FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/LSC/2024/0681** **LON/00AN/LVL/2024/0605**
Property	**:**	**Flat 9, 35-37 Gratton Road, London, W14 0JX**
Case reference	**:**	**LON/00AN/LSC/2024/0681**
Type of application	**:**	**Liability to pay service charges**
Applicant	**:**	**Natalia Hannah**
Representative	**:**	**Mr Hampton** **(Fletcher & Gordon Solicitors)**
Respondent	**:**	**35 -37 Gratton Road Management Limited**
Representative	**:**	**Mr Swabey** **(Swabey & Co, Solicitors)**
Case reference	**:**	**LON/00AN/LVL/2024/0605**
Type of application	**:**	**Variation of a lease by a party to the lease**
Applicant	**:**	**35 -37 Gratton Road Management Limited**
Respondent	**:**	**Natalia Hannah**
Tribunal members	**:**	**Judge Robert Latham** **Stephen Mason FRICS** **N Miller**
Date and Venue Of hearing	**:**	**28 April 2025 at 10 Alfred Place, London, WC1E 7LR**
Date of Decision	**:**	**27 May 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal records the agreement reached by the parties during the course of the hearing:

(i) Ms Hannah's lease in respect of Flat 9, 35-37 Gratton Road, London W14 0JX is to be varied in accordance with the Deed of Variation which was provided at the hearing. The variations are to take effect from 28 April 2025.

(ii) As at the date of the hearing, there are arrears of £4,417.03 on Ms Hannah's service charge account. These are to be paid by 26 May 2025.

(iii) Ms Hannah further agrees to pay £3,348.32 towards the reserve fund relating to her flat. These are to be paid by twelve monthly payments, the first of which is to be paid by 26 May 2025.

(2) The Tribunal directs the parties to execute the agreed Deed of Variation and to file a copy of H.M. Land Registry.

(3) The Tribunal makes no order for the refund of tribunal fees paid by the parties.

(4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(5) The landlord indicated that it may be minded to make an application for a penal costs order pursuant to rule 9(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. If the landlord makes such an application, the Tribunal will issue further directions.

The Applications

1. The Tribunal is required to determine two applications:

(i) On 15 October 2024, Ms Natalia Hannah ("The Tenant") issued an application pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") seeking a determination of the payability and reasonableness of the service charges which she is required to pay. The

tenant challenges the service charges payable for the service charge years 2003-2024. The sum in dispute is some £15,000.

(ii) On 28 November 2024, 35 -37 Gratton Road Management Limited ("the Landlord") issued an application seeking a variation of the Tenant's lease pursuant to Section 35 of the Landlord and Tenant Act 1987 ("the 1987 Act").

2. On 7 January 2025, an oral case management hearing took place at which Directions were agreed with the parties. The Directions made provision for a number of issues to be determined as preliminary issues on 30 April 2025.

3. On 13 February 2025, the Tenant made a number of concessions which reduced the preliminary issues in dispute. In particular, the Tenant accepted the Landlord's interpretation of the disputed lease provisions. The parties proposed that the Tribunal should determine the substantive issues in dispute.

The Hearing

4. Ms Hannah, the Tenant attended and was represented by Mr Hampton (Myers, Fletcher & Gordon, Solicitors). Mr Hampton is her husband. The Tenant does not reside in the flat.

5. The Landlord was represented by Mr Swabey (Swabey & Co, Solicitors). He was accompanied by Mrs Sanhedrin from Brackenbury Property Management Ltd ("Brackenbury"), the managing agents. The following were also present: Ms Anna Wieczkowski (a director of Brackenbury), Dr Heiko Cassens, a director of the Landlord Company and the tenant of Flat 4) and Mr James Bell (a director of Brackenbury).

The Background

6. There is a complex history to these applications which relate to Flat 9, 35-37 Gratton Road, London, W14 0JX ("the Flat"). 35 and 37 Gratton Road have been converted to create 10 flats. The Tenant's Flat is on the top floor of No.35. She enters via the front door at No.35 which leads into a communal entrance hall. This communal entrance hall is shared by seven of the ten tenants. The tenants of the two lower ground floor flats each have their own entrances. The front door at No.37 leads directly into Flat 4, the tenants of which are Birgit and Heiko Cassens.

