EASTERN LEASEHOLD VALUATION TRIBUNAL

Ref: CAM/00KA/LAM/2004/001

Address of Property: 109 Havelock Road Luton Bedfordshire LU2 7PR

Applicant (Tenant): Jamie McCance 109B Havelock Road Luton Bedfordshire LU2 7PR

Respondent (Landlord): Graham Browning, 2 Virginia Close, Luton Bedfordshire LU2 7LX

An application for the appointment of a manager (Section 24(1) Landlord and Tenant Act 1987)

Tribunal: Mr JR Morris
Miss M Krisko BSc(Est Man) BA FRICS
Mr JR Humphrys FRICS

Appearances: Dr Jamie McCance who is the Applicant and tenant of the first floor flat (109B)
Miss Russell sometimes referred to in the documentary evidence by her married name of Mrs E Gale who is the tenant of the ground floor flat (109A), accompanied by Mr Darius.

The Application

1. On the 19th December 2003 the Applicant applied to this tribunal under s 24(1) of the Landlord and Tenant Act 1987 for the appointment of a manager

The Law

2. Under s 24(10 of the Landlord and Tenant Act 1987:

a) A leasehold valuation Tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this part [of the Act] applies -
a) such functions in connection with the management of the premises
or
b) such functions of a receiver
or
c) both as the Tribunal thinks fit.

(2) A leasehold valuation Tribunal may make an order under this section in the following circumstances, namely-
a) where the Tribunal is satisfied-
i) that the landlord is either in breach of any obligations owed by him to the tenant under his tenancy and relating to the management of premises in question or any part of them (in the case of an obligation dependent on notice) would be in breach of any such obligation but for

the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(iii) that it is just and convenient to make the order in all the circumstances

Or

(ab) where the Tribunal is satisfied –

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

(ii) that it is just and convenient to make the order in all the circumstances

Or

(ac) where the Tribunal is satisfied-

(i) that the landlord has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under s87 of the Leasehold Reform, Housing and Urban Development Act 1993 and

(ii) that it is just and convenient to make the order in all the circumstances;

Or

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

3. Where a tenant relies upon a notice served under section 22 of the Landlord and Tenant Act 1987 it must:
(a) specify the tenant's name and address for service of notices
(b) state that the tenant intends to make an application for an order under section 24 of the Landlord and Tenant Act 1987 in respect of the subject property but will not do so if the landlord complies with the requirements specified
(c) specify the grounds on which the Tribunal would be asked to make an order and the matters that would be relied on by the tenant for establishing those grounds
(d) where matters are capable of being remedied by the landlord, require the landlord within a reasonable time specified in the notice to take such steps for the purpose of remedying them as are to be specified.

Description of the Property

4. The Tribunal inspected the subject property on the 21st May 2004. The subject property is a two-storey end of terrace house, which has been converted into two self-contained flats, one at ground floor and one at first floor level. The building is comprised of these two flats alone and therefore these are the only properties to be affected by the Application. The building is built of brick and constructed circa 1900. The side and rear elevations are rendered and painted. The windows are upvc double glazed units and the rainwater goods are plastic. There is a single storey extension to the ground floor flat at the rear. There is a strip of garden to the front and sides with a boundary wall, which is part of the demise of the first floor flat, and there is a small garden and patio with a boundary wall to the rear, which is part of the demise of the ground floor flat. There is an 'off road' parking area for two vehicles. There is a garage

adjacent to the property, which appears to continue to be held by the Respondent landlord.

5. Each flat has its own front entrance. The ground floor flat (109A) comprises an entrance lobby, kitchen, bathroom, living room and bedroom. The first floor flat (109B) comprises an entrance lobby with stairs to the first floor landing off which are a living room, bedroom, bathroom and kitchen.

6. Externally the property appeared to be in poor condition. The flat roof of the single storey extension needed attention, as did the flashings on the slate roof. The paint of the fascias was peeling and flaking and required redecoration. The rendered surfaces also needed to be decorated. The stone/concrete sills at the front of the house were damaged. There was a need for some re-pointing work especially on the chimneystacks.

