



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

Case reference : **CAM/00KA/LVI/2022/0001**

HMCTS code (paper, video, audio) : **A:BTMMREMOTE**

Property : **3 Napier Road, Luton, Bedfordshire
LU1 1RF**

Applicants : **1. Mr Moishe Abelesz
2. Mrs Helen Abelesz**

Representative : **Alan Mendelsohn, RA Management
Limited**

Respondents : **1. Mr Tasadduq Hussain (Flat 3B)
2. Ms Magda Joanna Salapa (Flat 3A)**

Application : **To vary lease(s) - s.35 and/or 37 of the
Landlord and Tenant Act 1987**

Tribunal member : **Judge David Wyatt**

Date : **22 August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents I was referred to are those described in paragraphs 7 and 8 below.

Decision of the tribunal

The tribunal makes the order enclosed with this decision to, with effect from the dates specified in the order, vary clause 1(e) of the 3B Lease and the 3A Lease (described below) by deleting “one seventh” and substituting “one third”.

Reasons for the decision

Parties and property

1. The Applicant landlords own the freehold title to the Property, registered under title number BD98491 with no registered charges. The title entries indicate the Property was first registered on 24 August 1983. There is no indication from the title entries that any land was transferred out of the title thereafter. The Property Register entries note a conveyance dated 7 February 1968 of the land in this title which gave rights of way over passageways, and rights to use sewers subject to reciprocal rights, on adjoining land including parts of 5 Napier Road. The Applicants have been the registered proprietors since 1 February 1999.
2. The Property accommodates three flats:
 - a. the first Respondent, Mr Tasadduq Hussain, is the registered proprietor of a lease dated 9 April 1985 for a term of 125 years from 1 January 1985 of the basement flat known as Flat 3B, registered under title number BD111154 with no mortgage (the “**3B Lease**”). He has been the registered proprietor since 23 February 2017. The 3B Lease had been purchased by Mr Hussain’s sister, then known as Ms Misba Ramzan, on 7 November 1995. Mr Hussain confirmed he had been involved since 1995, looking after all property matters on her behalf, before the title was transferred to him;
 - b. Nineveh Properties Limited is the registered proprietor of a lease of the ground floor flat, made by a deed of variation dated 31 July 2020 for a term of 125 years from 1 January 1985, registered under title number BD336443 (the “**Ground Floor Lease**”); and
 - c. the second Respondent, Ms Magda Joanna Salapa, is the registered proprietor of a lease dated 22 May 1985, for a term of 125 years from 1 January 1985, of the ground floor staircase and first and second floor flat known as Flat 3A, registered under title number BD110957, with a mortgage in favour of Coventry Building Society (the “**3A Lease**”). She purchased the lease on 29 March 2007.
3. The deed of variation dated 31 July 2020 varied the original Ground Floor Lease dated 7 November 1985 to increase the demise (probably to include an area which had been shown in the original plans as excluded for a hallway, although the copy plans in the bundles are not very clear) and amend clause 1(e) by deleting “*one seventh*” and substituting “*one third*”.
4. The plans to the Leases (as varied by the deed of variation) show the basement, ground and first floors of broadly similar size. The parties confirmed they each have their own separate staircase/entrance from the outside. The top (second) floor is substantially smaller because it is in the pitched roof, with a central staircase roughly in the middle and a dormer window providing part of the space.