7. The Landlord company is owned by the ten lessees each of whom are shareholders. Dr Heiko Cassens is the sole director.

8. The Tenant's lease is 13 July 1972. The Flat has one bedroom. The problem has arisen because under her lease the "the building" is defined as "35 Gratton Road". Her service charge contribution is specified as 11%. Under some of the other leases, "the building" is defined as "35 and 37 Gratton Road" or as "37 Gratton Road".

9. In 2003, the Tenant acquired the leasehold interest in Flat 9. She currently rents out her flat. Throughout her ownership 35 and 37 Gratton Road have been managed as a single unit. Indeed, it is difficult to see how they could be managed differently. Each tenant was required to make a 10% contribution to the cost of managing Nos. 35 to 37. This did not represent the percentages in their leases. The Tenant paid without objection.

10. On 1 May 2021, Brackenbury took over the management of the premises from Ringley Limited. They started to charge the Tenant the 11% specified in her lease in respect of the costs of managing both Nos. 35 and 37. The Tenant objected to this. She sought to argue that if her contribution was to be increased, it should be restricted to the cost of managing No.35, as specified in her lease. This is the basis of her application.

11. The other lessees recognised the need to address the problem that had arisen. Some found themselves unable to sell their flats. In March 2024, nine of the tenants seek agreed to vary their leases. The variations cover the following:

    (i) The "building" is defined as "35 & 37 Gratton Road".

    (ii) The three lessees who have their own entrances, are no longer required to contribute to the cost of maintaining the communal common parts.

    (iii) Expenditure is now split between (a) the maintenance of the building and (b) the maintenance of the internal common parts.

    (iv) The opportunity has been taken to update the leases, for example by making provision for a reserve fund.

12. It would have been open to the Landlord to apply to vary the terms of the leases with the requisite majority supporting the variations pursuant to section 37 of the Act. The Landlord did not adopt this course. The Landlord now seeks to vary the Tenant's lease in accordance with the variations agreed by the other tenants. In place of the Tenant's current contribution of 11%, the Landlord seeks to make her liable for 8.83% in respect of the building and 13.37% in respect of the internal common parts.

13. The Tenant's position was that her percentages are too high. This should be based on the respective floor area of each flat and that these should be measured. Were this to be done, she would not oppose the variations that the other tenants have agreed.

The Agreed Settlement

14. The Table below summarises the issues in dispute between the parties. Although the leases had originally defined the "Building" as either "35 Gratton Road", "37 Gratton Road" or "35 and 37 Gratton Road", It is accepted that this was an obvious drafting error. In respect of all the leases, the "Building" was treated as being both 35 and 37 Gratton Road. Indeed, it is difficult to construe it in any other manner, given the physical layout of

the building. On this basis, the service charge contributions added up to 100%.

15. It is to be noted that whilst eight of the flats initially paid 11%, two paid 6%. The leases were premised on the principle that each flat would pay the same, regardless of size. Flats 1 and 2 paid less because they had their own front doors and did not use the internal common parts. The one flat with a sense of grievance was Flat 4, which paid 11% although it had its own front door. Ringley were clearly wrong to collect 10% from each of the lessees.

Table
35-37 Gratton Road – Service Charge Contributions

Flat	Original Lease	Ringley	Square Footage (Sq m)	Landlord's Proposal	
	"the Building"			Building	Common Parts
Flat 1	6% - 35 only	10%	60	11.51%	0%
Flat 2	6% - 35 & 37	10%	62	11.90%	0%
Flat 3	11% - 35 & 37	10%	46	8.83%	13.57%
Flat 4	11% - 37 only	10%	55	10.56%	0%
Flat 5	11% - 35 only	10%	48	9.21%	13.95%
Flat 6	11% - 37 only	10%	55	10.56%	15.99%
Flat 7	11% - 35 only	10%	48	9.21%	13.95%
Flat 8	11% - 35 & 37	10%	55	10.56%	15.99%
Flat 9	**11% - 35 only**	10%	**46**	**8.83%**	**13.37%**
Flat 10	11% - 35 & 37	10%	46	8.83%	13.38%

