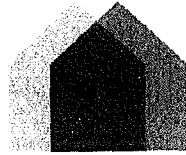


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**Residential
Property**
TRIBUNAL SERVICE

**H M COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AS/LVL/2013/0001

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 37 OF THE LANDLORD & TENANT
ACT 1987**

Applicant: Catalyst Housing Ltd

Respondents: The Lessees

Property: Flats 1-23 (odd) Heathcote Way and 1-6 Peplow Close,
Yiewsley, West Drayton, Middlesex, UB7 7XN

Date of Application: 14 December 2012

Date of Decision: 27 February 2013

Leasehold Valuation Tribunal
Mr I Mohabir LLB (Hons)

Introduction

1. This is an application made by the Applicant under section 37 of the Landlord and Tenant Act 1985 (as amended) (“the Act”) to vary the terms of clause 5(3) of all of the residential leases granted in respect of Flats 1-23 (odd) Heathcote Way and 1-6 Peplow Close, Yiewsley, West Drayton, Middlesex, UB7 7XN to permit it to recover the cost of improvements as service charges.
2. The Applicant is the freehold owner and lessor of the long leases of the residential flats granted in respect of Flats 1-23 (odd) Heathcote Way and 1-6 Peplow Close, which comprises 18 residential flats in total. The present lessees, and Respondents to this application, are set out in the Schedule annexed hereto.
3. The Applicant’s statement of case, at paragraph 3, has comprehensively, and helpfully, set out the relevant lease terms as to how the Respondents’ service charge liability arises. For this reason, it is not necessary for the Tribunal to repeat those terms here again. Instead, they may be summarised thus.
4. All of the residential leases were granted on the same terms, save for Flat 21 Heathcote Way. The Applicant’s obligation to repair and maintain Heathcote Way and Peplow Close is to be found in clause 5(3) of the leases. The only variation in the same clause of the lease for Flat 21 Heathcote Way does not make the payment of rent, in addition to the service charge, a condition precedent of the repairing and maintaining obligation on the part of the landlord.
5. The Respondents obligation to pay the service charge is set out in clause 3(2)(b) in accordance with clause 7, which sets out the mechanism to calculate the service charge liability and defines the service charge as being “a specified proportion of the service provision”. The sums to be included in the aggregate service provision are set out in clause 7(5).
6. The express terms of clause 5(3) of the leases do not allow the landlord to carry out such works that may amount to an improvement and to recover the

costs incurred as a service charge. Fourteen of the eighteen leaseholders advised the Applicant that they consented to the proposed variation. Therefore, on 14 December 2012, the Applicant made this application under section 37 of the Act seeking to vary clause 5(3). On 8 January 2013, the Tribunal issued Directions allocating this matter to the Paper Track and requiring the Applicant to formally notify each lessee and any other person who is likely to be affected of this application.

The Law

7. Section 37 provides:

“(1) Subject to the following provisions of this section, an application may be made to a leasehold valuation 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 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 may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all of the 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)...

(b) in a case where the application is in respect of more than eight leases, it is not opposed for any reasons 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)...”

Decision

8. The Tribunal’s determination took place on 27 February 2013. There was no oral hearing and the determination was made entirely on the basis of the documentary evidence filed by the Applicant. Although the Respondents had notice of these proceedings, none of them have responded or participated at all. The Tribunal did not inspect the property.

