



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

Case Reference : CHI/45UG/LVT/2019/0002

Premises : Felwater Court, London Road, Felbridge,
East Grinstead, RH19 1QR

Applicant : Freehold Managers (Nominees) Limited

Representative : JB Leitch Ltd

Respondents : David Grainger and Paul Michael Grainger

Representative : N/A

Type of Application : Application for the variation of a lease or leases
under Section 37 of the Landlord and Tenant Act 1987

Tribunal Members : Judge S Lal

**Date and venue of
Hearing** : 30th April 2019

Date of Decision : 6th May 2019

DECISION

Application

1. The matter was subject to Directions issued on 8th March 2019.
2. The Tribunal has been provided with a Bundle of 860 pages. The Bundle was prepared by the Applicant only. It contained within it the relevant leases to this Application. No written response has been received from the Respondent in accordance with the above Directions.
3. The Application is to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013. No party has objected to this procedure.

The Issue

4. The Applicant applied to the Tribunal on 16th January 2019 seeking to vary the leases of the Premises pursuant to section 37 of the Landlord and Tenant Act 1987.
5. Felwater Court consists of 21 flats. The common parts of the premises were managed until 2009 by Coastal Counties Retirement Homes Limited (now known as Southern Housing) under a common parts lease dated 9th December 1988. In 2009 Southern Housing assigned the common parts lease to Anchor Trust but the residential leases make no provision for a change in management company where there is a change in ownership and control of the common parts of the Premises.
6. At the time of the Application 17 of the 21 parties agreed to the variation of the Leases. Subsequently it has been agreed by 20 of the 21 leaseholders and the landlord that the residential leases should be varied to rectify the anomaly described in paragraph 5 above.

The Case for the Applicant

7. The Applicant claims that it would be a nonsense to have different management companies in respect of different leases within the block. 95% of the parties have consented to the variation with no known objectors and the Applicant asserts that no leaseholder will suffer any substantial prejudice as a result of the proposed variation.
8. The Applicant has proposed that the leases be varied such that a new particular (7) be inserted as follows:

“(7) Reference to the “Association” includes successors in title to Coastal Counties Retirement Homes Limited of registered land with title number WSX141181”.

The Applicant claims this will be for the benefit of all lease holders and will enable effective management of the common parts of the Premises.

The Respondents Case

9. The Respondents have not replied to the Applicant or the Tribunal in accordance with the Directions of 8th March 2019. The Tribunal noted the latest correspondence served by the Applicant which was confirmation of delivery of the above Bundle on 18 April 2019.

The Tribunal's Decision

10. An application can be made under section 37 of the Landlord and Tenant Act 1987 if three conditions are satisfied. Firstly, it must be necessary to vary all of the leases in order to achieve whatever purpose for which the variation is proposed. The Tribunal is of the opinion that this condition is satisfied in this instance as it would be impracticable for different management companies to operate in respect of the common parts of the Premises.
11. Secondly, if there are nine or more leases affected by the proposed variation, at least 75% of the parties must actively consent to the Application and no more than 10% of the parties must oppose it. The landlord counts as one of the parties. Each Lease is considered to be one party even if there are several persons sharing ownership of the Lease. The Tribunal is of the opinion that this condition is satisfied in this instance as more than 75% of the parties consented at the time of the Application, **(Marshall Dixon and Others v Wellington Close Management Ltd [2012] UKUT 5 (LC))**.
12. Thirdly, an application to vary a Lease can only be made on the basis that the leases or leases involved are in some way defective. The Tribunal is of the opinion that this condition is satisfied as the current management company does not have formal recognition under the leases even though it is carrying out its duties to manage the common parts of the Premises.
13. For the above reasons, the Tribunal finds in favour of the Applicant and determines that the leases of the Premises shall be amended and varied as described below:

A new particular (7) shall be inserted on page 2 of each of the leases as follows:

“(7) Reference to the “Association” includes successors in title to Coastal Counties Retirement Homes Limited of registered land with title number WSX141181”.

The existing leases and the covenants of the parties therein shall otherwise remain in full force and effect.
14. The Tribunal makes no other order.
15. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

16. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
17. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Judge S. Lal

Date.....