



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

Case reference : **LON/00AY/LVT/2014/0003**

Property : **Delphian Court, 188-192 Leigham
Court Road, Streatham, London,
SW16 2RD**

Applicant : **Phasepurpose Property
Management Ltd**

Representative : **Anthony Gold, Solicitors**

Respondent : **(1) Dermot Craig (Flat 1)
(2) Austin Asianya (Flat 17)
(3) Michelle Adams (Flat 24)**

Representative : **In person**

Type of Application : **Part IV of the Landlord & Tenant
Act 1987**

Tribunal Member : **Judge I Mohabir**

Date of Decision : **25 June 2014**

DECISION

Introduction

1. This is an application made by the Applicant under section 37 of the Landlord and Tenant Act 1985 (as amended) (“the Act”) to vary the terms of the residential leases granted in respect of Flats 1, 17 and 20 to permit it to recover 100% of the service charge expenditure through the service charge account.
2. The Applicant is the freehold owner and lessor of the 24 long leases of the residential flats granted in respect of the property known as Delphian Court, 188-192 Leigham Court Road, Streatham, London, SW16 2RD.
3. It seems that the Applicant had instructed solicitors in connection with the lease extensions for flats, 1-2, 5, 7-8, 10-11, 14-20 and 22-24, which varied the percentage of the service charge contributions of these flats. However, it was later discovered that this had resulted in a shortfall of 9.58% in the total contributions payable by the lessees for the service charge expenditure.
4. The leaseholders of Flats 5, 7, 8, 16 and 20 have voluntarily agreed to restore the original service charge contributions payable under their leases by executing a Deed of Rectification.
5. The Applicant now seeks to rectify the leases of Flats 1, 17 and 24 so that the service charge contributions payable result in 100% of the service charge expenditure being recoverable under the terms of the residential leases.
6. By an application dated 5 March 2014, the Applicant applied to the Tribunal under section 35(2)(f) of the Act to vary the said leases, namely, that they failed to make satisfactory provision in respect of the computation of a service charge payable under the lease.

7. On 12 March 2014, the Tribunal issued Directions. Paragraph 2 of the Direction provided that the Respondents should serve a statement of case setting out the basis on which this application is opposed. The Directions also provided, *inter alia*, that there be a “paper determination” of this application without the need for an oral hearing. In other words, the application would be determined solely on the basis of the statement of case and other documentary evidence relied upon by the parties. The Respondents have failed to file any evidence in this case nor have they participated in any way.

The Law

8. Section 35(4) of the Act provides:

“For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if-

- (a) it provides for any charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and*
- (b) other tenants of the landlord are also liable under the leases to pay by way of service charges proportions of any such expenditure; and*
- (c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.*

Section 37 of the Act provides:

“(1) Subject to the following provisions of this section, an application may be made to a leasehold valuation tribunal in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.

(2) Those leases must be long leases of flats under which the landlord is the same person but need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.

(3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all of the leases are varied to the same effect.

(4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.

(5)...

(6)..."

Decision

9. The Tribunal's determination took place on 13 May 2014.

9. The variations sought by the Applicant to the leases of Flats 1, 17 and 24 are set out in the form annexed hereto.

13. Having carefully considered the evidence in this matter, the Tribunal granted the application for the following reasons:
 - (a) that the application was unopposed by the Respondents.
 - (b) that the requirement of sections 35 (4)(a) and (b) of the Act had been met.
 - (c) that the requirement of section 35 (4)(c) of the Act had been met. The Tribunal was satisfied that the Applicant's object in seeking to vary all of the leases by including an express provision to allow all of the service charge expenditure to be recovered could not be met unless all of the leases had been varied to the same effect. Consequently, this ground under section 37(3) of the Act had been made out.
 - (d) it was satisfied that the making of an order varying the leases was not likely to substantially prejudice any of the Respondents or any person who is not a party to the application (s.38(6)).
 - (e) it was satisfied that no compensation was payable to any of the Respondents or any person who is not a party to the application under section 38(10), as no loss or disadvantage has been demonstrated by any of the parties.

14. Accordingly, for the reasons stated above, the Tribunal make an order under section 38(3) of the Act varying the terms of the residential leases of Flats 1, 17 and 24 in the terms annexed hereto and that the Land Register of the Titles affected by virtue of this decision.

Judge I Mohabir

25 June 2014

Proposed variation to clause 4(c)(i) of the Lease dated 21 July 2004 of Flat 1 Delphian Court:

*Contribute and pay **4.83** per cent of the costs incurred by the Lessor in performing his obligations in accordance with Clauses 5(b) (c) and (e) and the matters mentioned in the Fourth Schedule hereof*

Proposed variation to clause 4(c)(i) of the Lease dated 28 July 2000 of Flat 17 Delphian Court:

*Contribute and pay **4.20** per cent of the costs incurred by the Lessor in performing his obligations in accordance with Clauses 5(b) (c) and (e) and the matters mentioned in the Fourth Schedule hereof*

Proposed variation to clause 4(c)(i) of the Lease dated 31 March 2004 of Flat 24 Delphian Court:

*Contribute and pay **4.83** per cent of the costs incurred by the Lessor in performing his obligations in accordance with Clauses 5(b) (c) and (e) and the matters mentioned in the Fourth Schedule hereof*