

12830



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

Case reference : **LON/00AY/LVT/2017/0004**

Property : **Flats 1-24, The Old Fire Station, 46
Renfrew Road, London SE11 4NA**

Applicants : **Mr Rusere Shoniwa and others (as
listed in the attached schedule)**

Representative : **Mr R Shoniwa**

Respondents : **Mr A Teague (Flat 11)
Mr L Worthington (Flat 22)**

Representative : **In person**

Type of application : **Application to vary leases under
section 37 of the Landlord and
Tenant Act 1987**

Tribunal member(s) : **Mr Jeremy Donegan (Tribunal
Judge)
Mr Anthony Harris LL.M FRICS
FCI Arb (Valuer Member)**

Date/venue of hearing : **26 July 2017
10 Alfred Place, London WC1E 7LR**

**Date of corrected
decision** : **14 August 2017**

CORRECTED DECISION

The Tribunal exercises its powers under rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct the flat numbers at the Building, as shown in its decision dated 8 August 2017. The corrections are underlined.

Decision of the Tribunal

The leases of all flats at The Old Fire Station, 46 Renfrew Road, London SE11 4NA are varied in accordance with the attached order.

The application

1. The Tribunal received an application under section 37 of the 1987 Act on 24 May 2017. The application concerns The Old Fire Station, 46 Renfrew Road, London SE11 4NA ('the Building'), which is a former fire station that has been converted into 23 flats. All of these flats are let on long leases.
2. The addendum accompanying the application listed the 23 leaseholders and the freeholder (Caulfield Barran Browne Limited) as both applicants and respondents. The applicants seek to vary all of the leases at the Building ('the Leases'). The addendum also included the proposed variations to the Leases.
3. The application was accompanied by consent forms from the leaseholders of 21 of the flats and the freeholder, agreeing to the lease variations. None of the leaseholders had objected to the application. The leaseholders of Flats 11 and 22 had not responded.
4. Directions were issued on 8 June 2017 and further directions were issued on 10 July 2017. The directions named the leaseholders of Flats 11 and 22, as the respondents.

The law

5. The relevant legal provisions are set out in the appendix to this decision.

The background

6. The leaseholders have exercised the right to manage the Building, pursuant to chapter 1 of part 2 of the Commonhold and Leasehold Reform Act 2002 and the Building is now managed by 46 Renfrew Road RTM Company Limited ('the RTM Company').
7. The service charge percentages in some of the Leases were varied by a Tribunal decision dated 1 February 2016, made in proceedings under case reference LON/00AY/LVL/2016/0009 ('the First Decision').
8. The service charge percentages in the remaining Leases were varied by a Tribunal decision dated 7 September 2016, made in proceedings

under case reference LON/00AY/LVL/2016/0009 ('the Second Application').

9. The applicants now seek to vary the service charge provisions in the Leases, to enable the RTM Company to collect advance service charges and a reserve fund and to charge interest on late payments. They also wish clarify the scope of the repairing obligations in the Leases.

The hearing

10. The hearing of the application took place on 26 July 2017. Mr Shoniwa appeared on behalf of the applicants and was accompanied by Mr Simon O'Connor who manages the Building on behalf of the RTM Company.
11. The Tribunal was supplied with a bundle of documents in accordance with the directions. This contained copies of the application and supporting documents, the directions, the applicants' statement of case and a list of the proposed variations to the leases.
12. By the time of the hearing the leaseholder of Flat 22 (Mr Worthington) had also consented to the proposed variation to the leases. Mr Shoniwa advised that he was still awaiting a response from the leaseholder of Flat 11 (Mr Teague).
13. Mr Shoniwa explained the purpose of the proposed variations. The RTM Company has no means of funding service charge expenditure at the Building unless it collects advance charges from the leaseholders. It has been making advance demands every six months but there is no provision for this in the leases. The applicants and the RTM Company wish to regularise the position before embarking on any major works at the Building.
14. The clarification to the repairing obligations is required to spell out the works, including management costs that are contractually recoverable as service charge expenses.

The Tribunal's decision

15. The original application was supported by the leaseholders of 21 flats and the freeholder, who had all provided consent forms. They amount to 91.67% of the parties concerned. This support has increased since the application was made.
16. There were no objections to the proposed variation and the application satisfies the percentage requirements at subsection 37(5)(b) of the 1987 Act.

17. The Tribunal is satisfied that the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect (subsection 37(3)).
18. The proposed variation to the service charge provisions in the leases will assist the good management of the Building. The proposed clarification of the repairing obligations will provide greater certainty. These changes will benefit all parties to the application. Accordingly, there is no risk of prejudice or other reason that prevents the Tribunal from making an order (subsection 38(6)).
19. The Tribunal agrees the proposed variation to the leases and make an order in the terms attached. Given there is no risk of prejudice, no compensation is payable under subsection 38(10).

