



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

Case reference : **LON/00AG/LVL/2015/0008**

Property : **232A Royal College Street, London
NW1 9NJ**

Applicant : **Kamen Construction Limited**

Representative : **Mr Maloney of Ringley Legal**

Respondents : **The 12 leaseholders at the Property
whose details appear on the
application dated 9th November
2015**

Representative : **None**

Type of application : **Variation of a lease by a party to the
lease**

Tribunal Members : **Ms N Hawkes
Mr J F Barlow JP FRICS**

**Date and venue of
paper determination** : **19th January 2016 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **19th January 2016**

DECISION

Decision of the Tribunal

- (1) The Tribunal directs the parties to vary the respondents' leases substituting the service charge percentages shown in the Schedule at page 15 of the hearing bundle for the service charge percentages currently in the respondents' leases.
- (2) The Tribunal orders that the applicant is to bear the costs of varying the respondents' leases.

The application

1. By an application notice dated 9th November 2015, the applicant seeks to vary the leases of 12 flats at the property.
2. The applicant states in its written submissions that, when the site was purchased, it was the applicant's intention to develop the site to create 14 self-contained flats. However, the applicant was unable to obtain planning permission for 14 flats and only 12 have been constructed (6 flats in a new building and 6 in an existing building which has been converted).
3. The applicant submits that the existing leases fail to make satisfactory provision in relation to the computation of services charges because the percentages set out in the leases do not add up to 100% of the landlord's expenditure. The applicant explains that this is because, when the leases were drafted, it was contemplated that there would be 14 flats rather than 12 and that this is also the result of some drafting errors.
4. The applicant has produced schedules showing the service charges percentages in the existing leases (the first schedule at page 13 of the hearing bundle) and the proposed revised percentages (the schedule at page 15).

The hearing

5. The applicant was represented by Mr Maloney of Ringley Legal at the hearing. The respondents did not attend the hearing and were not represented.
6. In response to questions from the Tribunal, Mr Maloney stated that he has informed the respondents of these proceedings on three separate occasions. He stated that he wrote to the respondents approximately a month prior to the issue of the application; he again wrote to them on the date of issue of the application; and he wrote to them following

receipt of the Directions of the Tribunal dated 18th November 2015 enclosing copies of the Directions. He confirmed that the respondents have received copies of the amended proposed lease variations which appear at page 15 of the hearing bundle.

7. Mr Maloney stated that he has also notified all other persons likely to be affected by the proposed variation of the leases in accordance with the Directions. He stated that the only response which he has received has been a letter from an insurance company asking him to inform the insurance company of the outcome of today's hearing.

The law

8. Subsections 35(1) and 35(2) of the 1987 Act provide:

35.— Application by party to lease for variation of lease.

(1) Any party to a long lease of a flat may make an application to the appropriate 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;

9. Subsection 35(4) of the 1987 Act provides:

(4) For the purposes of subsection (2)(f) a 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 expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior 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.

10. Subsection 38(6) of the 1987 Act provides that:

(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 substantially to 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.

11. Subsection 38(10) of the 1987 Act provides that:

(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.

12. The Tribunal has considered Brickfield Properties Limited v Paul Botten [2013] UKUT 0133 (LC), in particular, paragraph 34.

The determination

13. The Tribunal accepts the applicant's contention that the aggregate of the amounts that are payable by the respondents in accordance with the proportions referred to in the leases in respect of service charge expenditure is not equal to the whole of the landlord's expenditure. Accordingly, the criteria set out in section 35(4) of the 1985 Act are satisfied and, for the purposes of subsection 35(2)(f), the leases fail to make satisfactory provision with respect to the computation of a service charge payable.
14. None of the respondents have sought to oppose this application and it does not appear to the Tribunal that it would be unreasonable for the proposed variations to be effected. Mr Maloney confirmed the applicant does not seek an order retrospectively varying the leases.
15. Accordingly, the Tribunal directs the parties to vary the respondents' leases substituting the service charge percentages shown in the

Schedule at page 15 of the hearing bundle for the service charge percentages currently in the respondents' leases.

16. Further, the Tribunal orders that the applicant is to bear the costs of varying the leases. Mr Maloney accepted, rightly in the Tribunal's view, that the respondents could not reasonably be expected to bear any of these costs.

Judge N Hawkes

Date 19th January 2016

KAMEN COURT 232-234 Royal College Street NW1

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Rebased Service Charge Percentages According to Areas

Unit	Area Sq Ft	GROUP A (Estate Service Charge)	GROUP B (Building A Service Charge)	GROUP C (Building B Service Charge)	GROUP D (Insurance)
1	1,012.00	9.60%	16.00%		9.60%
2	1,045.00	9.88%	17.00%		9.88%
3	1,045.00	9.88%	17.00%		9.88%
4	1,031.00	9.76%	16.00%		9.76%
5	1,064.00	10.07%	17.00%		10.07%
6	1,072.00	10.14%	17.00%		10.14%
7	640.00	6.05%		15.00%	6.05%
8	743.00	7.03%		17.00%	7.03%
9	474.00	4.49%		11.00%	4.49%
10	592.00	5.60%		14.00%	5.60%
11	1,215.00	11.49%		28.00%	11.49%
12	635.00	6.01%		15.00%	6.01%
Totals	10,568.00	100.00%	100.00%	100.00%	100.00%