FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BA/LVT/2019/0007**
Property	:	**Flats B & C, 14 Robinson Road, Colliers Wood, London, SW17 9DW**
Applicants	:	**1. Akwasi Obeng Agyeman Botwe (Flat C)** **2. Tolulope Elizabeth Morana (nee Jegede) (Flat B)**
Representative	:	**Lorna Morgan (Property Manager, Harmens Management)**
Respondents	:	**South London Ground Rents Limited**
Representative	:	**Ben Stimmler (Counsel)**
Type of application	:	**To vary two or more leases by a majority**
Tribunal member	:	**Judge Robert Latham** **Mike Taylor FRICS**
Date and venue of paper determination	:	**30 August 2019 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**12 September 2019**

DECISION

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(1) The Tribunal makes an Order pursuant to section 37 of the Landlord and Tenant Act 1987 varying the leases. The terms of the variation are set out in the Draft Deeds of Variation in the Application Bundle at p.70-73 (Flat C) and p.74-77 (Flat B).

(2) The Tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

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The Application

1. On 8 July 2019, the Applicant tenants applied to vary their leases under section 37 of the Landlord and Tenant Act 1987 ("the Act"). The relevant statutory provisions are annexed to this decision.

2. 14 Robinson Road is a three-storey terraced property which has been converted into four flats. This application relates to Flats B and C which are on the first floor. The substance of the variation sought is stark. Each lease attaches the lease plan for the wrong flat. Thus, the lease for Flat B has the lease plan for Flat C and the lease for Flat C has the lease plan for Flat B.

3. The application is opposed by the Respondent, whose predecessor-in-title is responsible for this inexcusable drafting error, namely the failure to correctly identify the land that is to be demised. Two points are taken:

   (i) The Respondent asserts that there was a binding agreement reached on 2 September 2016 (or 9 March 2017) whereby the parties agreed to vary the leases upon a payment by the First Applicant of a sum of £4,250 to the Respondent. The Respondent asserts that this Tribunal has no jurisdiction to go against this agreement.

   (ii) The variation sought falls outside the jurisdiction of the Tribunal under Section 37 of the Act. In particular, it is contended that the variations sought to the two leases are note "to the same effect" (Section 37(3).

4. The Tribunal gave Directions on 11 July. It proposed determining the application on the papers. On 23 July, the Respondent served its Statement of Case. The Respondent asked for the case to be struck out as an abuse of process with an award of costs. Alternatively, there should be an oral hearing at which the Respondent would cross-examine the First Applicant under oath.

5. On 31 July, the Tribunal gave further Directions setting the matter down for an oral hearing to determine the issue of jurisdiction. The Applicants were represented by Ms Lorna Morgan, a Property Manager with Harmens Management. The Respondent was represented by Mr Ben Stimmler (Counsel). Mr Stimmler provided a Skeleton Argument and referred us to the Upper Tribunal decision in *Shellpoint Trustees Limited v Barnett* [2012] UKUT 375 (LC). Ms Morgan referred us to Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. We are grateful for the assistance provided by both representatives. Both representatives agreed that the Tribunal should determine not only the issue of jurisdiction but also the substantive application, should we determine that we have jurisdiction to do so.

6. None of the parties attended the hearing. Mr Botwe has not provided a witness statement. Mr Stimmler adduced no oral evidence in support of his contention that there was a binding agreement. He has rather sought to rely on an incomplete set of papers from which he has asked the Tribunal to draw various inferences.

7. Both parties were directed to make their final submissions in respect of the Tribunal's jurisdiction and costs two weeks before the hearing. Neither party complied with this Direction. Ms Morgan complained that she had had insufficient time to peruse the Respondent's Skeleton Argument and the authority which had been e-mailed to her on Wednesday evening (28 August). The Tribunal therefore granted a short adjournment to enable her, and the Tribunal, to peruse these documents.

8. Mr Stimmler made clear that the Respondent's objection to the application is purely financial. It would have no objection to the proposed variations if the sum of £4,250 was paid which had been discussed in 2016. The Tribunal expressed our surprise that the landlord expected the tenants to compensate it for the gross negligence of its predecessors-in-title in drafting the two leases.

The Background

9. Neither Applicant occupies their flat. The house is now managed by the 14 Robinson Road RTM Company Limited, which is controlled by the four tenants. The tenants of Flats A, D and the RTM Company have all signified their agreement to the proposed variations.