Next steps

20. The order includes provision for the variation to the leases to be registered at HM Land Registry. At the hearing, Mr Shoniwa indicated that the variations effected by the First and Second Decisions had not been registered. There is no express provision in sections 37-39 of the 1987 Act for registration of statutory lease variations. However, subsection 39(1) stipulates that such variations are binding on all persons and paragraph 6.4 of Land Registry Practice Guide 27 makes it clear that such orders can be registered. The Applicants may wish to seek independent legal advice upon registration of the First and Second Decisions.

Name: Tribunal Judge Donegan **Date:** 8 August 2017

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

Landlord and Tenant Act 1987 (as amended)

Section 37 Application by majority of parties for variation of leases

- (1) Subject to the following provisions of this section, an application may be made to the appropriate tribunal in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.
- (2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.
- (3) The grounds on which an application can be made under this section are that the object to be achieved cannot be satisfactorily achieved unless all leases are varied to the same effect.
- (4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.
- (5) Any such application shall only be made if –
 - (a) in a case where the application in respect of less than nine leases, all, or all but one, of the parties concerned consent to it: or
 - (b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent of the total number of the parties concerned and at least 75 per cent of that number consent to it.
- (6) For the purposes of subsection (5) –
 - (a) In the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and
 - (b) the landlord shall also constitute one of the parties concerned.

Section 38 Orders ... varying leases

- (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 (subject to subsections (6) and (7)) make

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

(2) If –

(a) an application under section 36 was made in connection with that application; and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal –

(a) that the variation would be likely to substantially prejudice –

(i) any respondent to the application, or

(ii) any person who is not a party to the application,

and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) A tribunal shall not on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation to the lease –

- (a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or
 - (b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or
 - (c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurers.
- (8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.
- (9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are 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.

Section 39 Effect of orders varying leases: applications by third parties

- (1) Any variation effected by an order under section 38 shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title of those parties), whether or not they were parties to the proceedings in which the order was made or were served with a notice by virtue of section 35(5).
- (2) Without prejudice to the generality of subsection (1), any variation effected by any such order shall be binding on any surety who has guaranteed the performance of any obligation varied by the order; and the surety shall accordingly be taken to have guaranteed the performance of the obligation as so varied.
- (3) Where any such order has been made and a person was, by virtue of subsection 35(5), required to be served with a notice relating to

the proceedings in which it was made, but he was not so served, he may –

- (a) bring an action for damages for breach of statutory duty against the person by whom any such notice was so required to be served in respect of that person's failure to serve it;
 - (b) apply to the appropriate tribunal for the cancellation or modification of the variation in question.
- (4) A tribunal may on an application under subsection (3)(b) with respect to any variation of a lease –
- (a) by order cancel that variation or modify it in such manner as is specified in the order, or
 - (b) make such an order as is mentioned in subsection 38(10) in favour of the person making the application,
- as it thinks fit.
- (5) Where a variation is cancelled or modified under paragraph (a) of subsection (4) –
- (a) the cancellation or modification shall take effect as from the date of the making of the order under that paragraph or as from such later date as may be specified in the order, and
 - (b) the tribunal may be order direct that a memorandum of the cancellation or modification shall be endorsed on such documents as are specified in the order;

and, in a case where a variation is so modified, subsections (1) and (2) above shall, as from the date when the modification takes effect, apply to the variation as modified.



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

Case Reference : LON/00AY/LVT/2017/0004

Property : Flats 1-24, The Old Fire Station, 46 Renfrew Road, London SE11 4NA

Applicants : Mr Rusere Shoniwa and others (as listed in the attached schedule)

Respondents : Mr A Teague (Flat 11)
Mr L Worthington (Flat 22)

Tribunal Members : Mr Jeremy Donegan (Tribunal Judge)
Mr Anthony Harris LLM FRICS
FCI Arb (Valuer Member)

Date of Order : 14 August 2017

ORDER FOR VARIATION OF LEASES

1. The leases of Flats 1-24, The Old Fire Station, 46 Renfrew Road, London SE11 4NA are varied on the terms set out in the appendix to this order, pursuant to section 38(3) of the Landlord and Tenant Act 1987.
2. The leases varied are those listed in the schedule of notices of leases in the attached Land Registry extract for title number 276917. The variation takes effect from today's date.
3. The applicants shall submit an application to HM Land Registry to register this order against the register of each title affected by this variation, within 28 days of the date of this order.