5. The Leases are for the purposes of these proceedings in substantially the same terms, made between landlord and tenant. Using the 3B Lease as the sample, they provide (in para. 2 of the “INTERPRETATION” section at the beginning of the lease and the other identified parts of the lease) that:
- a. the “*Estate*” as described in the First Schedule means 3 Napier Road as shown edged red on the Land Registry title plan, including: “...*the Block of Flats and ancillary buildings erected thereon ... TOGETHER with the right of way contained in the Property Register...*” of the freehold title;
 - b. the “*Block*” means: “...*the structure in which the flats are situate but excludes all garden grounds footpaths and access ways...*”;
 - c. the “*Flats*” means the flats forming part of the Block;
 - d. the “*Building*” means: “...*that part of the estate not included in the Flats...*”, more particularly described in the Second Schedule as being the main structural parts of the Block including the roof, most external parts and items such as conduits and joists which do not serve or support only one Flat;
 - e. the “*Grounds*” means: “...*that part of the Estate not included in the Building or the Flats...*”, more particularly described in the Second Schedule as the gardens, grounds, paths and forecourts;
 - f. the “*Demised Premises*” include the relevant Flat, the joists and beams on which the floors of the Flat are laid and all tanks, conduits and the like used solely for the purpose of the Flat;
 - g. by clause 1(e), the tenant is to pay (with emphasis added): “...*by way of further or additional rent from time to time on demand a sum or sums of money equal to one seventh part of the amount which the Lessor may from time to time expend in effecting or maintaining the insurance of the Block and Grounds in pursuance of its covenants hereinafter contained*”;
 - h. clause 14 provides for the Service Charge (under the Seventh Schedule) to be paid based on the estimates of the Lessor or their managing agents (a) and balancing payments and credits (b);
 - i. by paragraph 4 of the Sixth Schedule, the tenant covenants to keep the Demised Premises in good repair, with other provisions in the lease about how repairs which may affect other flats are to be carried out (e.g. paragraph 7); and
 - j. in Part I of the Seventh Schedule, the tenant covenants to pay one third of the costs mentioned in Part II. These include any costs of repairing and decorating the Building, conduits, entrances, staircases and Grounds, cleaning and lighting the Building, maintaining the Grounds, any outgoings in respect of the Building and Grounds, any insurance

against third party risks in respect of the Block and Grounds, fees and disbursements of managing agents and all other expenses incurred in the maintenance and proper and convenient management and running of the Block and the Grounds.

Procedural history

6. On 11 January 2022, the Applicants applied to the tribunal under sections 35 and/or 37 of the Landlord and Tenant Act 1987 (the “**Act**”) to vary clause 1(e) of the relevant leases by deleting “*one seventh*” and substituting “*one third*”.
7. The application named the 3B leaseholder as respondent. On 24 February 2022, a procedural chair gave initial case management directions. With extensions of time, the Applicants and the 3B leaseholder exchanged case documents pursuant to those directions and a main bundle was prepared, anticipating a paper determination. On review of the bundle and following a request from the 3B leaseholder for a hearing, a procedural judge gave directions requiring further information. In reply, the Applicants confirmed they intended to seek the same variations to the lease of Flat 3A. The judge gave directions for the case documents to be served on the leaseholder of Flat 3A and a case management hearing (CMH) was arranged for 8 June 2022.
8. The CMH on 8 June 2022 was attended by Mr Mendelsohn for the Applicants, Mr Sarum Hussain and Mr Nahman Hussain (the first Respondent’s sons) and Ms Magda Salapa in person. Ms Salapa confirmed she had consented to the proposed variation of her lease. I directed that Ms Salapa be added to the proceedings as second Respondent and confirmed as requested by the Applicants that the application was proceeding as an application under section 35 and/or 37 of the Act. Further directions were given to prepare for the substantive hearing, including evidence that the mortgagee of the 3A Lease had been notified of the application, exchange of any further case documents between the parties and preparation of a supplemental bundle for the hearing. The documents in the supplemental bundle demonstrate that on 2 March 2022 Mr Mendelsohn sent to Coventry Building Society copies of the application to vary the leases, the directions and the relevant Land Registry entries, noting that they could apply to the tribunal to be joined as a party. The mortgagee acknowledged receipt on the same day and no application has been received from them.
9. The substantive hearing on 17 August 2022 was attended by Mr Mendelsohn for the Applicants and Mr Sarum Hussain and Mr Nahman Hussain for the first Respondent. Ms Salapa did not attend. At the start of the hearing, I explained that the tribunal would not have jurisdiction in these proceedings to order reimbursement of insurance charges if the variations were not made. Mr Hussain had also referred in his additional documents to other changes he would like to see, including a suggestion that the tribunal could remove the current insurance provisions and allow the leaseholders to insure. I suggested that it did not appear appropriate to explore that in these proceedings, not least because the suggestion had not been made previously and no draft wording had been proposed. Mr Hussain did not pursue this.