10. Ms Morana is the tenant of Flat B. The lease is dated 31 August 2004 and was granted by Chalfords Limited to Blackacre Properties Limited. The term is 125 years from 25 March 2004. The "demised premises" are described in the First Schedule. The First Schedule describes this as the flat situated on the first floor which is edged red on the lease plan. Although the lease plan describes the area delineated in red as "Flat B", the parties are agreed that the common intention was to demise the flat on the opposite side of the first floor. This is the flat which Ms Moran has occupied since she acquired the leasehold interest. The lease plan also purports to demise to her the hallway on the first floor without reserving any right to the other tenant to gain access by this hallway.

11. The proposed variation (at p.74-7) is to substitute a lease plan which accurately delineates the flat (edged in red), the common parts (edged in green); and the shared use of the rear garden (edged in blue). The amended lease plan was drafted on 20 December 2016.

12. Mr Botwe is the tenant of Flat C. The lease is dated 16 February 2006 and was granted by Newservice Limited to Blackacre Properties Limited. The term is 125 years from 25 December 2002. The "demised premises" are Flat C as more fully described in the First Schedule. The First Schedule describes this as the flat which is edged red on the lease plan. The lease plan for the First Floor bears little resemblance to the lease plan in the lease for Flat B. It rather seems to refer to three flats, namely C, D and E. Although the lease plan descries the area delineated in red as "Flat C", the parties are agreed that the common intention was to demise the flat on the opposite side of the first floor. This is the flat which Mr Botwe has occupied since he acquired the leasehold interest.

13. The proposed variation (at p.70-73) is to substitute a lease plan which accurately delineates the flat (in red) and the common parts (in green). The amended lease plan was drafted on 4 March 2016. Two additional variations are proposed. The first relates to a section of the rear garden. It is common ground that the tenants of Flats B and C have shared use of this garden area. The lease is ambiguous. The First Schedule includes within the demise "the garden shown edged green on the Plan (if any)". There is no plan edged green. The proposed variation is to include a provision in respect of the garden in the same terms as in the lease for Flat B. The final variation relates to the tenant's "service charge proportion". No contribution is specified in the lease. The parties are agreed that "25%" should be included, all the tenants contributing 25%.

Issue 1: Is there a binding agreement which deprives the Tribunal of Jurisdiction?

14. Mr Stimmler argues that there is a binding agreement between the parties to vary the two leases with a payment of £4,250 by Mr Botwe, the First Applicant. In its Statement of Case (at [3]) the Respondent asserts that this variation for a payment of £4,250 was "negotiated and agreed via his solicitors on the 2 September 2016". The Respondent states that the Second Applicant is not required to pay a premium as the First Applicant's sole desire was to vary both leases.

15. If there was a binding agreement, no party has sought to enforce it. Indeed, there is no evidence that the Second Applicant was a party to the any agreement that was reached on 2 September 2016.

16. The factual background seems to have been that Mr Botwe was planning to sell his flat in 2016. His purchaser, unsurprisingly, required the lease to be varied so that it accurately reflected the flat that he was seeking to acquire. It seems likely that he also became aware that there was a second lease which purported to demise the property which he was intending to acquire. The sale aborted in late July 2017.

17. Thereafter, that was no further discussion about any variation until the Applicants issued their current application on 8 July 2019. Harmens Management did not give the Respondent any advance notice that they intended to issue the application. The current application has arisen because Mr Botwe did not pay his service charges and his mortgagee is now seeking to repossess the flat. On 14 May, 2019, the mortgagee obtained a Notice of Eviction which was to be executed on 6 August 2019. This has now been deferred pending the determination of this application. Mr Botwe has identified another buyer and is anxious to complete a sale before the mortgagee repossesses the flat.

18. In order to establish his argument, Mr Stimmler would need to satisfy us on three points:

    (i) An agreement was concluded on a specific date, by which time there was sufficient certainty as to the terms of and the parties to the agreement.

(ii) This agreement was not a contract for the "disposition of an interest in land" which would be required to satisfy the requirements of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989; and

(iii) That even if there were such a legally enforceable agreement, it would preclude this Tribunal from entertaining a statutory variation of the leases.

We conclude that the Respondent has failed to satisfy us on any of these points.