Name: Tribunal Judge Donegan **Date:** 14 August 2017

Appendix to order

Relevant Terms and proposed variations

AMEND

Clause 3 (1) from:

‘Pay the said rent at the times and in manner aforesaid without any deduction **AND** at all times contribute and pay [] per cent of the cost of insuring the Building and [] per cent of the costs charges and expenses ... such proportion of such costs and expenses as aforesaid’

To

‘Pay the said rent at the times and in manner aforesaid without any deduction **AND** at all times contribute and pay [] per cent of the cost of insuring the Building under clause 5 and [] per cent of the Lessor’s Expenses (as defined in the Fifth Schedule) . Interest shall accrue and be payable at the rate of 2% per annum above the base rate of the Bank of England from time to time on any sum payable hereunder which remains unpaid after 14 days from the date it is due such interest to be deemed to be additional rent due from the Lessee to the Lessor and to be recoverable as such.’

Clause 3 (3)

ADD to the beginning ‘*Save where the Lessor has covenanted to do the same,*’

Clause 6 (2)

REPLACE with ‘*Carry out the Services as defined in paragraph 8 of the Fifth Schedule*’

Schedules

ADD

FIFTH SCHEDULE: THE SERVICE CHARGE AND SERVICES

1 Definitions

In this Schedule the terms defined below have the meanings given in this paragraph.

- 1.1 References to ‘**a financial year**’ are references to the period commencing on 1st April in any year and ending on 31st March in the following year or such other annual period as the Lessor in his discretion determines as being that for which their accounts, either generally or in respect of the Building, are to be made up.
- 1.2 ‘**The Lessor’s Expenses**’ means the costs and expenditure—including all charges, commissions, premiums, fees and interest—paid or incurred, or deemed in accordance with the provisions of this Schedule to be paid or incurred, by the Lessor in respect of or incidental to all or any of the Services .

- 1.3 **'The Plant'** means all the electrical, mechanical and other plant, machinery, equipment, furnishings, furniture, fixtures and fittings of ornament or utility in use for common benefit from time to time on, in or at the Building, including goods and passenger lifts, lift shafts, escalators, heating, cooling, lighting and ventilation *or* air conditioning equipment, cleaning equipment, fire precaution equipment, fire and burglar alarm systems, door entry systems, closed circuit television, refuse compactors and all other such equipment, including stand-by and emergency systems.
- 1.4 **'The Retained Parts'** means the parts of the Building other than the Demised Premises and other flats in the Building.
- 1.5 **'The Service Charge'** means the sum payable by the Lessee under Clause 3(1) in respect of the Lessor's Expenses.

2. Certificate of the Lessor's Expenses

As soon as reasonably practicable after each financial year the Lessor must ensure that they issue a certificate containing a summary of the Lessor's Expenses for that financial year, and a summary of any expenditure that formed part of the Lessor's Expenses in respect of a previous financial year but has not been taken into account in the certificate for any previous financial year. A copy of the certificate must be supplied by the Lessor to the Lessee on request.

3. Omissions from the certificate

Omission from a certificate of the Lessor's Expenses of any expenditure incurred in the financial year to which the certificate relates is not to preclude the inclusion of that expenditure in any subsequent certificate.

4. Deemed Lessor's Expenses

In any financial year the Lessor's Expenses are to be deemed to include:

- 4.1 such fair and reasonable part of all costs and expenditure in respect of or incidental to all or any of the recurring services and other matters referred to in paragraph 8 below, whenever paid or incurred whether before or during the Term, including reasonable provision for anticipated expenditure by way of contribution to sinking and reserve funds, as the Lessor in his reasonable discretion allocates to that financial year.
- 4.2 If the Lessor or a person connected with the Lessor or employed by the Lessor attends (where permitted by law) to:
- 4.2.1 the supervision and management of the provision of services for the Building,

- 4.2.2 the preparation of statements or certificates of the Lessor's Expenses,
- 4.2.3 the auditing of the Lessor's Expenses, or
- 4.2.4 the collection of rents from the Building,

then an expense is to be deemed to be paid or a cost incurred by the Lessor, being a reasonable fee not exceeding that which independent agents might properly have charged for the same work.

5. Payment

For each financial year the Lessee must pay the Service Charge.

6. Payment on account

For each financial year the Lessee must pay to the Lessor on account of the Service Charge such a sum as is reasonable having regard to the likely amount of the Service Charge. The Lessor will set a budget for each financial year, being an estimate of the Lessor's Expenses and will notify the Lessee of the sum payable in advance in accordance with their contribution. That sum must be paid in advance by equal instalments on the first day of every month, the first instalment to be paid on the first day of the month immediately before the commencement of the financial year in question. The Lessee shall pay the said monthly instalment by means of standing order or direct debit. During any financial year the Lessor may, at any time and at their discretion, revise the contribution on account of the Service Charge for that financial year so as to take into account any actual or expected increase in expenditure.

