



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

**Case reference** : **LON/00AT/LVT/2018/0016**

**Property** : **Various flats at 565 London Road,  
Isleworth TW7 4EE**

**Applicant** : **CREST Nicholson Operations Ltd**

**Representative** : **Clarke Willmot LLP**

**Respondent** : **All Leaseholders of flats 1-59, 565  
London Road Isleworth TW7 4EE  
(as set out in the application)**

**Representative** : **The Leaseholders were un-  
represented**

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

**Tribunal members** : **Judge Daley  
Mr D. Jagger FRICS**

**Date and venue of  
paper determination** : **26 February 2019 at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **26.02.2019**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The Tribunal determines that the Application has succeeded and that the lease shall be amended as set out in the draft variation as attached in the schedule.
- (2) The Tribunal determines that the variation shall be effective from the date of this decision.
- (3) The Tribunal determines that no compensation is payable to any party pursuant to Section 38(10) of the Landlord & Tenant Act 1987 in respect of the variations determined above.
- (4) The Tribunal makes the determinations as set out under the various headings in this Decision.

### **The application**

1. The Applicant sought by an application dated 22 November 2018, a determination pursuant to Section 35 of the Landlord and Tenant Act 1987 (the Act) to vary the lease of the property on terms set out at pages 9 to 10 of the application.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The Directions**

3. Directions were given on 4 December 2018 the tribunal directed that the matter be determined on the basis of written representations unless any party requested a hearing. No such request having been made the matter is determined on the basis of the documentation and written representations provided by the parties.
- (1) The Tribunal on 4 December 2018 identified the following issues-: The tribunal has identified the following **issues**:
    - Should the tribunal order the proposed variation(s) to be made to the leases?
    - Do the proposed variations fall within the grounds set out in section 35(2) of the Act, that is to say, does the lease fail to make satisfactory provision for one of the matters set out in that section?
    - If it does make an order varying the leases, should the tribunal order any person to pay compensation to any other person (see section 38(10) to the Act).

## **The background**

4. The Applicant is the landlord and Lessor of the premises Known as 565 London Road, Isleworth, TW7 4EE.
5. The premises which are the subject of this application are a block of self-contained flats numbered 1-59 situated on several stories set in the Isleworth suburb of London..
6. The premises is a new development built in approximately 2014 and offered for sale on lease terms which provided a 125 year lease..

The documents before the Tribunal

7. Having read the evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows:

## **The Applicant's case**

8. The application is made pursuant to section 35 of the 1987 Act.
9. The Applicants seek an order varying the terms of the leases of the property under Section 35(2) (b) of the Landlord and Tenant Act 1987 namely on the grounds that the lease fails to make satisfactory provision in respect of the insurance for the building containing the flats.
10. The Applicant provided details of clause 7 of the lease which provided a detailed and comprehensive provision as to how the lessor should go about obtaining insurance, what the insurance should cover, and what the expectations/ rights of the parties were in the event of a shortfall following the occurrence of an insured event, and or difficulties with reinstatement of the premises; however although the lease provided details of the Lessee's proportion and also provided details of the list of services for which payment from the lease proportion could be made, however the cost of the insurance was not included in the sixth schedule.
11. The only other clause which provided some assistance was the eighth schedule in which paragraph 2 provided that -: the lessee(s) covenant-: "2. To pay the Manager or its authorised agent the Lessee's proportion at the times and in the manner herein provided"

“Lessee’s Proportion” is defined in the Definitions section as meaning “a fair and reasonable of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Seventh Schedule”.

The Seventh Schedule states that the Lessee’s Proportion shall be assessed in relation to the list of services to be provided in the Sixth Schedule.”

12. The Applicant asserted, that notwithstanding the fact that the Sixth Schedule made no reference to the recovery of costs incurred by the landlord in insuring the building, (in accordance with the Ninth Schedule) it was clear that it was the intention of the parties that the costs of insurance should be recoverable from the lessees.
13. Draft terms were provided within the application and a schedule was also attached in the hearing bundle.

### **The Respondents’ case**

14. The Directions given by the Tribunal provided that the Applicant should send copies of the application to each leaseholder together with a copy of the directions and that on or before 21 December 2018 the applicant should confirm to the tribunal whether there was any other person who they know or believed to be likely to be affected by the proposed variation and how they had been made aware of the application
15. The leaseholders were also directed to complete a form which was enclosed with the directions indicating whether they consented/ or objected to the application. The Tribunal received two copies of the form, one from Network Homes Ltd who was the leaseholders of 20 flats within the premises, and also the leaseholder of flat 7.
16. Prior to making the application, the landlord had received 6 pro-formas consenting to the application. No written objections were received.

### **The Tribunal’s decision and reasons**

17. The Tribunal determines the issues before it as follows:
  - (i) The Application has succeeded as the Tribunal are satisfied having considered the copy lease, that the lease fails to make provision for the payment of the insurance premium as set out in the application.
  - (ii) The Tribunal is satisfied that the lease as currently drafted fails to make satisfactory provision for the

costs of the insurance to be collected as a service charge, and that such a failure is detrimental to the parties to the lease.