1. A Concluded Agreement?

19. Mr Stimmler's starting point is an e-mail dated 2 September 2016 (at p.99). In its Statement of Case, the Respondent asserts that this is the date upon which the variation "was negotiated and agreed". The email is sent by Ms Joan Thorpe-Anderson, a Solicitor at Anderson Fidler, who was acting for Mr Botwe, sent to Mr James Buck, of Pier Management, managing agents for the Respondent. This e-mail records that the Respondent has agreed that the consideration for a Deed of Variation is £4,250. The email purports to "enclose a draft deed for approval and execution if approved". The Tribunal has not been provided with a copy of that draft deed. The e-mail concluded: "As you are aware, our client has a buyer for this property. We would therefore appreciate your urgent attention to the matter". There is no evidence that the Respondent approved or executed the deed. There is no suggestion that Ms Thorpe-Anderson had authority to act for Ms Morana. It is impossible for the Tribunal to accept that any variation "was negotiated and agreed" on this date. Indeed, it is apparent from a letter dated 27 September 2016 (at p.100), that the parties were still negotiating the terms of the proposed variations.

20. Mr Stimmler sought to advance a further argument, albeit not one raised in the Respondent's Statement of Case, that a concluded agreement was reached on 9 March 2017. This letter is dated "2016", but it seems that it should be "2017". It is written by Mr David Bland, a Legal Executive Agent with Pier Legal Services, another agent for the respondent, to Ms Thorpe-Anderson. It is impossible to accept that a concluded agreement was reached on this date. Mr Bland is seeking confirmation that Ms Thorpe-Bland has authority to act for Ms Morana. There is no evidence as to the variations that were being considered.

21. The high point of the Respondent's case is an e-mail dated 15 May 2017 (at p.103) from Rosina Sayers, a Paralegal with Pier Management Limited, to Ms Thorpe-Anderson. This reads: "We are pleased to confirm that we are holding both Deeds duly executed by our Client. Please let us know when you are in a position to complete". There is no evidence as to the deeds which had been executed. However, we are asked to infer that these are the documents for Flat B (at p.107-114) and for Flat C (at p.115-122). The document for Flat C is not executed by the Respondent.

22. Whilst these documents seek to substitute the new lease plans upon which the Applicants rely in the current application (at p.114 and p.122), they do not extend to the variations sought in the current application:

(i) Flat B: Paragraph 8 of the Second Schedule of the lease (at p.35) refers to the right to the shared use of the garden area shown edged red. The shared garden in the new lease plan is edged blue.

(ii) Flat C: Whilst the lease plan suggests that the rear garden edged blue is shared by Flats B and C, this conflicts with the express terms of the lease. Paragraph 7 of the First Schedule (at p.60) grants sole use of "the garden shown edged green on the Plan (if any"). The variation now sought seeks to delete this paragraph, and add a new Paragraph 8 to the Second Schedule. Further, this document does not address the absence of any "service charge proportion" in the lease. In the current application, it is agreed that a figure of 25% be substituted.

23. There are two further obstacles to the contention that there was a concluded agreement:

(i) It is unclear whether this was a tripartite agreement between the Respondent and the two Applicants or merely between the Respondent and Mr Botwe. There is no suggestion that Ms Morana was required to pay any consideration for the proposed variation. Would she have had the standing to enforce the agreement? There is reference in the bundle to a letter dated 15 March 2017 confirming that Anderson Fidler were instructed on behalf of Ms Morana (see p.97). However, the Tribunal have not been provided with a copy of the letter. There is no evidence that she agreed to the proposed variations which were under discussion and which would not have adequately addressed the defects in her lease.

(ii) There was a dispute as to whether the Respondent required Mr Botwe to pay a further sum of £300 + VAT in respect of the assignment which the proposed variation was intended to facilitate (see p.105).

24. The Tribunal would need clear and cogent evidence to satisfy us that a concluded agreement had been reached. The Respondent has failed to adduce such evidence. If there was a binding agreement, no party has sought to enforce it.

<u>The Law of Property (Miscellaneous Provisions) Act 1989</u>

25. Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 provides:

> "(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.
>
> (2) The terms may be incorporated in a document either by being set out in it or by reference to some other document.
>
> (3) The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract."