The Lease

7. The Applicant provided a copy of the first floor flat lease ("the Lease") and Miss Russell the tenant of the ground floor flat provided a copy of her lease at the Hearing although the plan annexed to this lease was missing. The terms of the leases appeared to be the same. Both tenants hold their flats under long leases granted for a term of 99 years from the 23rd April 1998. The respondent is the freeholder and the immediate lessor/landlord.

8. The demised property to each tenant is described in Part 2 of the Fourth Schedule of his and her respective leases with reference to a plan. The leases have some discrepancies in the description of the demise. It was noted on the plan provided which was attached to the lease of the first floor flat that the original labelling of the parking area, was intended for the first floor flat and the garage for the ground floor flat. However these labels have been crossed out on this plan and only half the parking area is designated for the first floor. Miss Russell, the tenant of the ground floor flat, stated that on her plan the original labelling is not crossed out. Miss Russell gave evidence to say that she has always understood the garage to be part of her demise but had not used it initially because she did not have a car and later because the Respondent continued to use it. No evidence was adduced by production of either a copy of the Lease plan or of the Land registry entry for the ground floor flat to indicate whether or not the garage was included in the demise of the ground floor flat. The area demised by the respective leases together extends to include the whole of the subject property. Therefore there are no common parts.

9. By virtue of Clause 6(4) of the Lease the Lessor covenants:
"to keep insured at all times through out the term the demised premises (including the fixtures and fittings of the Lessor) and three years rent thereof and architects', surveyors' and engineers' rebuilding fees against loss or damage by fire, explosion, aircraft damage and other such risks as the Lessor shall in its absolute discretion deem necessary ... in some insurance office or with underwriters of repute and to make all payments necessary for the purpose when the same shall respectively become payable and to produce to the Lessees on demand after seven days' notice in writing the policy or policies of such insurance and the receipt for the payment of the premiums"

Clause 1(2) provides that the Lessor may receive payment of "from time to time a sum of money equal to the amount which the Lessor may expend in effecting and maintaining the insurance of the demised premises against loss or damage by fire and other such risks as the Lessor may deem necessary."

10. By virtue of Clause 5 the Lessee covenants:
(5) "...once in every five years...to paint at a time appointed by the Lessor...all the outside wood and iron work",
(6)"...once in every seventh year to paint all the interior of the demised premises",
(7) "From time to time and all times during the said term well and substantially to repair, uphold support cleanse maintain drain amend and keep in good and substantial repair and condition the demised premises including any roof and in particular every part of the maisonette that provided support for the maisonette above or below the same or any part thereof"
(8) " To make good at the Lessees' expense any damage howsoever the same may be caused to the water pipes and main"

11. By virtue of Clause 6(5) "in the event of there being a failure in the absolute and uncontrolled discretion of the Lessor on the part of the Lessees of the various maisonettes to observe the repair obligation hereunder then if the Lessor shall in its absolute discretion deem necessary ...the Lessor may paint all external wood and iron work...maintain the roof foundations and main structures of the building in good repair and condition ...all joists between floors and the ceilings and the demised premises and those of any other maisonette...are hereby declared to be party structures and the expense of repairing and maintaining them shall be borne in equal shares..."

12. Under Clause 5 to allow the Lessor to carry out Clause 6 (5) the Lessee covenants:
(9) "...to pay and contribute a one half or a due proportion of the cost and expense of making repairing and maintaining painting supporting rebuilding cleansing all the ways roofs main wall timbers structure passageways and pathways" and by
(13) "To permit the Lessor and the Lessor's workmen ...to repair and make good all defects"

13. The effect of these clauses of the Lease is that :
The Lessor (i.e. landlord) must maintain insurance on the property
The Lessees (i.e. tenants) between them are to repair and maintain the whole of the property. Only if they do not do so may the Lessor at his absolute discretion carry out repairs and maintenance for which he may charge the Lessees in equal shares.

