



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

Case Reference : **LON/OOAG/LVL/2023/0003**

Property : **25 Greencroft Gardens, London
NW6 3LN**

Applicants : **(1) 25 Greencroft Gardens Limited,
(2) Baljit Kaur Goraya, (3)
Muzammil Ahmad Abdul Latiff
Hajee Abdoula, (4) Rubin Xu and
Yuhan Xia and (5) Ken Chee Keung
Law and Vivien Wai-Wan Law**

Representative : **Mr E Topal of Counsel, instructed
by Eracleous & McKenna LLP**

Respondents : **None**

Type of Application : **For the determination of the
liability to pay a service charge**

Tribunal Members : **Judge P Korn
Mrs A Flynn MRICS**

Date of hearing : **27 June 2023**

Date of Decision : **17 July 2023**

DECISION

Description of hearing

This has been a face-to-face hearing. The decisions made are set out below under the heading “Decisions of the tribunal”.

Decision of the tribunal

Pursuant to section 38(1) of the Landlord and Tenant Act 1987 (“**the 1987 Act**”), the tribunal hereby orders the variation of each of the following leases in the manner listed in Schedule 1 and as set out for ease of identification in the sample lease contained in Schedule 2:-

Name of flat	Location of flat	Name of leaseholder
Flat 1	Lower Ground Floor /Basement	Muzammil Ahmad Abdul Latiff Hajee Abdoula (“ Flat 1 Leaseholder ”)
Flat 2	Ground Floor	Rubin Xu and Yuhan Xia (“ Flat 2 Leaseholder ”)
Flat 3	First Floor	Ken Chee Keung Law and Vivien Wai-Wan Law (“ Flat 3 Leaseholder ”)
Flat 4	Top Floor	Baljit Kaur Goraya (“ Flat 4 Leaseholder ”)

Introduction

1. The tribunal has received applications pursuant to section 35 of the 1987 Act for a variation of each of the long leases at the Property.
2. The Property contains 4 flats, all held on long leases. The identity of the current leaseholder of each flat is as set out above, and all of the leaseholders (“**the Leaseholders**”) wish to vary their leases in the same manner. The leases are all identical, save as to parties, demise and term.
3. 25 Greencroft Gardens Limited (“**the Landlord**”) is the Leaseholders’ landlord and it is part of this application as an Applicant.

The issue

4. Each of the leases provides for a management company, Greencroft Management Limited (company number 02213051) (“**the Management Company**”), to be responsible for management and the repair and maintenance of the Property. However, the Management Company was dissolved on 3 April 2007 and the leases

contain no provision for the management functions of the Management Company to be undertaken by any other party or entity.

5. In practice, the abovementioned management functions have been assumed by the Landlord, but all parties now wish this to be formalised by an appropriate set of variations to each of the leases.

Relevant legislation

6. Below are the relevant parts of section 35 and 38 of the 1987 Act.

Section 35

(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 and maintenance of ... the building containing the flat ...

Section 38

(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 ... make an order varying the lease specified in the application in such manner as is 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.

The hearing and the tribunal's conclusion

7. At the hearing, there was some discussion as to why the applications had been made under section 35 rather than section 37 of the 1987 Act. The tribunal noted that the initial application just related to the Flat 4 Leaseholder's lease. The Flat 1 Leaseholder, the Flat 2 Leaseholder and the Flat 3 Leaseholder had all joined as co-applicants at a later stage, and the tribunal commented that once all Leaseholders had joined as co-applicants it would have been best for the Applicants jointly to apply for permission to convert the section 35 applications into a section 37 application.

