



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

Case Reference	:	LON/00AS/LVT/2019/0010
Property	:	Flats 1-12 and 14-28 Cervantes Court, Northwood, Middx. HA6 1AL
Applicant	:	Cervantes Court (Northwood) Residents Co Ltd
Representative	:	Colman Coyle Ltd
Respondents	:	The leaseholders of the property as set out in a schedule to the application
Type of Application	:	Variation of lease
Tribunal Members	:	Judge Nicol Mr R Shaw FRICS
Date of Decision	:	27th January 2020

DECISION

The Tribunal orders pursuant to section 35 of the Landlord and Tenant Act 1987 that the lease for each flat at the subject property is varied on the terms set out in Appendix 2 to this decision.

Relevant legislation is set out in Appendix 1 to this decision.

Reasons

1. The Applicant is the lessee-owned freeholder of the subject property, a collection of 3 blocks containing 9 flats each. The numbering of the 27 flats goes up to 28 because there is no number 13.
2. The Respondents are the lessees of the 27 flats. Only the lessee of number 16, Ms Sonia Jacqueline McFarlane, is not a shareholder in the

Applicant company although she is apparently welcome to take up her share if she wishes.

3. The standard arrangements for the repair and maintenance of buildings such as these would be for the lessor to be obliged to repair but to be able to collect service charges from the lessees to pay for any such repairs. The leases in this case are unusual in that the repairing obligations are placed on the lessees. The upper properties are obliged to maintain the roofs and the lower properties the foundations and drains.
4. Unfortunately, this scheme of maintenance has not worked in practice. In 2015 the Applicant commissioned a condition report from Mr Douglas Snell BSc (Hons) MRICS. His report, dated 17th September 2015, identified that repairs were required to the roofs, pointing, rainwater goods and other brickwork. The Applicant, having no power to require the lessees to address these issues or to collect any funds from them, has found it impossible to get the repairs done. The Respondents have not addressed these issues either. The Applicant asserts, understandably, that the building would not have improved through the subsequent years.
5. The Applicant concluded that the leases should be varied. The Respondents were asked their opinions. The majority approved. The lessees of flat number 7, Premal Damji Gohil and Amisha Deevyesh Mody, indicated their opposition without giving any reasons. A number did not respond at all.
6. If sufficient numbers had responded and consented to the lease variations, the Applicant could have applied to the Tribunal for an order varying the leases under section 37 of the Landlord and Tenant Act 1987. Instead, the Applicant has proceeded under section 35, for which they are required to establish that the lease fails to make satisfactory provision with respect to the repair or maintenance of the flats or the building containing the flats or for the collection and computation of service charges.
7. The Tribunal heard the application on 27th January 2020. The Applicant was represented by counsel, Mr Kester Lees, attended amongst others by his instructing solicitor, Mr Michael Large, and Mr Andrew Bridgewater, a lessee and director of the Applicant company. None of the Respondents attended and none of them have expressed any opposition to the application, even the lessees of flat number 7 who have never followed up their original unreasoned objection. Mr Bridgewater had provided a comprehensive witness statement setting out the issues for the Applicant in trying to get any repairs done. Mr Large had also provided a witness statement explaining how the Respondents had been served with relevant documents.

8. The Tribunal is in no doubt that section 35(2) of the Act is satisfied in that the leases do not make satisfactory provision for the repair or maintenance of the flats or the building or for service charges.
9. The Applicant had drafted a deed of variation at a time when they hoped to get all the Respondents to agree. The proposed variations were admirably brief and aimed to bring the repairing obligations within standard service charge provisions.
10. No fixed system of apportionment was set out in the draft but the Applicant intends to use the floor area of each flat, as measured in a report dated 9th May 2019 from Mr Roland Thompson of 3sixty Measurement Ltd. Two of the Respondents had expressed concern whether this should be made more explicit in the varied lease terms but, in the Tribunal's experience, it is best to allow the flexibility to use other methods of apportionment in future in case the lease parties come to a different view.
11. The Tribunal expressed concern that the varied terms did not refer to common parts but, apparently, other than one path and the trees that line it, there aren't any. The estate road has been adopted and the garden areas are demised to lessees.
12. The Applicant provided a slightly revised draft of the proposed variations and the Tribunal was content to approve it, as set out in Appendix 2 to this decision.