26. Ms Morgan contends that the variation under discussion was a contract for the "disposition of an interest in land" and would therefore need to comply with the statutory requirements in Section 2. Mr Stimmler responded that the proposed variations merely corrected mutually agreed mistakes and did not amount to any disposition of an interest in land. Were the proposed variations merely to annexe accurate lease plans, there would be force to Mr Stimmler's argument. However, the variations seek to do more. The extent of Ms Morana's rights to the rear garden were unclear from her lease. The proposed variation was intended to address an ambiguity in her lease, namely to grant her specific rights in the rear garden.

27. The Tribunal therefore concludes that the contract for which the Respondent contends is a disposition of an interest in land which fails to meet the specified requireents required by the 1989 Act.

<u>Is the Tribunal Estopped from Entertaining a Statutory Variation?</u>

28. Even if the Tribunal is wrong on both of the above, the Tribunal does not accept that any contract to vary the leases prevent us to consider an application for a statutory variation. If any party had wished to enforce the contract, it would be open to them to do so. None has decided to do so.

29. We have already discussed the difficulties that Ms Morana would have in enforcing the agreement. Indeed, it would not be in the interests of any party to enforce the agreement given that the proposed variations do not satisfactorily address the flaws in the two leases (see [22] above).

30. Even had there not been these practical problems, we are satisfied that a legally enforceable contract would not preclude any party from pursuing their statutory remedy before this tribunal. This Tribunal is entitled to have regard to any such agreement. As Mr Stimmler reminded us, Section 38(10) permits a tribunal to make an order providing for any party to the lease to pay compensation to another party in respect of any loss or disadvantage that the tribunal considers that he is likely to suffer as a result of such a variation. This is a power which could be exercised in an appropriate case to prevent any abuse.

<u>Issue 2: Does the Tribunal have Jurisdiction to make the variations which are sought?</u>

31. The statutory provisions in Sections 37 and 38 of the Act are complex. Mr Stimmler focused on Section 37(3) which provides:

> "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."

32. The parties are agreed that it is only the leases in respect of Flats B and C which need to be varied. Mr Stimmler argues that these leases do not need to be varied to the same effect, but could rather be varied independently to incorporate lease plans to accurately reflect what the original parties had intended to demise.

33. It is not necessary to vary the leases of Flats A and D. It is therefore agreed that in determining whether there is the required qualified majority for the variation required by Section 37(5) the relevant parties are the two Applicants, the Respondent and 14 Robinson Road RTM Company Limited. Three of the parties consent to the application. The Respondent opposes it.

34. Mr Stimmler referred us to the Upper Tribunal decision of HHJ Gerald and AJ Trott FRICS in *Shellpoint Trustees Limited v Barnett* [2012] UKUT 375 (LC); [2013] L&TR 21 (emphasis added):

> "70. The first question to address under s.37 is: what is or are the "object" or objects to be achieved by the non-consequential variations? As a matter of statutory construction, there may be single or multiple objects. In many respects, the object of a variation will be self-evident from the content of the variation itself. But it does not follow that that is necessarily the object, or purpose, of the variations. We accept Mr Lederman's submission that it is for the applicants, not the tribunal, to identify the "object" or purpose which, broadly speaking, may be of infinite variety depending upon the facts and circumstances relating to the leases, buildings and flats in question.
>
> 71. What the object is is a question of evidence to be adduced by the applicants: what are they trying to achieve by the variations, and why? What problems or deficiencies are there or have there been in running the blocks and enforcing the leases? What is the purpose of the variation(s)? Without this information, or evidence, the tribunal cannot make any findings as to the "object" to be achieved, nor can it properly exercise its discretion, which includes an evaluation of the proposed variation. Whilst the s.37 jurisdiction is wider than and distinct from that of s.35, there is room for overlap. For example, where there are unsatisfactory provisions relating to recouping the costs of repairs or maintenance an application can be made to remedy those deficiencies where there is a sufficient supporting majority of tenants under s.37 and, if not, under s.35. We accept the submission of Mr Lederman that it is not for the tribunal to determine whether they approve of the object, but it is for the tribunal to make a finding, based upon the evidence, of what the object is.
>
> 72. The second question is: can the "object" be satisfactorily achieved by the proposed variation without varying all the Leases (we summarise, but do not lose sight of, the statutory wording)? There are two questions here: does the proposed variation achieve the object, and if so do all of the leases need to be varied to satisfactorily achieve that object? These of course presuppose that the leases do not already have sufficient or satisfactory provisions: if they do it is obvious that they need not be varied as there will be no object, or purpose, to the variation. Or, as Mr Barnett tersely put it, "if it ain't broke don't fix it".
>
> 73. These are questions of evidence to be adduced by the applicants: how do the proposed variations achieve that object or objects? Can that only be satisfactorily achieved if all the leases are varied? The nature and extent of the evidence will of course depend upon the variations sought. It is also a question for legal argument: as a matter of law do the variations achieve the object or are they capable of doing so? We accept Mr Lederman's submission that it is for the applicants, not the tribunal, to select the solution or variation from what will frequently be one of a number of different options and if the majority of tenants are supportive then it is not for the tribunal to second