8. Mr Topal for the Applicants said that the ground for each application is that the leases fail to make satisfactory provision with respect to the repair and maintenance of the building and that accordingly section 35(2)(a) applies. The tribunal tested this argument at the hearing by asking whether the leases themselves failed to make satisfactory provision or whether it would be more accurate to say that the circumstances had changed so as to make the lease provisions less workable insofar as they relate to the repair and maintenance of the building. However, ultimately the tribunal accepts that, because the Management Company has been dissolved, the building repair and maintenance provisions no longer work in a satisfactory manner and therefore the net effect is that the leases now fail to make satisfactory provision in this regard. In any event, as all of the affected parties wish to vary the leases it is not considered appropriate to refuse to make an order simply because of one possible interpretation of the wording of section 35(2)(a).
9. Mr Topal took the tribunal through the proposed amendments during the hearing. A small number of further points were picked up during that process, and the Applicants were directed to send through an up-to-date amended set of proposed variations. This was later sent to the tribunal, and we are satisfied with the proposed amendments. We are also satisfied that the variations sought would not be likely to prejudice any person who is not a party to the application.
10. No application has been made by any person for compensation to be paid to them in respect of any loss or disadvantage, and the tribunal sees no reason to order, and does not order, the payment of compensation to any person.

Cost applications

11. There were no cost applications.

Name: Judge P Korn

Date: 17 July 2023

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

SCHEDULE 1

APPLICATIONS UNDER SECTION 35 OF THE LANDLORD AND TENANT ACT 1987

VARIATIONS

- 1 Paragraph 3 of the Particulars is deleted.
- 2 The wording “*of the first part the Managers specified in Paragraph 3 of the Particulars (hereinafter called the Managers)*” is deleted from the sixth line on page 1.
- 3 The word “*second*” is replaced with the word “*first*” in the seventh line on page 1.
- 4 The word “*third*” is replaced with the word “*second*” in the ninth line on page 1.
- 5 The wording “*the Managers*” is deleted from the second line of Clause 2 (1).
- 6 The wording “*the Managers*” is deleted from the second line of Clause 2(2).
- 7 The wording “*and with the Managers as a separate covenant*” is deleted from the Clause 3.
- 8 The wording “*and the Managers*” is deleted from the fourth line of Clause 3(B).
- 9 In the sixth line of Clause 3(C) the word “*Managers*” is replaced with the word “*Lessors*”.
- 10 The words “*and the Managers*” is deleted from the ninth line of Clause 3(C).
- 11 The word “*Managers*” in the margin next to Clause 3(E) is replaced with the word “*Lessors*”.
- 12 In Clause 3(E) the word “*Managers*” is replaced with the wording “*Lessors*”.
- 13 In Clause 3(F) the word “*Managers*” is deleted and replaced with “*Lessors*” throughout.

- 14 In the ninth line of Clause 3(H) the word “*Managers*” is deleted and replaced with the word “*Lessors*”.
- 15 The wording “*the Managers and..*” is deleted from the first line of Clause 3(K).
- 16 The wording “*the Managers and..*” is deleted from the first line of Clause 3(L)(i)
- 17 The words “*the Managers*” are deleted from the first and second lines of Clause 3(ii) and replaced with the word “*and*”.
- 18 The word “*Managers*” is substituted with the word “*Lessors*” in the fifth and the eight line of Clause 3(L)(ii).
- 19 The word “*Managers*” is substituted with the word “*Lessors*” in the fourth line of Clause 3(M)(ii).
- 20 The wording “*or by the Managers*” is deleted from the third and fourth lines of Clause 3(N)ii).
- 21 The words “*and with the managers*” is deleted from the fifth and sixth lines of Clause 3(N)(ii).
- 22 The word “*Managers*” is deleted and replaced with the word “*Lessors*” in the ninth and the eleventh lines of Clause 3(N)(ii).
- 23 The wording “*and the Managers*” in Clause 3(N)(iii) be deleted.
- 24 The word “*and*” is inserted between the words “*Lessors*” and “*the*” in the first line of Clause 3(O).
- 25 The wording “*and the Managers*” is deleted from the second line of Clause 3(O).
- 26 The word “*Managers*” is deleted from Clause 3(R)(3) and replaced with the word “*Lessors*”.
- 27 The word “*Managers*” is deleted from Clause 3(R)(5)(b) and replaced with the word “*Lessors*”.
- 28 The word “*Managers*” is deleted from Clause 3(R)(6) and replaced with the word “*Lessors*”.
- 29 The word “*Managers*” is deleted from Clause 3(R)(8) and replaced with the word “*Lessors*”.