7. Final account and adjustments

As soon as reasonably practicable after the end of each financial year, the Lessor must furnish to the Lessee with an account of the Service Charge payable by him for that financial year, credit being given for payments made by the Lessee on account. Within 14 days of the furnishing of such an account, the Lessee must pay the Service Charge, or any balance of it payable, to the Lessor. The Lessor must allow any amount overpaid by the Lessee to him against future payments of Service Charge, whether on account or not. At the end of the financial year current at the end of the Term the Lessor must repay to the Lessee any outstanding overpayment of the Service Charge.

8. The Services

The Services are:

- 8.1 Maintain in good and substantial repair the Retained Parts, including replacing and renewal where necessary which for the avoidance of doubt shall include but not be limited to:
 - 8.1.1 all the external window frames (including those of any French windows and patio doors), of the Building, including those of the flats in the Building;

- 8.1.2 the structure of the Building including the principal internal timbers the exterior walls foundations and roof together with the entrance hall staircases and paths thereof and all such sewers drains pipes wires party structures and other conveniences as may belong to or be used by the Demised Premises in common with other premises in the Building.
- 8.2 where appropriate or necessary, decorating the Retained Parts which, for the avoidance of doubt, shall include, but not be limited to:
- 8.2.1 all the external window frames (including those of any French windows and patio doors), of the Building, including those of the flats in the Building; and
- 8.2.2 at least once every four years to paint in a proper and workmanlike manner all the outside wood iron and stucco or cement work with two coats of good paint.
- 8.3 operating, maintaining, repairing and, whenever the Lessor, acting reasonably, considers it appropriate, renewing, replacing or modifying the Plant;
- 8.4 placing and running maintenance contracts for the Building;
- 8.5 providing suitable facilities for disposing of refuse, compacting it or removing it from the Building;
- 8.6 providing reasonable lighting in the Retained Parts both internally and externally;
- 8.7 providing reasonable central heating and air conditioning to the Retained Parts;
- 8.8 cleaning the windows and other glass of the Retained Parts, and the outside of the windows and other glass of the Building (including the Demised Premises);
- 8.9 supplying, maintaining, servicing and keeping in good condition and, wherever the Lessor considers it appropriate, renewing and replacing all fixtures, fittings, furnishings, equipment and any other things the Lessor may consider desirable for performing the Services or for the appearance or upkeep of the Retained Parts;
- 8.10 carrying out inspections and tests of the Retained Parts, including the Plant, that the Lessor from time to time considers necessary or desirable;
- 8.11 planting, tidying, tending and landscaping any appropriate part of the Retained Parts in such manner as the Lessor from time to time considers appropriate;
- 8.12 providing, replacing and renewing trees, shrubs, flowers, grass and other plants, in the grounds of the Building;
- 8.13 employing such persons as the Lessor, acting reasonably, considers necessary or desirable from time to time in connection with providing any of the Services, performing the Lessor's other obligations in this Lease, enforcing any lessee's obligations (without prejudice to the Lessor's ability to recover under clause 3 (7)), and collecting rents or other amounts accruing to the Lessor from the Building, with all incidental expenditure including, but without limiting the generality of the above,

- remuneration, employment of surveyors or legal professionals, payment of statutory contributions and such other health, pension, welfare, redundancy and similar or ancillary payments and any other payments the Lessor, acting reasonably, thinks desirable or necessary, and providing work clothing;
- 8.14 discharging any amounts the Lessor may be liable to pay towards the expense of making, repairing, maintaining, rebuilding and cleaning anything—for example ways, roads, pavements, sewers, drains, pipes, watercourses, party walls, party structures, party fences and other conveniences—that are appurtenant to the Building or are used for the Building in common with any adjoining property of the Lessor;
- 8.15 erecting, providing, maintaining, renewing and replacing notice boards, notices, websites and other signs or mediums of communication for sharing information relating to the Building either in the Building or on-line as the Lessor, acting reasonably, from time to time considers appropriate;
- 8.16 administering and managing the Building, performing the Lessor's other obligations in this Lease and preparing statements or certificates of and auditing the Lessor's Expenses;
- 8.17 discharging all existing or future taxes, rates, charges, duties, assessments, impositions and outgoings whatsoever in respect of the Retained Parts, including those for water, electricity, gas and telecommunications;
- 8.18 paying any interest on any loan or overdraft raised for the purpose of defraying the Lessor's Expenses;
- 8.19 taking any steps the Lessor, acting reasonably, from time to time considers appropriate for complying with, making representations against, or otherwise contesting or dealing with any statutory or other obligation affecting or alleged to affect the Building, including any requirement of the European Union, notice, regulation or order of any government department, local, public, regulatory or other authority or court, compliance with which is not the direct liability of the Lessee or any lessee of any part of the Building; and
- 8.20 discharging the reasonable and proper cost of any service or matter the Lessor, acting reasonably, thinks proper for the better and more efficient management and use of the Building and the comfort and convenience of its occupants.