> guess them although, of course, the tribunal would be at liberty to make suggestions.
>
> 74. For convenience, we consider these questions and the related evidence together. We should say however that we do not accept Mr Lederman's submission that the majority view should prevail unless the s.38(6) grounds are made out. In our judgment, the purpose of s.37 is to enable the majority to apply to the tribunal for a variation to achieve a particular object: if they cannot bring themselves within those requirements, then there is no jurisdiction to entertain the application or consider it further. <u>The jurisdiction is relatively narrow, and is not intended to allow rewriting of leases merely because that is the will of the majority and in many cases may well seem sensible.</u>"

35. The first question which we are required to address is what is the object to be achieved by the proposed variations. The stated object is to vary the two leases so that their lease plans accurately reflect the property which the landlord intended to demise to the tenants under the two leases. Although some additional non-consequential variations are proposed, the Respondent does not object to these.

36. The second question is whether this object can be satisfactorily achieved by the proposed variation without varying both the leases. There are two questions: do the proposed variations achieve the object, and if so, do both leases need to be varied to satisfactorily achieve this object?

37. Mr Stimmler argues that the two leases do not need to me varied to the same effect. Each lease is being varied independently with a distinct lease plan. Whilst both tenants have made a joint application, it would have been open to them to make separate applications. Section 37 is not intended to deal with this situation. The remedy is rather one of rectification. Such an application would need to be made to the County Court or the Land Registration section of the First-tier Tribunal (Property Chamber.

38. The Tribunal disagrees. The object to be achieved by the proposed variations is that the two leases should have lease plans which accurately reflect the property which the landlord intended to demise to the respective tenants on the first floor of 14 Robinson Road. The variations do not need to be identical, the two leases rather need to be "varied to the same effect". Neither do we accept that the two leases could be satisfactorily varied independently of each other. Were just one lease to be varied, there would be two leases registered at the Land Registry which purported to demise the same property. The Respondent's predecessors-in -title made the same inexcusable drafting error in respect of both flats. It is probable that the second error was consequential upon the first. The only satisfactory solution is for the errors in both leases to be corrected at the same time.

39. Section 38(10) permits this Tribunal to make an order providing for any party to the lease to pay compensation to another party in respect of any loss or disadvantage that the tribunal considers that he is likely to suffer as

a result of such a variation. We see no reason to make an order for compensation. It is in the interests of all parties that the leases are varied so that the lease plans accurately reflect the intended demises. It seems that Mr Botwe has been paying a 25% contribution towards the service charge, albeit that his lease does not specify any contribution. He has not sought any compensation. There are no grounds whatsoever for requiring compensation to be paid to the Respondent. It is the landlord's predecessors-in-title who were responsible for the current deplorable state of affairs.

40. It seems that Mr Botwe was willing to pay £4,250 in 2016 to achieve a more limited variation to his lease than is now sought. Had there been a legally enforceable contract, it would have been open to the Respondent to seek to enforce it. We have found that there was no such legally enforceable contract. Even if we are wrong on this, we do not consider that there are any grounds for making an order for compensation.

Refund of Tribunal Fees

41. At the end of the hearing, the Applicants made an application for a refund of the fees that they have paid in respect of the application and hearing pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the fees of £300 paid by the Applicants within 28 days of the date of this decision.

42. We have regard to the fact that Harmens Management did not send any pre-action letter before issuing this application. They should have done so. However, even if they had followed good practice, the Respondent would still have opposed the application.

Judge Robert Latham
12 September 2019

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).

Annexe: Sections 37 & 38 of the Landlord and Tenant Act 1987

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.

38.— Orders varying leases.

(1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

(2) If—

(a) an application under section 36 was made in connection with that application, and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —

(a) that the variation would be likely substantially to prejudice—
(i) any respondent to the application, or
(ii) any person who is not a party to the application,
and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

(a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.