- (iii) The Applicant has not asked for or set out a reason why the variation should be backdated; Accordingly the effective date of the variation subject to a deed of variation being drafted and properly executed is the date of this decision
- (iv) No compensation is payable. The Tribunal finds no reasons for ordering compensation and therefore determines that no compensation should be payable.

### **Next steps**

- 18. The parties are ordered to arrange for endorsements to be executed and attached to the lease, then register notice of the variations of the lease at the Land Registry. In such cases the costs are normally borne by the Applicant.

Chairman: Judge Daley  

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26 February 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).

## **Appendix of relevant legislation**

### **VARIATION OF LEASES**

#### *Applications relating to flats*

#### **S35 Application by party to lease for variation of lease.**

- (1) Any party to a long lease of a flat may make an application to [a leasehold valuation tribunal] [FN1] for an order varying the lease in such manner as is specified in the application.
- (2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—
  - (a) the repair or maintenance of—
    - (i) the flat in question, or
    - (ii) the building containing the flat, or
    - (iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;
  - (b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);
  - (c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;
  - (d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

- (e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;
- (f) the computation of a service charge payable under the lease;
- (g) such other matters as may be prescribed by regulations made by the Secretary of State.
- (3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—
- (a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and
- (b) other factors relating to the condition of any such common parts.
- (3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.
- (4) 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 such 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 their 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.
- (5) [Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002] [FN2] shall make provision—
- (a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and
- (b) for enabling persons served with any such notice to be joined as parties to the proceedings.
- (6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—
- (a) the demised premises consist of or include three or more flats contained in the same building; or
- (b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
- (8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act.[...]



## Schedule of Draft Lease

**Draft Wording of Variation Sought as per pages 9 and 10 of the application (pages [x] and [x] of the Bundle)**

1 Replacement of existing clauses

1.1 The fifth paragraph of Clause 3 of the Lease shall be deleted and replaced by the following clause:

"YIELDING AND PAYING THEREFOR during the Term the Rent or such greater rent as shall be determined following the review thereof as hereinafter provided and in any event to be paid for the first twenty years thereof by equal half yearly payment in advance on the First day of September and the First day of March in each year the first of such payments being a proportionate payment to be made on the execution hereof AND ALSO paying on demand by way of further or additional rent the Insurance Proportion of the sums paid by the Landlord in maintaining insurance of the Block under paragraph 7 of the Ninth Schedule the first of such payments being a proportion after part calculated from the date hereof AND ALSO paying in accordance with the Seventh Schedule on demand by way of further or additional rent the Tenant's Proportion."

1.2 Clause 7.9 of the Lease shall be deleted and replaced by the following clause:

"If at any time (including retrospectively) it should become necessary or equitable to do so the Manager (acting reasonably) shall recalculate on an equitable basis the Lessee's Proportion and/or Insurance Proportion appropriate to all the Properties comprising the Development or Building or Block (as the case may be) and shall then notify the lessees accordingly and in such case as from the date specified in the said notice the Lessee's Proportion and/or Insurance Proportion so calculated and notified to the Lessee in respect of the Demised Premises shall be substituted and the Lessee's Proportion and/or Insurance Proportion so recalculated in respect of the said Properties shall be notified by the Manager to the lessees thereof and shall be substituted for those set out in their leases.

2 Addition of new clauses

2.1 The following definition shall be added at clause 1:

"Insurance Proportion" means a fair proportion of the costs incurred by the Lessor in complying with its obligation in this Lease to insure the Building including the costs reasonably incurred in carrying out valuations for insurance purposes (but not more than once every two years) in connection with the matters mentioned in paragraph 7 of the Ninth Schedule.

2.2 The following shall be added to the Lease as a new clause 32 in the Eighth Schedule:

"To pay the Lessor or its authorised agent the Insurance Proportion on demand"

2.3 The following shall be added to the Lease as a new clause 33 of the Eighth Schedule:

"The Lessee shall:

33.1 immediately inform the Lessor if any matter occurs in relation to the Lessee or the Demised Premises that any insurer or underwriter may treat as material in deciding whether or on what terms

to insure or to continue to insure the Demised Premises and shall give the Lessor notice of that matter;

33.2 not do or omit anything as a result of which any policy of insurance of the Block and other structures or any neighbouring property may become void or voidable or otherwise prejudiced, or the payment of any policy money may be withheld, nor (unless the Lessee has previously notified the Lessor and has paid any increased or additional premium) anything as a result of which any increased or additional insurance premium may become payable;

33.3 comply at all times with the requirements and recommendations of the insurers relating to the Demised Property and the use by the Tenant of the common parts (if any);

33.4 give the Lessor immediate notice of the occurrence of any damage or loss relating to the Demised Premises arising from an Insured Risk or of any other event that might affect any insurance policy relating to the Demises Premises;

33.5 pay the Lessor an amount equal to any insurance money that the insurers of the Block refuse to pay (in relation to the Block) by reason of any act or omission of the Lessee or any undertenant, their workers, contractors or agents or any person at the Demised Premises or the common parts (if any) with the actual or implied authority of any of them."