be unsatisfactory to impose the obligation on a sub-tenant over whom the Respondent had no control. The contractor charged the sum of £30 per week for an inspection which also included a general inspection of the state of the property. The Respondent estimated that approximately one half of that amount could be attributed to the fire alarm inspections and this proportion was not challenged by the Applicant. The Applicant

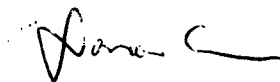
- maintained that the Respondent had not consulted the tenants about this charge. We find that under statute there was no legal obligation to consult over this matter. We do not consider the charge of £30 per week for the inspection described above to be excessive and find the charge to be reasonable and reasonably incurred. For the above reasons the Applicant's application under this section fails and is dismissed.
- 20 The Applicant made an application under s 20C of the Act . In the light of our decision under s 19 (above) we do not find that it would be reasonable to allow the Applicant 's application under this sub-section to succeed. We find that the Applicant's application under s 19 was misconceived and vexatious has put the Respondent to the expense of defending an unsustainable claim. We therefore refuse this application which fails and is dismissed.
- 21 Being satisfied with Mr Faulkner's qualifications and experience we order that he be appointed to act as manager of the property with effect from 1 July 2003. His duties obligations and remuneration are set out in the annexed Schedule (supplied by Mr Faulkner as part of his evidence to the Tribunal) . We also authorise him to seek recovery of service charge arrears payable up to the date of his appointment.
- 22 Mr Faulkner is at liberty refer back to the Tribunal for further Directions on such matters as he deems necessary.
- 23 The Respondent made an application for costs. Mr Gordon submitted that had this matter been approached in a less litigious manner Mr Gordon's involvement and consequent costs would not have been incurred. There had been voluminous correspondence over what was in effect a minor issue. Mr Gordon estimated his costs at £1200 which represented his advice, dealing with correspondence inspection of the property and attendance at the Tribunal hearings. The Applicant opposed the application on the grounds that offers to settle had been made in July 2002 and that had the Tribunal agreed at the preliminary hearing in January 2003 to dispense with the preliminary notice to the Respondent the proceedings would have been shorter. The Applicant took issue with Mr Gordon's role and his unwillingness to correspond with the Applicant. The correspondence had been generated by the application for a manager and this could have been obviated in January but was not.
- 24 The Tribunal considered the submissions made by both parties and the history of these proceedings. The Tribunal felt that this matter could have been disposed of on March 26 2003 (the original date set for the hearing) had the Applicant complied with the Directions made by the Tribunal on 8 January 2003. Similarly the matter might have been disposed of on May 14 (date of previous hearing) at which time the Applicant had still failed to comply with the Directions issued in January and at which hearing he presented no proper evidence in support of his application under s 19 and his proposed manager was not present at the hearing to give evidence. The correspondence in this case has not solely been generated since the application for the appointment of a manager was made. The Tribunal has been presented with voluminous correspondence and documents dating from 1995, very little of which had relevance to the applications under consideration and few pages of which were actually referred to at the hearings. Although the Applicant was appearing in person, his witness

statement asserts that he has been called to the Bar. In the light of his legal training we find that his conduct of the case and disregard of Directions made by the Tribunal is unacceptable. The delay in resolution of the case has been caused entirely by the Applicant and has resulted in one postponed and one adjourned hearing prior to 11 June 2003. The Tribunal feels that this would be an appropriate case in which costs should be awarded to the Respondent and finds that the Respondent's estimate of £1200 is reasonable given the amount of preparation work which has been undertaken by them. However, The Tribunal has no jurisdiction to order costs in a matter of this type and thus no order for costs can be made but there is no reason why the Respondent's costs of defending these proceedings should not be added to the service charge payable by the tenants in the normal way.

DECISION AND ORDER

- 1 The Applicant's applications under s 19 (2A) and s 20C of the Landlord and Tenant Act 1985 fail and are dismissed.
- 2 The Tribunal orders the appointment of Mr Faulkner FRICS MRIPM of Labyrinth Properties Ltd to act as manager of the property known as Fiona House 67 York Road Guildford Surrey with effect from 1 July 2003. Mr Faulkner's duties obligations and remuneration are set out in the Schedule annexed to this decision . Additionally Mr Faulkner is to have power to recover arrears of service charges payable by the tenants up to the date of his appointment.

Dated 11 June 2003



Frances Silverman

A member of the Southern Leasehold Valuation Tribunal appointed by the Lord Chancellor.

FIONA HOUSE, 67 YORK ROAD, GUILDFORD

Outline Specification and Responsibilities of the Appointed Property Manager

1. The Manager shall collect in accordance with the terms of the Lease the following: -
 - a) The ground rents reserved on each of the flats.
 - b) The service charges (including insurance contributions) payable by the lessees.
2. During the period of the appointment the manager shall provide the following management services: -
 - a) Prepare an annual service charge budget.
 - b) Recover from the Lessees their proportions payable of the service charge.
 - c) At the end of the year liase with independent auditors for the preparation of service charge certification.
 - d) Prepare a long term maintenance plan to take into account the repair and redecoration of the exterior and the common parts of the property.
 - e) Undertake a review of all existing contractual arrangements for the property, including cleaning of the common parts and maintenance of the fire alarm system.
 - f) Appoint contractors to deal with routine maintenance and repair issues including the entry phone system, fire alarm system, and fire extinguishers.
 - g) Obtain competitive quotes for the provision of buildings insurance.
 - h) Account to the Landlord on an annual basis for ground rentals collected without deduction of any commission.
 - i) To regularly inspect the property internally and externally.
 - j) Liase with vendors and purchasers solicitors in connection with the sale of individual flats.
 - k) Enforce covenants between the Lessees and the Lessors.
 - l) All Client Account funds are to be held in a discrete trust account.
 - m) Ensure that all works to the property are undertaken strictly in accordance with statutory consultation with the Lessees.

3. During the period of his appointment the Manager should be entitled to the discovery of such documents held by the respondent or his advisors as are reasonably required for the proper management of the property and the discharge of any function or duty contained in this order.
4. During the period of his appointment the Manager should be entitled to receive the following remuneration: -
 - a) The sum of £750.00 plus VAT for the first year of the appointment with subsequent increases to be negotiated with the Lessees.
 - b) The sum of 10% of the costs of any major works (to be considered as above £5,000.00 plus VAT).