Name: NK Nicol

Date: 27th January 2020

Appendix 1

Landlord and Tenant Act 1987

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 the appropriate tribunal 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 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.

Appendix 2

THIS ORDER relates to the leases of the 27 flats at Cervantes Court, Northwood, Middx. HA6 1AL

UPON the Tribunal considering the application by the Applicant to vary the terms of each of the 27 leases

AND UPON the Tribunal being satisfied that, pursuant to section 35(2)(a), (e) and (f) of the Landlord and Tenant Act 1987, the leases fail to make satisfactory provision with respect to the repair and maintenance of the flats or the building containing them, the recovery by one party to each 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 the computation of service charges;

PURSUANT TO section 38(1) of the Landlord and Tenant Act 1987,

IT IS ORDERED THAT:

1. Delete Clause 3 and the Fourth Schedule in each lease.
2. Delete the words "...and in particular any part of the said demised premises which may provide support for the upper maisonette..." and "...and in particular to keep the floors and roof of the said demised premises in good weather proof condition and from all leakage of rainwater or other elements or things which might in any way damage or affect the lower maisonette..." in clause 5(7) of each lease.
3. The following shall be added to the Lease as new clauses in each lease:
 - 5(16) The Lessee at all times during the term is to pay and contribute, on demand, a reasonable proportion as determined by the Lessor of the Service Costs referred to at Schedule 4 to include the costs of maintaining and repairing the structure of the demised premises, including drains, gutters and external pipes, and the maintenance and gardening of communal areas.
 - 6(5)(i) If the Lessor has given the Lessee notice of any breach of any of the Lessee's covenants relating to the repair or condition of the Property, to carry out all works needed to remedy that breach as quickly as possible, and in any event within the time period specified in the notice (or immediately if works are required as a matter of emergency) to the reasonable satisfaction of the Lessor.
 - 6(5)(ii) If the Lessee has not begun any such works within the time specified in the notice or is not carrying out the works with due speed or has not completed such works to the reasonable

satisfaction of the Lessor, to permit the Lessor and all persons authorised by them, to enter the Property and carry out the works needed.

- 6(5)(iii) To pay to the Lessor on demand the costs properly incurred by the Lessor in carrying out any works pursuant to this clause (including any solicitors', surveyors' or other professionals' costs and expenses, and any VAT on them, assessed on a full indemnity basis).
- 6(6) That the Lessor will keep in repair the structure including the roof and foundations of the demised premises, including drains, gutters and external pipes, and the maintenance and gardening of communal areas.
- 6(7)(i) The Lessor shall prepare and send the Lessee an estimate of the Service Costs referred to at Schedule 4 for the service charge year ending 31st July ("Service Charge Year") and the Lessor shall prepare and send to the Lessee a certificate showing the Service Costs for that Service Charge Year.
- 6(7)(ii) The Lessor will keep accounts, records and receipts relating to the Service Costs incurred by the Lessor and to permit the Tenant, on giving reasonable notice, to inspect the accounts, records and receipts by appointment with the Landlord.

Schedule 4

Service Costs

The Service Costs are the total of:

- (a) all of the costs reasonably and properly incurred of:
 - (i) carrying out the Lessor's obligations;
 - (ii) putting aside such sum as shall reasonably be considered necessary by the Lessor to provide reserves or sinking funds for items of future expenditure to be or expected to be incurred at any time in connection with the Lessor's obligations; and
- (b) the costs, fees and disbursements reasonably and properly incurred of:
 - (i) managing agents employed by the Lessor;
 - (ii) accountants employed by the Lessor to prepare and audit the service charge accounts;
 - (iii) any other person retained by the Lessor to act on behalf of the Lessor in connection with the Building; and
 - (iv) the costs of surveyors and/or legal professionals costs, including for the avoidance of doubt any proceedings before the First Tier Tribunal (Property Chamber) or the Upper Tribunal (Land Chamber).
- (c) all rates, taxes, impositions and outgoings payable in respect of the Retained Parts, their use and any works carried out on them

(other than any taxes payable by the Lessor in connection with any dealing with or disposition of its reversionary interest in the Building); and

(d) any VAT payable by the Lessor in respect of any of the items mentioned above except to the extent that the Lessor is able to recover such VAT.

4. The Applicant shall serve a copy of this order together with the form of amended lease on the Chief Land Registrar by no later than 24th February 2020.