

**Southern Rent Assessment Panel & Leasehold Valuation Tribunal**

**Case No.CHI/00ML/LVT/2006/0004**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER Part IV (Section 35) LANDLORD AND TENANT ACT  
1987 FOR THE VARIATION OF LEASES**

Property: 40 Stafford Road, Brighton, East Sussex BN1 5PF

Applicants: Mrs M A Al-Bahrani

Respondents: Mr B Abraham  
Miss J Sandgrove  
Mr G Shaw  
Mr J Hakim

Appearances: For the Applicant:  
Mr G Holden FRICS of Parsons Son & Basley

For the Respondents:  
No attendance

Application: 18 August 2006

Directions: 23 August 2006

Hearing: 2 November 2006

Decision: 10 November 2006

Members of the Leasehold Valuation Tribunal  
Ms J A Talbot MA Cantab. (Chairman)  
Mr N J Cleverton FRICS  
Ms J Dalal

## **Application**

1. This application dated 18 August 2006 was made by the landlord for the variation of leases at Flats 1,2,3 and 4 at 40 Stafford Road, Brighton, East Sussex BN1 5PF. Directions were issued by the Tribunal on 23 August 2006. The Applicant did not provide a formal Statement of Case or draft wording of the variation sought but did provide a Schedule setting out the new percentage apportionments sought. The Respondent tenants did not reply to the Application apart from a letter from Mr Shaw of Flat 3.

## **Law**

2. Section 35(2) of the Landlord and Tenant Act 1985 ("The Act") sets out the grounds on which any party to a long lease of a flat can make an application to the Leasehold Valuation Tribunal for an order varying the lease. The grounds are that the lease fails to make satisfactory provision with respect to one or more specified matters. Those at Section 35(2)(f) the computation of a service charge payable under the leases.

## **Jurisdiction**

3. Section 38(4) of the Act provides that the Tribunal can by order vary a lease in the terms requested, or in such other way as it thinks fit. Section 39(1) makes any variation binding on the parties and also on others whether or not they were a party to the proceedings. The Tribunal must not make a variation if it appears to the Tribunal that the variation would be likely to substantially prejudice any respondent to the application, or that for any other reason it would not be reasonable in the circumstances for the variation to be effected. (Section 38(6)).

## **Inspection**

4. The Property was constructed around 1890 and comprises a double-fronted 2 storey mid-terrace house situated on level ground in the Prestonville area of Brighton close to all amenities. It has fully rendered and painted front elevations and replacement UPVC windows and has been converted into 4 flats, 2 on the ground floor and 2 on the first floor. Flats 1 and 4 are on the north side (the left hand side looking at the property from the road) and Flats 2 and 3 are on the south side (the right hand side).
5. The members of the Tribunal were given access to Flats 2 and 3 by Miss Sandford and Mr Shaw respectively. They are owner occupiers. Flats 1 and 4 are occupied by sub-tenants who were not at home. Flat 2 (ground floor south) was the largest flat with a separate bedroom, lounge with kitchen area, and bathroom. Flat 3 was a studio flat with bathroom.

## **Hearing**

6. A hearing took place in Hove on 2 November 2006, attended by Mr G Holden, chartered surveyor of Parsons Son & Basley ("PSB"), the managing agents. The respondent tenants did not attend and were not represented.
7. First of all it was necessary to resolve some confusion that had arisen over the numbering of the flats. The existing leases were confusing in that, although they

were in the same form and presumably drafted at the same time, the flats were described by reference to their location in the property, but only 2 of the flats were numbered, and one of these (flat 4) was incorrect in that it did not correspond to the number on the flat door which was number 2. This was the ground floor flat south. It is possible that this confusion had arisen historically because the tenants had always followed the numbering on the doors which did not correspond to the leases. The Tribunal ascertained that the correct numbering was as shown in the table below.

