



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

**Case reference** : **LON/00AY/LVL/2018/0013**

**Property** : **Flats 3A & 3B, 37 Rosendale Road,  
London, SE21 8DY**

**Applicant** : **John Thompson**

**Representative** : **Mr Paget of Counsel**

**Respondents** : **(1) Nicholas Dimond  
(2) Ghulam Dastgir**

**Representative** : **Mr Dastgir in person**

**Type of application** : **Variation of a lease by a party to the  
lease**

**Tribunal members** : **Tribunal Judge I Mohabir  
Mr J Barlow FRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **2 December 2019**

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**DECISION**

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## **Decision of the Tribunal**

- (1) The application is dismissed.

## **Background**

1. By an application dated 23 November 2018, the Applicant sought to vary the service charge provisions and other terms in the long residential leases held by the Respondents of Flats 3A and 3B, 37 Rosendale Road, London, SE21 8DY respectively.
2. The Applicant holds the headlease of Flat 3 in the building that was granted on 10 November 1988 (“the headlease”). Subsequently, the flat was developed into the two subject flats and identical underleases were granted in respect of both of them on 9 June 2008, which the Respondents presently hold (“the underleases”).
3. Save for minor differences, the terms of the underleases repeated those contained in the headlease. Under the terms of the headlease, the Applicant is obliged to pay a one third service charge contribution. It was the Applicant’s case that under the terms of the underleases it seems that each of the Respondents is required to pay a service charge contribution of one quarter. In total, this represents a payment of one half, which is greater than the one third share payable under the headlease. The Applicant was seeking to vary the underleases to a one sixth contribution for each of the Respondents.
4. In addition, the Applicant was seeking the extensive variations to the underleases set out in the document found at pages 77-80 and 81-89 in the hearing bundle.
5. All of the variations sought by the Applicant were opposed by the Respondents.
6. The earlier hearing on 30 August 2019 was adjourned to enable the parties to continue negotiations.

## **The hearing**

7. The adjourned hearing took place on 2 December 2019. The Applicant was represented by Mr Paget of Counsel. The Second Respondent, Mr Dastgir, appeared in person. The First Respondent did not attend and was not represented.
8. The Tribunal asked Mr Paget to explain why his client was seeking to vary the service charge contributions payable under the underleases

when it was opposed by the Respondents. He explained this had arisen in the context of earlier proceedings relating to the recovery of service charge arrears from them. In the course of those proceedings, the Tribunal had pointed out that the underleases allowed for the over recovery of service charge contributions from the Respondents. Mr Paget said that his client was trying to be fair to the Respondents by seeking to vary the leases in their favour.

9. The Tribunal pointed out to Mr Paget that if the Respondents were objecting to this variation, the Applicant did not appear to have a cause of action because the statutory test under section 35(2)(f) of the Landlord and Tenant Act 1987 (“the Act”), that the leases failed to make satisfactory provision in this regard, was not met. The Respondents were satisfied that they did and if this allowed for over recovery from them, then so be it. Unless and until the leases are otherwise varied, the parties are bound by the contractual terms governing the service charge regime.
10. As to the other variations sought by the Applicant, the Tribunal indicated that they do not appear to fall within any of the statutory criteria set out in sections 35(2)(a) to (e) generally of the Act and it appeared that the Tribunal did not have jurisdiction to deal with these matters.
11. In the light of the indications given by the Tribunal above, and having taken his client’s instructions, Mr Paget said that he was content for the application to be dismissed.
12. Accordingly, the application is dismissed.

<b>Name:</b>	Tribunal Judge I Mohabir	<b>Date:</b> 2 December 2019
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### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).