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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/16UD/LVL/2012/0005**

Property : **1 to 15 and 17 to 34 Scaleby Close, Scalegate Road, Upperby, Carlisle, CA2 4JN**

Applicant : **Two Castles Housing Association Ltd.**

Respondent : **Various (see attached sheet)**

Type of Application : **s.35 of the Landlord and Tenant Act 1987**

Tribunal Members : **Mr P Forster
Mr I R Harris**

Date of Decision : **14 June 2013**

DECISION

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Decision

1. The Leases of 1-15 and 17-34 Scaleby Close, Scalegate Road, Upperby, Carlisle, CA2 4JN be varied as follows:
 - (a) in the Lease Recital, at paragraph (4), the 3rd line, the words *with the exception of the Warden's accommodation* be deleted.
 - (b) in the Particulars of the Lease *Service charge specified Proportion* the numbers *1/33* be replaced with *1/34*.
 - (c) in clause 5(5), the 3rd to 7th lines, the words *and accommodation for the warden in connection with the beneficial use and occupation of the flat contained* be deleted.
 - (d) in clause 5(6), the 2nd and 3rd lines, the words *(other than the Warden's accommodation)* be deleted.

Background

2. This is an application under s.35 of the Landlord and Tenant Act 1987 ("the Act") for orders varying 33 leases of flats 1 to 15 and 17 to 34 Scaleby Close, Scalegate Road, Carlisle, CA2 4JN. The Applicant is Two Castles Housing Association Ltd. who is the landlord under each of those 33 leases and the Respondents are the respective tenants.
3. All the leases contain provisions which oblige the Applicant to provide a resident warden service the costs of which can be recovered from the Respondents under the service charge. The application is to amend the leases to remove that obligation.
4. Scaleby Close is a leasehold scheme for those over 55 years old comprising 34 flats and bungalows. One of those properties is for the use of a resident warden. In March 2011, the warden became ill and was unable to work for a period of 16 months until July 2012 when she was able to return to work on reduced hours. During the period that she was not able to work her duties were covered by "Careline", a communal alarm monitoring system. The Applicant received a petition signed by a majority of the Respondents stating that they had managed for 16 months without a resident warden and that they did not see the need to have a warden.
5. On 19 July 2012, the Applicant wrote to all the Respondents informing them that if they wished, their leases could be amended to remove the obligation on the Landlord to provide a resident warden. The Respondents were invited to complete and return a voting slip indicating their views. Of the 33

leasehold properties, 27 voted to opt out of the warden scheme, 3 voted to retain a resident warden and 3 did not reply.

6. On the basis of that poll, the Applicant made its application under s.35 of the Act on the ground that a majority of the leaseholders did not wish to retain a resident warden and were satisfied with the Careline service. The 3 who voted for the retention of a warden did not give reasons for their objection. The effect of withdrawing a resident warden service would be to reduce the service charges payable by the Respondents. They currently each pay £208.94 per year for the provision of a resident warden. If the service is withdrawn the annual service charges would be reduced by that amount for each of them.
7. If the application is allowed and the leases are amended the current warden will be offered alternative accommodation and she will be offered help to find another job.
8. The Tribunal issued directions on 17 December 2012 that provide that the application is to be determined without a hearing unless a party requests one. None of the parties has asked for a hearing. There were also directions for the parties to submit statements of case and bundles of relevant documents. Only the Applicant responded by serving statements in support of the application and a comprehensive bundle of documents. The Applicant also submitted a response to further directions issued by the Tribunal asking for additional evidence.

The Decision

9. This is properly an application under s.37 rather than under s.35 of the Act. The grounds upon which such an application may be made to vary a lease are set out in s.37. The Tribunal needs to be satisfied that:
 - (1) the leases are long leases of flats under which the landlord is the same person but they need not be leases of flats which are in the same building nor be drafted in identical terms (s.37(2)); and
 - (2) the variation can only be achieved if all the leases are varied (s.37(3)); and
 - (3) the Applicant has garnered sufficient support to enable the application to proceed (s.37(5)); and
 - (4) the variation is not likely to substantially prejudice any Respondent or any person who is not a party to the application and that compensation would not compensate them (s.38(6)(a)); and
 - (5) the variation would be reasonable in the circumstances (s.38(6)(b)).

10. The proposal is to remove the obligation on the landlord to provide a warden service. The Tribunal has copies of all the leases and the terms of the proposed amendments. The evidence before the Tribunal is that 27 of the 33 leaseholders have agreed to the proposal; 3 have objected and 3 have not responded.
11. The application stands to be determined on the papers without an inspection or hearing. The evidence submitted with the application did not explain why the variation is sought or explain the possible consequences of withdrawing the warden service. The application needed to be put in context. The additional submission from the Applicant provides that evidence.
12. The Tribunal finds that s.37 of the Act is satisfied:
 - (1) the 33 leases are long leases of flats under which the Applicant is the landlord. The terms of each of the Leases are in identical terms, and
 - (2) the proposed variation can only be achieved if all the leases are varied. It would not be practical to provide a warden for some but not all the leasehold properties and to share the costs in the manner provided in the current Leases, and
 - (3) the Applicant has garnered sufficient support to enable the application to proceed. There are more than 8 Leases and the application is not opposed by more than 10 percent of the total number of the parties concerned and at least 75 per cent of the 33 leaseholders consent to it.
 - (4) the withdrawal of the warden will reduce the amount of the service charge payable each year by the leaseholders. There is unlikely to be any effect on the value of each leasehold property. It is not likely to substantially prejudice any Respondent or any person who is not a party to the application and the Tribunal finds that compensation would not be appropriate, and
 - (5) the variation would be reasonable in the circumstances.
13. The application is allowed in the terms set out at paragraph 1 above.

P Forster
Chairman

14 June 2013

- Respondents:**
- (1) Kathleen Jennings Little
 - (2) Samuel Lakin
 - (3) Mary Lakin
 - (4) Executors of Bertha Burrow
 - (5) Jadwiga Smith
 - (6) Colin Threlkeld
 - (7) Mary Threlkeld
 - (8) Margaret Nixon
 - (9) Sylvia Jean Hull
 - (10) Joseph Tait
 - (11) Maureen Tait
 - (12) Executors of Frank Howorth
 - (13) Iris Doreen Cox
 - (14) Ellice Winter
 - (15) Freda Bowman
 - (16) Executors of Beatrice Whitaker
 - (17) Hazel Dand
 - (18) Marion Graham
 - (19) William Milne
 - (20) Caroline Milne
 - (21) Joseph McEwan
 - (22) Marion Staddon
 - (23) Dorothy Scott
 - (24) Geoff Gordon
 - (25) Patricia Miller
 - (26) Dorothy Sewell
 - (27) Executors of Ann Frazer
 - (28) Joyce Irving
 - (29) Audrey Thompson
 - (30) Executors of John Green
 - (31) Margaret Troughton
 - (32) Arthur Smith
 - (33) Hugh Nattrass
 - (34) Mary Nattrass
 - (35) Malcolm Gardner
 - (36) Sybil Gardner
 - (37) David Brown
 - (38) Joseph Beaty
 - (39) Lydia Notman
 - (40) Edna Davidson