10. At the hearing, Mr Mendelsohn confirmed that to the best of his knowledge the second Respondent remained the owner of the 3A Lease. He had received no notice of assignment or the like, and said he had last week received a letter from Coventry Building Society dated 9 August 2022 indicating that they did not intend to attend the hearing but would like Mr Mendelsohn to notify them of the result.

General objections from Mr Hussain

11. Mr Hussain explained his grounds of opposition in his first set of documents, which were amplified and supplemented by the second set of documents produced by his sons. I allowed both of his sons to speak for him at the hearing and as agreed with them refer generally in this decision to “Mr Hussain” for brevity. This decision only specifically refers to the critical points, but I have considered all the submissions which were made.
12. Mr Mendelsohn had argued that the lower proportion in 1(e) must have been a mistake. Mr Hussain asked how the “one seventh” could possibly be an error, given the many years and transactions and advisers who must have been involved in and since 1985. He said, in essence, that if one third had been intended the clause would have said this, or buildings insurance would have been dealt with as part of the “Service Charge” provisions in the lease, as third-party insurance was. He said there “*may*” be a valid reason for the difference. Mr Hussain argued that the proportion should not be changed, since for about 35 years everyone had accepted clause 1(e) as it was.
13. Mr Hussain said that at all times he had assumed that he was being asked to pay one seventh of the total buildings insurance premium. He said copy insurance invoices had not been provided at the time, despite requests for these at least in 2014 and 2020. On 19 October 2021, Mr Hussain wrote to specifically raise (or raise again) the issue of the lower insurance proportion in clause 1(e) of his lease. Mr Hussain had said that invoices and breakdowns were provided for the first time on 9 November 2021, so he then realised that one third rather than one seventh was being charged. He suggested that the Applicants and their representative had deliberately charged the wrong proportion of the insurance charges and withheld copy invoices in the past to avoid this being discovered, despite requests for them.
14. Mr Mendelsohn said that one third of all costs had always been charged to leaseholders and the Applicants considered the difference had been “*waived*”. He observed that on 4 June 2020 Mr Hussain had requested a copy of the insurance invoice, saying: “*Thank you for your e-mail of 13 May 2020 ... I have noted the premium due from me to be £230.88, which is an apportionment of a third as the building is split into three flats. Taking this into consideration, the total premium I assume is £692.64 for the whole site, which ... seems to be a little on the high side*”.
15. Mr Mendelsohn produced a list of the insurance charges made over the years, each for one third of the relevant insurance premium. For the preceding three years, these were as follows:

Year	Charge per flat (£)
31/01/2021 to 30/01/2022	249.70
31/01/2020 to 30/01/2021	230.88
31/01/2019 to 30/01/2020	225.46

16. The issues are examined in turn below. Sections 35, 37 and 38 of the Act are set out in the Schedule to this decision. Section 38 sets out the tribunal's powers in respect of orders on applications under sections 35 to 37 inclusive.

Satisfactory provision (s.35)

17. As discussed at the hearing, the grounds on which applications may be made under s.35 to vary a long lease of a flat are set out in s.35(2). They are that the lease fails to make "*satisfactory provision*" with respect to one or more of the specified matters. One of these is the computation of a service charge payable under the lease (s.35(2)(f)). By s.35(8), "service charge" here has the meaning given by section 18(1) of the Landlord and Tenant Act 1985, so includes the variable service charge payable for insurance under clause 1(e) of the leases.
18. I am satisfied that the 3A Lease and the 3B Lease fail to make satisfactory provision with respect to the computation of a service charge because they satisfy the conditions set out in s.35(4). In each case, they provide for any service charge to be a proportion of expenditure incurred by the landlord, other tenants of the landlord are also liable under their lease to pay by way of service charges proportions of such expenditure and the aggregate of the amounts that would in any particular case be payable by reference to those proportions would be less than the whole of any such expenditure. I understand why Mr Hussain had argued there was no "defect" or "mistake", but that is not the test for the purposes of s.35. Section 35(4) was discussed at the hearing and Mr Hussain did not argue that the conditions in it were not met; I am satisfied that they were. Accordingly, by s.35(4), the leases fail to make satisfactory provision for the purposes of s.35(2)(f).