Preliminary Matters

14. A preliminary notice purporting to be under section 22 of the Landlord and tenant Act 1987 was served n the Respondent by recorded delivery dated 13th November 2003 by the Applicant. In it the Applicant referred to a letter 29th October 2003 which set out circumstances which the Applicant said showed the Respondent to be in breach of the Lease. It also stated that the Applicant intended to make an application for a management order unless the Respondent within 14 days set out a time scale for remedial action. There is no evidence before the Tribunal of a response from the Respondent to this notice and no evidence of remedial action having been taken.

15. Pre hearing Directions were issued to which the Applicant responded but no response was been received from the respondent to the Directions.

Documentation

16. The documents provided by the Applicant included the following:

a) Application Form LVT/6
b) A copy of the Lease
c) Letter from the Applicant to the Respondent dated 29th October 2003
d) A copy of the purported s 22 Preliminary Notice dated 13th November 2003
e) A statement by the Applicant together with supporting documents
f) A statement by Miss Russell (the tenant of 109A) with supporting documents
g) A report on condition

17. No documentation was received from the Respondent

The Issues

18.

a) Whether there are sufficient grounds to justify the appointment of a manager by the tribunal

b) Who should be appointed to be the Manager and the terms of the order

Hearing

19. The Hearing took place on the 21st May 2004 and was attended by the Applicant, Dr McCance, and Miss, Russell who is the tenant of the ground floor flat (109A), and Mr. Darius. The Respondent did not appear. The Chairman explained the Law and the effect of the clauses in the Lease to the Applicant and Miss Russell who said that they had not appreciated the effect of the lease.

The Applicant's Case

20. The Applicant referred to the purported s22 notice and said that prior to the notice he had sent a letter to the Respondent dated 29th October 2003 informing the Respondent of the work to be carried out as follows:

1. The roof is not watertight and daylight can be seen through the lead flashing that connects the roof to the adjoining property and it is prone to leaking.
2. The down pipe at the front of the property had come away from its fittings and is causing water to run down the outside wall.

As a result of the want of repair the Applicant had to repair internal plaster damaged due to water penetration, a portion of his mortgage was retained until the roof was repaired and he was unable to obtain contents insurance due to the state of the roof.

21. The Applicant then referred to his written statement of evidence to the Tribunal stating

that he corresponded with the respondent complaining of the want of repair and redecoration and stating that he had informed the Respondent that he wished to be appointed as the manager.

22. The Applicant called Miss Russell who gave evidence referring to her written statement of evidence. She said that she had been a tenant since 29th January 1988. She had complained about the state of repair of the premises and asked the Respondent for the insurance details, as she believed she might have a claim. The Respondent failed to produce an insurance certificate and receipt for premiums paid. She had been advised by her solicitor to withhold any monies until she was given the relevant insurance information. The Respondent subsequently gave her the insurance information which included a certificate for the period 16th February 1989 to 16th February 1990 and she was able to make a claim in 1992 to remedy damp. Miss Russell said that she understood the Respondent to be responsible for the carrying out of repairs and that he would then be entitled to recover the monies by way of service charge. Miss Russell stated that she sought to make a further claim under the insurance and communicated with CIS directly. Initially they were reluctant to deal with her as the Policy was in the name of the Respondent but eventually agreed to do so and she was able to make a further claim for a chemical damp proof course in 1998. In oral evidence Miss Russell stated that she had been in touch with the CIS Insurance Company recently who informed her that the insurance on the property had expired in February 2004 and had not been renewed. She had taken out building insurance for her flat but otherwise the property would be uninsured.

23. The Applicant stated that he wanted to be appointed as manager and Miss Russell agreed to this.

The Respondent's Case

24. No representations were received from the Respondent.

The Decision

25 The Tribunal found that as notwithstanding the uncertainty regarding the garage the respective demises included the whole of the subject property therefore there are no common parts for which the Respondent alone is responsible. Whether or not the garage is included in the demise of 109A is a matter in respect of which the tenant, Miss Russell should obtain clarification and inform the manager appointed accordingly.