16. When the lessees came to vary their flats, it would have been open to them merely to adopt a common definition of "the building" defining it as "35-37 Gratton Road". However, they decided on further variations:

    (i) The service charges are to be apportioned between the costs attributable to "the building" and the "common parts". Flats 1, 2, and 4 have no use of the internal common parts and do not contribute to these service charges. Flat 4 is the main beneficiary, as Flats 1 and 2 now have to pay a higher cost to the "building" costs.

    (ii) The opportunity was also taken to update the leases, for example by making provision for a reserve fund.

17. Had all the leases been varied at the same time, an application could have been made under section 37 of the 1987 which permits variation by a majority. The landlord did not adopt this course. A number of the lessees wanted to sell their flats and needed to vary the leases without delay in order to do so.

18. The Tenant objected to the percentage service charge contributions which she would now be required to pay. She suggested that they should rather

be 7.2% towards the building costs and 10.92% towards the common parts. There were two problems to this argument. First, were these percentages to be adopted, the service charge contributions would no longer add up to 100%. Secondly, there was no application for such a variation. It was apparent that the Tenant objected to the landlord's percentages as she thought that they were too high given the size of her flat. However, it was clear that the Landlord had computed these on the gross internal areas of the flats. Mr Mason pointed out to the Tenant that the GIA measurement would include the staircase which was internal to her flat.

19. The Tenant had no objection to the other proposed variations which updated the terms of her lease. Indeed, it would make her lease the more attractive were she to want to sell it.

20. The Tribunal made it clear to the Tenant that there were two options open to us: (i) to approve the variations sought by the landlord; or (ii) to dismiss the application, in which case she would continue to pay the 11% in respect of all the service charges as specified in her lease. The Tribunal also pointed out that she would be spiting herself, as she would be paying more than under the Landlord's proposal. Mr Swabey provided a budget which showed the extent to which she would benefit. Whilst she would be paying a higher percentage towards the common parts, she would be paying less towards the building costs which were always likely to be the more substantial part of the budget.

21. The Tribunal granted a short adjournment to enable the Tenant to review her options. On her return, Ms Hannah consented to the variations proposed by the Landlord.

22. The remaining issue was the arrears of service charges. The Tenant had been withholding payments because she thought that the charges were too high. Whilst the other lessees had been contributing towards a reserve fund collected as a contribution towards the Landlord Company, the Tenant had failed to do so.

23. The Tribunal granted a further adjournment. On her return, the Ms Hannah agreed to the following:

    (i) She agreed that there were arrears of £4,417.03 on her service charge account. She agreed to pay these by 26 May 2025.

    (ii) She further agreed to pay £3,348.32 towards the reserve fund relating to her flat. These are to be paid by twelve monthly payments, the first of which is to be paid by 26 May 2025. This will put her in the same position as the other tenants who have contributed via their payments to the Landlord Company.

24. The Tribunal commends the parties on the settlement that they have reached which reflects the merits of their respective cases. The Tribunal is satisfied that each party should bear 50% of the tribunal fees.

25. In the light of our findings, we are satisfied that it would not be just and equitable to make an order under section 20C of the Landlord and Tenant Act 1985.

26. Mr Swabey indicated that the landlord was considering an application for a penal costs order against the Tenant pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal emphasised that this is normally a "no costs" jurisdiction. There is a high threshold before a tribunal makes a penal costs order (see *Lea v GP Ilfracombe Management Co Ltd* [2024] EWCA Civ 1241; [2025] 1 WLR 371 and *Willow Walk Management Co and others* [2016] UKUT 290 (LC); [2016] L&TR 34). If the Landlord decides to proceed with this application, the Tribunal will issue appropriate directions.

Judge Robert Latham
27 May 2025

Rights of appeal

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber)