

**SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/24UP/LVT/2010/0007

IN THE MATTER OF SECTION 35 OF THE LANDLORD AND TENANT ACT
1987

Between:

Tapestart Limited (Applicant)

and

The Lessees (Respondents)

**Premises: Flats 1-10 and 18-29 Northbrook Bower, Free Street,
Southampton, Hampshire, SO32 1NR ("the Premises")**

Date of Application: 19th July 2010

Date of Paper Determination: 21st October 2010

Tribunal: Mr D Agnew BA LLB LLM

ORDER AND REASONS

Background

1. On the 19th July 2010 the Applicant, who is the Landlord of the Premises, applied to the Tribunal for an order under Section 35 of the Landlord and Tenant Act 1987 ("the Act") for the variation of the twenty-two leases of the flats at the Premises. The variation sought was to change the tenants' proportion of the total service charges for the Block from one twenty-sixth part to "an equal part share of the expenditure in sub-clause 7 and in the Third Schedule of the Block" The reason for seeking the variation was that four flats have recently been enfranchised and no longer contribute to the service charge expenditure and neither do they receive any services from the Landlord. Thus, in order to collect the full amount of the service charge expenditure from the remaining lessees it is necessary to adjust the stated proportion of their contribution. Rather than specify that the remaining lessees shall contribute a one twenty-second part of the service charge expenditure the variation sought simply requires each

lessee to contribute an equal share of the expenditure on the Block so that if there should be any further changes in the number of flats contributing thereto it will not be necessary to vary the lease again. The Block is defined by reference to a plan and the Tribunal pointed out to the Applicant's solicitor that it would also be necessary for the plan to be amended to show the Block as comprising only the remaining flats contributing to the service charge and the Applicant's solicitor agreed that this would be necessary.

2. The Tribunal considered that this matter could conveniently be dealt with on the paper track and decided on written representations rather than an oral hearing and the usual directions to that effect were issued. No one objected to that procedure being adopted.
3. Prior to the determination the Applicant's solicitor informed the Tribunal that he had received replies from sixteen out of the twenty-two lessees concerned consenting to the proposed variation and that no replies had been received from six lessees. There had been no objections.

The Leases

4. Currently, by Clause 7.1 of the leases the tenants covenant "to pay contributions by way of Service Charge to the Landlord and to the Company as appropriate equal to the Tenant's Proportion of the amount which the Landlord and the Company may from time to time expend and as may reasonably be required on account of anticipated expenditure on rates services repairs maintenance or insurance or otherwise in discharging their obligations under clause 8 being and including expenditure described in the Third Schedule....."
5. The "Tenant's Proportion" is defined in clause 1.10 of the existing lease as "1/26th part of the expenditure described in sub-clause 7.1 and in the Third Schedule on the Block".
6. The Block is defined in clause 1.3 of the existing lease as "Northbrook Bower shown for identification on the plan edged green."

The Law

7. By Section 35 of the Act it is provided that:-
 - (1) Any party to a long lease of a flat may make an application to a leasehold valuation 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-

(f) the computation of a service charge payable under the lease
(4) For the purposes of subsection 2(f) the 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 the expenditure incurred, or to be incurred, by or on behalf of the 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.”

The Determination

8. The Tribunal is satisfied that the provisions of sections 35(1), (2)(f) and (4)(a) to (c) apply in this case and grants the order as asked.
- 9 The leases of flats 1-10 and 18-29 at the Premises will therefore be varied so that Clause 1.10 shall read:
“The Tenants Proportion: the total of:-
(a) an equal part share of the expenditure described in sub-clause 7.1 and the Third Schedule on the Block”.
Further, the plan annexed to the leases will be amended to show the green line encompassing flats 1-10 and 18-29 only.

Dated this 21st day of October 2010

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D. Agnew BA LLB LLM
A member of the Tribunal
appointed by the Lord Chancellor.