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

Case Reference : CHI/21UD/LVT/2017/0006

Property : 28 Magdalen Road, St Leonards on Sea,
East Sussex TN37 6EG

Applicant : Mr Barry Markham

Representative :

Respondent : Mr. S. Lilley (First Floor Flat)
Mr & Mrs Bailey (Top Floor Flat)

Representative :

Type of Application : Landlord & Tenant Act 1987 - to vary two
or more leases by a majority

Tribunal Member(s) : Judge D. R. Whitney

Date of Directions : 27th November 2017

DETERMINATION

Background

1. The Applicant seeks to vary the leases of the flats in 28 Magdalen Road, St Leonards on Sea, East Sussex ("the Property"), under Section 37 of the Landlord & Tenant Act 1987 ("the 1987 Act"). Directions were issued on 8th September 2017. These included a direction that the matter would be dealt with on paper unless any objection was received.
2. No objection has been received. The Applicant has filed a bundle of documents in accordance with the directions.

The Law

3. The relevant law can be found in Section 37 of the Landlord and Tenant Act 1987. A copy is annex hereto marked "A".

Determination

4. 28 Magdalen Road, St Leonards on Sea, East Sussex TN37 6EP ("the Property") is we are told a block of 5 flats. The Applicant is the owner of the freehold and 3 of the leasehold flats in the building. The other two flats belong to the respondents although it appears from the Land registry entries included within the bundle that the Applicant owns his flats jointly with Eileen Joan Bowen and the Third Floor Flat is owned solely by Mr I. I. Bailey (see Section 3 of the hearing bundle).
5. At Section 9 of the bundle is a statement of facts on behalf of the Applicant. In essence he says it has been identified that in certain regards the leases of the five flats is unsatisfactory in not making appropriate provision for all services. In particular the following matters are identified:
 - No provision for recovery of cost of electricity usage in communal areas;
 - No provision for recovery of the costs of cleaning the communal areas;
 - No provision for recovery of any bank charges incurred, managing agent's costs and professional fees;
 - Ambiguity as to who is responsible for repair and maintenance of window frames;
6. At section 10 is a draft schedule of the variations sought. The Tribunal is told this has been drafted by solicitors. Essentially the variations are drafted to deal with the defects highlighted.

7. Under the Directions the Applicant was to serve the Application and the directions on each of the Respondents. However the Tribunal served copies of the Application and directions on each of the Respondents. Mr Lilley by letter dated 14th July 2017 confirmed that he had no objection to the proposed variation and therefore agreed to the same. No response has been received from Mr Bailey.

8. The Tribunal is satisfied on the evidence before it that in accordance with Section 37 (5)(a) of the Landlord and Tenant Act 1987 all but one of the relevant parties consent to the variation. Those consenting are in excess of 83% of the parties (which include the freeholder). The Tribunal is satisfied having regard to the "statement of facts" at section 9 of the bundle that the object cannot be properly achieved unless all the leases are varied. The Tribunal notes that no party either leaseholder or freeholder has formally objected. The Tribunal is satisfied on the evidence before it that no party will suffer any prejudice as a result of the variation which is to overcome obvious defects within the current leasehold scheme and ensure the good running of the Property.

9. The Tribunal being so satisfied orders that the five leases registered at the Land Registry shall be varied in the form annexed hereto marked "B". The Applicant, as freeholder, shall be responsible for making application to the Land Registry to have noted against all relevant freehold and leasehold titles details of the variation as Ordered by the Tribunal.

Judge D. R. Whitney

ANNEX A

37 Application by majority of parties for variation of leases.

(1) Subject to the following provisions of this section, an application may be made to the appropriate 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 they 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 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) Any such application shall only be made if—

(a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or

(b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.

(6) For the purposes of subsection (5)—

(a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and

(b) the landlord shall also constitute one of the parties concerned.

Draft Schedule

1. The words "and the external parts of the buildings" in the Second Schedule shall be deleted and replaced with the following words:

"and the external parts of the buildings including the window frames"

2. The following words shall be added to the end of Clause 19 of the Sixth Schedule:

"including but not limited to the supply of electricity cleaning bank and accountancy charges and management fees solicitor's surveyor's or other professional fees and expenses and any value added tax on them".

3. The words "repair decoration and condition" in Clause 3 of the Seventh Schedule shall be deleted and replaced with the following words:

"repair decoration and condition properly cleaned and adequately lighted".

4. Clause 5 of the Seventh Schedule shall be amended to include the date of 31 December as the accounting day.

5. Clause 20 of the Sixth Schedule shall be deleted and replaced with the following clause:

"The Lessee shall pay to the Lessor on demand the costs and expenses (including any solicitors', surveyors' or other professionals' fees, costs and expenses and any VAT on them) assessed on a full indemnity basis incurred by the Lessor (both during and after the end of the term) in connection with or in contemplation of any of the following:

- (a) preparing and serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;
- (b) preparing and serving any notice in connection with this lease under section 17 of the Landlord and Tenant (Covenants) Act 1995; or
- (c) any consent applied for under this lease, whether or not it is granted (except to the extent that the consent is unreasonably withheld or delayed by the Lessor in circumstances where the Lessor is not entitled to unreasonably withhold or delay consent)."