Consents and object to be achieved (s.37)

19. Given the above finding in respect of section 35, I have jurisdiction to vary the leases, whether or not the applications also satisfy the grounds under section 37, but I consider that below for the sake of completeness.
20. Mr Hussain had initially been concerned that Ms Salapa had been pushed into consenting to the proposed change to her lease and might now make a different decision. He had thought it was strange that the first consent e-mail from Ms Salapa produced by the Applicants was in March 2022, given that the Applicants later (after the need for this was highlighted at the CMH) produced an e-mail from her on 10 January 2022 consenting just before the application was made. In his documents, he had challenged the authenticity of the e-mail of 10 January 2022. However, after Mr Mendelsohn explained that the March

2022 e-mail had been obtained to seek to comply with the initial directions given by the procedural chair in February 2022, Mr Hussain said that they had been worried about this but had not meant to suggest forgery and accepted the explanation given.

21. I am satisfied that before the application was made to the tribunal all but one of the parties concerned (i.e. Ms Salapa and the Applicants, but not Mr Hussain) had consented to it, so the consent requirement in section 37(5) was satisfied. As noted above, the documents confirming this had initially been challenged but by the end of the hearing were no longer disputed. Further, as noted above, Ms Salapa confirmed at the CMH that she had consented to the proposed variation of her lease. I am also satisfied that the object to be achieved by the variation cannot be satisfactorily achieved unless both of the leases are varied to the same effect, so section 37(3) is satisfied. My reasons for this are the same as those summarised below.

Whether to make an order

22. Under section 38, since I am satisfied that the Applicants have made out a ground under s.35 (and/or under s.37), I “*may*” make an order varying the specified leases unless section 38(6) applies. The variation may be that specified in the application or, if made only on the ground under s.35, such other variation as I think fit.
23. Section 38(6) provides that a tribunal shall not make an order effecting any variation of a lease if it appears to the tribunal that: (a) the variation “*would be likely substantially to prejudice any respondent ... or any person who is not a party to the application*” and that compensation would not be an adequate remedy; or (b) that: “*for any other reason it would not be reasonable in the circumstances for the variation to be effected.*” Section 38(10) gives power to provide for a party to pay compensation in respect of any loss or disadvantage the tribunal considers is likely to be suffered as a result of the variation. Mr Hussain confirmed that no compensation was sought. They had been unable to reach agreement on the variation, but if the tribunal decided to make it there would be no need for compensation. I am satisfied there is no loss or disadvantage which should be compensated in the circumstances of this case. The higher insurance cost proportion is balanced by the appropriate simplicity of a single proportion for all service charge costs and the other circumstances, as explained below.
24. The conduct of the Applicants is a factor against making the order sought, but in my assessment it is not a substantial factor. I accept that for many years they had not checked the leases in detail and simply charged one third of all service charge costs to each of the three flats. Mr Hussain had raised the issue as part of a long letter on 16 April 2014, saying to Mr Mendelsohn that he had been told by the ground floor leaseholder that the leaseholders were: “*...all paying a third of the insurance even though the owner of the top flat has a flat which is much larger. Please can you point out to us where in the lease it states that we should all be paying the same apportionment as we feel that the top flat owner should be paying more ... It also states that we are required to pay one seventh of the insurance costs please can you confirm*”

this.” Mr Mendelsohn was unable to recall this letter from eight years ago or say whether it was answered (Mr Hussain said it was not, despite a chasing e-mail), and it appears the Applicants did not provide breakdowns of the insurance costs until 2021.