26. The Tribunal doubted that the purported section 22 notice was adequate. Even if it were under the terms of the lease so far as the repair of the premises was concerned it found that the Respondent was not in breach. The whole building is demised to the tenants who are responsible for the repair, maintenance and decoration of the property under the Lease. Only when they fail to carry out their obligations may the landlord at his discretion carry out repairs for which he may charge the tenants.

27. However the Tribunal were satisfied that the Respondent was in breach of the clause 6(4) of the Lease in failing to insure and that a management order should be made so

that insurance could be effected as soon as possible.

28. In addition to the Respondent being in breach of the covenant to insure the Tribunal was satisfied that other circumstances also existed which made it just and convenient for a management order to be made. The circumstances were that:
    - The property was in need of repair work and maintenance work would from time to time be required.
    - There are only two tenants both of who attended the Hearing and were in agreement that one of them namely the Applicant should be appointed

29. The Tribunal therefore made a Management Order appointing the Applicant until 21st May 2007.

30. The Tribunal explained to the Applicant the effect and responsibilities of the Order. The Tribunal required the Applicant to obtain insurance cover as soon as possible.

31. The Tribunal drafted the order and sent a copy to the Applicant and the Respondent for comment within 14 days. As no reply was received the Order as drafted and appended to these Reasons was confirmed.

J R Morris (Chairman)

EASTER LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTION 24(1) OF THE LANDLORD AND TENANT ACT 1987
AND IN THE MATTER OF 109A AND 109B HAVELOCK ROAD, LUTON, BEDFORDSHIRE LU2 7PR ("THE PROPERTY")

BETWEEN

Jamie McCance **Applicant**

and

Graham Browning **Respondent**

ORDER FOR THE APPOINTMENT OF JAMIE MCCANCE AS MANAGER AND RECEIVER

UPON hearing the evidence

IT IS ORDERED THAT:

1. Dr Jamie Mc Cance of 109B Havelock Road Luton Bedfordshire LU2 7PR ("The Manager") be appointed Manager and Receiver of the Property with effect from the 21st May 2004.

2. The Manager shall manage the Property in accordance with:

   a) the respective obligations of the Lessor and the Lessees under the Leases by which each of the flats at the Property are demised and in particular with regard to repair, decoration and insurance of the Property and
   b) the duties of a Manger as defined by and set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institute of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

3. The Manager shall receive all sums whether by way of ground rent, payment of service charges of otherwise arising under the said Leases.

4. The Manager shall account to the freeholder for the time being of the Property for the payments of ground rent received by him and shall apply the remaining amounts (other than those representing his costs and expenses hereby specified in paragraph 5) in the performance of the Lessor's covenants contained in the said Leases.

5. The Manger shall be entitled to costs and incidental expenses up to the sum of £100.00 per annum.

6. The Manger shall make arrangements for the insurance of the building forthwith upon appointment.

7. The Manager shall seek professional advice where appropriate as is permitted under the terms of the Lease.

8. During the period of appointment the Manager shall comply with all statutory requirements, including those included in the Landlord and Tenant Act 1985 and the Landlord and Tenant Act 1987, as amended, and the Code and in particular:

a) Review the insurance of the property, obtaining quotations and arranging insurance, as necessary.

b) Prepare and annual service charge budget, including if required a sinking fund provision.

c) Recover the agreed service charge from the Lessees.

d) Prepare a maintenance plan of the repair and redecoration of the exterior and common parts of the property.

e) Deal expeditiously with routine repairs.

f) Liase with vendor's and purchaser's solicitors in connection with the sale of the individual flats.

g) Maintain a current and a deposit account for any reserve/sinking fund and account to the Lessees periodically for monies raised and expended.

9. This Order shall remain in force until 21st May 2007 or until it is varied or revoked by a further Order of the Tribunal and the Applicant and the Respondent shall each have liberty to apply to the Tribunal for further directions.

Chairman J Rhys Munt

Date 21st May 2004