- 30 The word “*Managers*” is deleted from Clause 3(R)(11) and replaced with and replaced with the word “*Lessors*”.
- 31 The wording “*or the Managers*” is deleted from Clause 3(16)(b).
- 32 The word “*Managers*” in third line Clause 3(17) are replaced with “*Lessor*”.
- 33 The wording “*or the Managers*” is deleted from Clause 3(19).
- 34 The word “*Managers*” in Clause 3(20) is replaced with the word “*Lessors*”.
- 35 The word “*Managers*” in Clause 3(23) is replaced with the word “*Lessors*”.
- 36 The word “*Managers*” in Clause 3(25) is replaced with the word “*Lessors*”.
- 37 The word “*he*” in the first line of Clause 4(A) is deleted.
- 38 The word “*Managers*” in the first, second, fourth, sixth and eighth lines of Clause 4(A) is deleted and is replaced with the word “*Lessors*”.
- 39 The words “*to the Lessors*” in the sixth and seventh lines of Clause 4(A) is deleted.
- 40 The word “*Managers*” in third and sixth lines of Clause 4(C) is deleted and replaced with the word “*Lessors*”.
- 41 The word “*Managers*” in Clause 4(D) is deleted and replaced with the word “*Lessors*”.
- 42 The word “*Managers*” in Clause 4(E) is deleted and replaced with the word “*Lessors*”.
- 43 The wording “*and the Managers as a separate covenant*” in the first and second lines of Clause 5 is deleted.
- 44 The word “*Managers*” in the tenth and thirteenth lines of Clause 5 is deleted and replaced with the word “*Lessors*”.
- 45 The word “*Managers*” in the second line of Clause 6 is replaced with the word “*Lessors*”.
- 46 The words “*with the Lessors and*” in second line of Clause 6 are deleted.

- 47 The words “*as a separate covenant*” in the third line of Clause 6 are deleted.
- 48 The word “*Managers*” in Clause 6(a)(v) is replaced with the word “*Lessors*”.
- 49 The word “*Managers*” in Clause 6(b) is replaced with the word “*Lessors*”.
- 50 The word “*Managers*” in Clause 6(b)(ii) is replace with the word “*Lessors*”.
- 51 The word “*Managers*” in Clause 6(d) is replaced with the word “*Lessors*”.
- 52 The word “*Managers*” in Clause 6(f)(i) is replaced with the word “*Lessors*”.
- 53 The word “*Managers*” in Clause 6(i) is replaced with the word “*Lessors*”.
- 54 The words “*and the Managers*” in Clause 6(l) are deleted.
- 55 The word “*Managers*” in Clause 6(m) is replaced with the word “*Lessors*”.
- 56 The word “*Managers*” in Clause 6(n) is replaced with the word “*Lessors*”.
- 57 The word “*Managers*” in second and third lines of Clause 7(1) is replaced with the word “*Lessors*”.
- 58 The word “*Managers*” in Clause 7(1)(b) is replaced with the word “*Lessors*”.
- 59 The word “*Managers*” in Clause 7(1)(d) is replaced with the word “*Lessors*”.
- 60 The word “*Managers*” in Clause 7(1)(e) is replaced with the word “*Lessors*”.
- 61 The word “*Managers*” in Clause 7(2) is replaced with the word “*Lessors*”.
- 62 The wording “*Neither the Managers nor Lessors shall*” is deleted from Clause 10(B) and replaced with “*The Lessors shall not.*”

- 63 The word “*Managers*” in Clause 10(B)(i) is replaced with the word “*Lessors*”.
- 64 The word “*Managers*” in Clause 10(B)(ii) is replaced with the word “*Lessors*”.

SCHEDULE 2

See attached amended sample lease.