25. However, Mr Hussain had raised many matters in his 2014 letter and some of his correspondence may have appeared slightly excessive. For example, the paragraph noted above is on the third page of a letter in a small font size and followed by an argument that the lease should be varied to make Mr Mendelsohn’s company a party if he is to act as agent for the landlords. It may not have been practical to answer the letter in great detail and it appears many years passed before the insurance issue was raised again. Further, while I understand why Mr Hussain may not have recalled this, it seems from his letter of 16 April 2014 and his e-mail of 4 June 2020 (noted above, referring to an “*apportionment of a third as the building is split into three flats*”) that he probably knew he was being charged one third of all service charge costs, buildings insurance and otherwise, when the lease provided for only one seventh of building insurance costs. Given the words he used, I do not accept that Mr Hussain was merely asking questions. It is not helpful that copy insurance invoices/breakdowns do not seem to have been provided when requested before 2021, and the difference in the 3A Lease and the 3B Lease should have been identified by 2020 at the time of the deed of variation of the Ground Floor Lease, but I am not satisfied that the leaseholders were misled.

What order to make

26. Mr Hussain asked why, if the proportion is changed, it should be changed to one third, since each flat was a different size. He said if a variation was made it should be fair and on an area (“*sq ft*”) basis. He argued that Flat 3A was split over three floors. During their earlier correspondence about this, Mr Mendelsohn had suggested to Mr Hussain that if the floor areas were simply taken from existing energy performance certificates they would be 37 sq. m for 3B (29%), 58 sq. m for 3A (45%) and 34 sq. m for the ground floor flat (26%). Mr Hussain said the floors should be measured by a RICS surveyor, observing that measurements taken for EPCs are very basic.
27. I am satisfied that the current lease provisions are insufficient and unsatisfactory. It is appropriate to vary the leases so that each leaseholder pays the same one third proportion of insurance costs as they do all other service charge costs. I am not satisfied that insurance costs are disproportionately greater for larger flats than are other service charge costs; Mr Hussain made that argument but there was no evidence to support it. There was no evidence to suggest that the insurance charges which have been made over the years were outside a normal range for any flat. No evidence was produced to explain the reason for the “one seventh” or suggest that it was anything other than a mistake which had been ignored in practice, as Mr Mendelsohn had argued.
28. On the information provided (Mr Hussain did not confirm the precise area of his own flat or suggest any alternative proportions or wording), it appears disproportionate to incur the costs of a measured survey and then allocate the

precise proportions to each flat, not least because a new application would probably be needed to achieve that (to attempt to obtain the measurements and seek to vary the Ground Floor Lease, not knowing whether that would be appropriate). Only about two years ago, the Ground Floor Lease was varied to set their buildings insurance cost proportion at one third, although the Respondents did not know about that at the time.

29. As discussed at the hearing and noted above, while Flat 3A was said to extend over three floors these comprise a staircase from the ground floor, a “normal” first floor and a smaller second-floor loft area. It is larger than the lower flats, but not by enough to call for a different allocation of buildings insurance costs in this small building when all maintenance and other service charges are split equally. Incidentally, as discussed at the hearing, it might be said that the 3A Lease carries a greater share of repairing obligations, since the joists and beams supporting the floors of each flat are included in the relevant demise, but I do not attempt to assess that. Mr Mendelsohn confirmed that if the variations sought were made the Applicants would instruct their solicitors to register them at the Land Registry at their own cost.
30. Mr Mendelsohn asked that the variations be backdated to the commencement of the leases. He noted that in Brickfield Properties Ltd v Botten [2013] UKUT 133 (LC), the Upper Tribunal confirmed that a variation of a lease under s.35 may be backdated to the date when the defect in the lease arises. Oddly, the deed of variation dated 31 July 2020 of the Ground Floor Lease is not entirely clear about when the variations it made took effect, with clause 2.1 making the variations “*from and including the date of this deed*” (which seems consistent with the surrender and re-grant) and clause 2.2 suggesting that the terms have effect (or perhaps also have effect) as though the provisions of the deed of variation had been “*originally contained in the lease*”.
31. The tribunal has power to make the variations retrospective and they would be binding on predecessors in title (s.39). However, as discussed at the hearing, the Applicants had (understandably, since they were not legally represented) not traced and obtained the contact details of the parties’ predecessors in title or given notice to them. S.35(5) expects notice of a variation application to be given to any person the Applicants know or have reason to believe is likely to be affected by the variation. In the final round of documents in the supplemental bundle, they had obtained the historical register entries showing ownership of the 3B lease by Mr Hussain’s sister. Mr Mendelsohn argued that Mr Hussain had been managing the 3B Lease for her since 1995, having suggested in his own evidence that all family property was managed as one. However, when this was discussed at the hearing, Mr Hussain explained that the sister had been a schoolteacher who had bought the 3B Lease as an investment, paying service charges to Mr Hussain who then paid them to the Applicants’ agents on her behalf. He did not represent the sister in these proceedings.
32. In the circumstances, I am satisfied that I should make the variation retrospective to the date the Respondents became the legal owners of their leases (23 Feb 2017 for the 3B Lease and 29 March 2007 for the 3A Lease), but