8. Mr Holden set out the case for the landlord who sought the lease variations. He submitted that the existing leases were defective in that the sum of the percentage contributions specified as the lessee's share of the maintenance expenditure only added up to 90% instead of 100% of the total expenditure. The current relevant terms of the leases were that 3 of the tenants paid 20% and 1 paid 30%. In order to avoid a shortfall, it appeared that PSB had simply charged the tenant of one of the flats, flat 3, 30% instead of the 20% specified in the lease. Mr Holden did not seek to defend this somewhat arbitrary step. It had come to light when the tenant in question wanted to sell her flat, and she had since been compensated.
9. As a result, PSB on behalf of the landlord sought to rectify the defect by altering the percentage proportions and considered that the fairest way would be to re-calculate percentages based on the floor areas of the flats. Accordingly a competent surveyor from PSB had measured the square footages and calculated the resulting revised percentages, as follows:

Flat Number	Description	Size	Percentage
Flat 1	Ground floor north	24.114 m <sup>2</sup>	20.75
Flat 2	Ground floor south	37.444 m <sup>2</sup>	32.22
Flat 3	First floor south	22.734 m <sup>2</sup>	19.56
Flat 4	First floor north	31.934 m <sup>2</sup>	27.47

10. It was submitted that the leases should be varied accordingly.
11. Of the Respondent lessees, only Mr Shaw of Flat 3 replied by letter. He indicated that he did not oppose the variation sought and he confirmed this at the inspection. Miss Sandford of Flat 2 also stated that she did not object. They were the only owner-occupiers. The lessees of Flats 1 and 4, which are sub-let, had been given notice of the Application but had not responded.
12. Mr Shaw was under the impression that he had to pay £150 costs. He was probably referring to the hearing fee, which was payable by the landlord as the Applicant. Mr Holden helpfully indicated to the Tribunal that the landlord did not intend to pass on any costs in relation to these proceedings to the lessees.
13. Finally, the Tribunal noted that there was an error in the date of the lease of Flat 4. On the front page the date was 6 May 1986 but at Paragraph 1 of the Particulars it was 6 May 1985. As all the other leases were granted in 1986, it was probable that "1985" was a simple error and that it should read "1986". It would seem sensible to correct this error as part of the variation exercise.

## Decision

14. The Tribunal accepted in principle that it was reasonable for the leases to be varied to provide for the percentage contributions specified as the lessees share of the total expenditure as sought. None of the lessees had objected, two had agreed.
15. In addition, in order to avoid further confusion, the Tribunal decided that it was necessary for a further variation to ensure that each flat is correctly described and numbered as shown in the Table, and to correct the date error for Flat 4.
16. The Tribunal has the power, pursuant to Section 38(10), to order compensation to be paid in respect of any loss or disadvantage that a person is likely to suffer as a result of an order for a variation of a lease. In its Directions the Tribunal asked the respondents for any submissions relating to compensation. No such submissions were made and the Tribunal did not consider that it was appropriate to make any order under Section 38(10).

## Order

17. Accordingly the Tribunal orders as follows:

- (i) the leases are to be varied by Deeds of Variation to be executed by the parties as soon as possible.
- (ii) the definitions of the Demised Premises on the front page and at Paragraph 3 of the Particulars in each lease are to be varied so that the description and numbering of each of the flats are as follows:

Flat Number	Description
Flat 1	Ground floor north
Flat 2	Ground floor south
Flat 3	First floor south
Flat 4	First floor north

- (iii) the percentage contributions specified as the lessee's share of the maintenance expenditure at Paragraph 7 of the Particulars in each lease are to be varied so that the percentages are as follows:

Flat Number	Percentage
Flat 1	20.75
Flat 2	32.22
Flat 3	19.56
Flat 4	27.47

- (iv) the date of the lease of Flat 2 is to be corrected so that 6 May 1986 appears as the relevant date on the front page and at Paragraph 1 of the Particulars.

**Dated 10 November 2006**

**Signed**

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**Ms J A Talbot  
Chairman**