9. The variation sought by the Applicant to clause 5(3) of the leases is to include the words "*and improve or procure the maintenance repair redecoration and renewal and improvement*" in relation to the estate generally. A further variation is sought to clause 5(3)(a) to include the words "*or procure the redecoration or improvement*" to the outside doors of the premises.
10. The basis of the application is that the Applicant, as a registered social landlord, is obliged to ensure that the premises it lets satisfy the Decent Homes Standard. Ensuring that the buildings, installations and services at Heathcote Way and Peplow Close satisfy this standard will necessarily involve improvements. The Applicant submitted that this could not be satisfactorily achieved unless all of the leases are varied to the same effect.
11. The Applicant contended that the Respondents, as lessees, will benefit from the increased value of their homes as a consequence any improvements, but will still enjoy the statutory protection afforded by section 19 of the Landlord and Tenant Act 1985 (as amended). Moreover, that vast majority of lessees supported the application and none had objected to it.
12. The Applicant also submitted that the variation sought would not substantially prejudice a party to any of the residential leases and would not have the effect of terminating certain existing rights in respect of insurance. Furthermore, the Applicant did not consider that any compensation was payable to the Respondents.
13. Having carefully considered the evidence in this matter, the Tribunal granted the application for the following reasons:
 - (a) that the requirement of section 37(2) of the Act had been met.
 - (b) it was satisfied that the Applicant's object in seeking to vary all of the leases by including an express provision to allow the cost of any improvements to be recovered as a service charge could not be met unless all of the leases had been varied to the same effect.


Accordingly, this requirement in section 37(3) of the Act had been met.

- (c) that the requirement in section 37(5)(b) of the Act had been met. The Tribunal was satisfied that the requisite percentage of parties (including the landlord) consenting to the variation had exceeded the statutory requirement of 75% and that not more than 10% of the total number of parties concerned had opposed the application. Of the 18 leaseholders, 14 had actively supported the application and no objections had been raised by the remainder.
- (d) it was satisfied that the making of an order varying the leases was not likely to substantially prejudice any of the Respondents or any person who is not a party to the application (s.38(6)).
- (e) it was satisfied that no compensation was payable to any of the Respondents or any person who is not a party to the application under section 38(10), as no loss or disadvantage has been demonstrated by any of the parties.

- 14. Accordingly, for the reasons stated above, the Tribunal make an order under section 38(3) of the Act varying the terms of all of the residential leases in the terms of the Order annexed hereto and that the Land Register of the Titles affected by virtue of this decision.

Dated the 27 day of February 2013

CHAIRMAN.....



Mr I Mohabir LLB (Hons)

IN THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LONDON RENT ASSESSMENT PANEL

CASE REFERENCE:

B E T W E E N:

CATALYST HOUSING LIMITED ("The Lessor")

Applicant

- and -

- (1) MS M BRIDGEN ("The Lessee of Flat 1 Heathcote Way")
- (2) MS V A NEATBY-SMITH ("The Lessee of Flat 3 Heathcote Way")
- (3) MR S J WATERS ("The Lessee of Flat 5 Heathcote Way")
- (4) MS J M MOORE ("The Lessee of Flat 7 Heathcote Way ")
- (5) MS L E NICHOLLS ("The Lessee of Flat 9 Heathcote Way ")
- (6) MR O FARRELL (The Lessee of Flat 11 Heathcote Way")
- (7) MS M A JULIEN ("The Lessee of Flat 13 Heathcote Way ")
- (8) MR D DONOGHUE ("The Lessee of Flat 15 Heathcote Way ")
- (9) MR K S PANESAR and MRS P K PANESAR ("The Lessees of Flat 17 Heathcote Way")
- (10) MS M A AGHADIUNO("The Lessee of Flat 19 Heathcote Way")
- (11) MS D WHITE ("The Lessee of Flat 21 Heathcote Way ")
- (12) MS J A GRAHAME ("The Lessee of Flat 23 Heathcote Way")
- (13) MS R H TIAINEN ("The Lessee of Flat 1 Peplow Close")
- (14) MS C THOMPSON ("The Lessee of Flat 2 Peplow Close")
- (15) MS S MOODY ("The Lessee of Flat 3 Peplow Close ")
- (16) MR J P S RAI ("The Lessee of Flat 4 Peplow Close")
- (17) MS M D CZAJKOSKI (otherwise MS M D IRAURGUL)("The Lessee of Flat 5 Peplow Close")
- (18) MS A A-M BROUWER ("The Lessee of Flat 6 Peplow Close")

Respondents

O R D E R

Order of the Leasehold Valuation Tribunal varying Clause 5(3) of the Residential Leases for the property known as Flats 1-23 (odd) Heathcote Way, Yiewsley, West Drayton, Middlesex UB7 7RD and 1-6 Peplow Close, Yiewsley, West Drayton, Middlesex UB7 7XN.