not earlier. The leaseholders have in effect complied with the amended clause already. If pending the outcome of these proceedings Mr Hussain has not paid the full current buildings insurance charge he should be given a reasonable time to do so. I do not delay these proceedings to consider whether to make the variations take effect earlier because these proceedings have already continued for long enough (Ms Salapa might soon sell her lease) and Mr Hussain's sister and any other relevant predecessors in title would have to be properly notified and given the opportunity to make representations. If such predecessors had been notified of these proceedings and had produced the same evidence and submissions as Mr Hussain, I would probably have made the variations take effect from the date(s) they acquired the leases.

33. This decision does not preclude a new application by the Applicants to seek an earlier variation if (for example) Mr Hussain's sister attempts to claim insurance charges paid before 23 February 2017 (Mr Hussain had suggested in some of the correspondence that he might pursue this if the variation was not made). While I cannot advise (the parties must take their own independent legal advice) and make no findings about such matters, it seems that any such litigation is likely to be a waste of time and resources; the parties are encouraged to move on from this dispute.

Judge David Wyatt

22 August 2022

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).

SCHEDULE

Sections 35, 37 & 38 of the Landlord and Tenant Act 1987

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—

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease ;

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(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 $\frac{1}{3}$ the whole of any such expenditure.

(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and Tribunal Procedure Rules shall make provision—

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building;
or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) In this section “service charge” has the meaning given by section 18(1) of the 1985 Act.

(9) For the purposes of this section and sections 36 to 39, “appropriate tribunal” means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.

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 may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all 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) in a case where the application is 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.

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 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.

(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 of 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 insurer.

(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 or 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.

**IN THE MATTER OF PART IV OF THE LANDLORD AND TENANT ACT
1987**

**IN THE MATTER OF 3 NAPIER ROAD, LUTON, BEDFORDSHIRE LU1
1RF**

BETWEEN:

**1. MOISHE ABELESZ
2. HELEN ABELESZ**

Applicants

- and -

**1. TASADDUQ HUSSAIN
2. MAGDA JOANNA SALAPA**

Respondents

ORDER

UPON the applications and for the reasons described in the accompanying decision notice

IT IS ORDERED that the Respondents' leases be varied as follows:

(1) with effect from 23 February 2017 the first Respondent's lease of Flat 3B, registered under title number BD111154, is amended as set out in paragraph (3) of this order;

(2) with effect from 29 March 2007 the second Respondent's lease of Flat 3A, registered under title number BD110957, is amended as set out in paragraph (3) of this order;

(3) clause 1(e) in the part of the leases under the heading "THE LEASE" (after the section headed "INTERPRETATION") is amended by deleting the words "one seventh" and substituting the words "one third".

The Applicants shall ensure that this order is registered at HM Land Registry in respect of each leasehold title.

Judge David Wyatt

22 August 2022