The variation to Clause 5(3) in all Leases except Flat 21 Heathcote Way is emphasized in bold and underlined:

- 5(3) That (subject to payment of the rent and service charge and except to such extent as the Leaseholder or the tenant of any other part of the Estate shall

be liable in respect thereof respectively under the terms of this Lease or of any other Lease) the Landlord shall maintain repair redecorate and renew and improve or procure the maintenance repair redecoration and renewal and improvement :

- (a) the roof foundations and main structure of the Buildings and all external parts thereof including all external and load-bearing walls the windows and doors on the outside of the flats within the Buildings (save the glass in any such doors and windows and the interior surfaces of walls) and all parts of the Buildings which are not the responsibility of the Leaseholder under this Lease or of any other leaseholder under a similar lease of other premises in the Buildings Provided always the Landlord shall redecorate or procure the redecoration or improvement as necessary the outside doors of the Premises;
- (b) the pipes sewers drains wires cisterns and tanks and other gas electrical drainage ventilation and water apparatus and machinery in under and upon the Estate (except such as serve exclusively an individual flat in the Buildings except such as belong to the Post Office or any public utility supply authority);
- (c) the Common Parts.

Flat 21 Heathcote Way's Lease be varied as follows:

5(3) That (subject to payment of the service charge and except to such extent as the Leaseholder or the tenant of any other part of the Estate shall be liable in respect thereof respectively under the terms of this Lease or of any other Lease) the Landlord shall maintain repair redecorate and renew and improve or procure the maintenance repair redecoration and renewal and improvement :

- (a) the roof foundations and main structure of the Buildings and all external parts thereof including all external and load-bearing walls the windows and doors on the outside of the flats within the Buildings (save the glass in any such doors and the interior surfaces of walls) and all parts of the Buildings which are not the responsibility of the leaseholder under this Lease or of any other leaseholder under a similar lease of other premises in the Buildings Provided always the Landlord shall redecorate or procure the redecoration or improvement as necessary the outside doors of the Premises;
- (b) the pipes sewers drains wires cisterns and tanks and other gas electrical drainage ventilation and water apparatus and machinery in under and upon the Estate (except such as serve exclusively an individual flat in the Buildings and except such as belong to the Post Office or any public utility supply authority);
- (c) the Common Parts.

SCHEDULE OF FREEHOLD AND LEASEHOLD TITLES

Flats 1-23 (odd) Heathcote Way, Yiewsley, West Drayton, Middlesex UB7 7RD
Flats 1-6 Peplow Close, Yiewsley, West Drayton, Middlesex UB7 7XN

	<u>Freeholder</u>	<u>Title Number</u>
	Catalyst Housing Limited	NGL544375
<u>Flat No.</u>	<u>Leaseholders</u>	<u>Title Number</u>
1 Heathcote Way	Ms M Bridgen	NGL593072
3 Heathcote Way	Ms V A Neatby-Smith	NGL562686
5 Heathcote Way	Mr S J Waters	AGL226239
7 Heathcote Way	Ms J M Moore	AGL249885
9 Heathcote Way	Ms L E Nicholls	AGL51508
11 Heathcote Way	Mr O Farrell	NGL595495
13 Heathcote Way	Ms M A Julien	NGL561915
15 Heathcote Way	Mr D Donoghue	NGL561912
17 Heathcote Way	Mr K S Panesar and Mrs P K Panesar	AGL73410
19 Heathcote Way	Ms M A Aghadiuno	NGL561803
21 Heathcote Way	Ms D White	AGL208438
23 Heathcote Way	Ms J A Grahame	AGL30671
1 Peplow Close	Ms R H Tiainen	NGL561813
2 Peplow Close	Ms C Thompson	NGL561916
3 Peplow Close	Ms S Moody	NGL561837
4 Peplow Close	Mr J P S Rai	AGL74189
5 Peplow Close	Ms M D Czakjoski (otherwise Ms M D Iraurgul)	NGL561810
6 Peplow Close	Ms A A-M Brouwer	NGL562545