



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

Case reference : **LON/00AN/LVL/2021/0007**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Flat 6, 68 Sinclair Road, London W14
0NJ**

Applicant : **68 Sinclair Road Limited**

Representative : **Dean Wilson LLP**

Respondent : **Su Ken Wong**

Representative : **N/A**

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

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **6 January 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a determination on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not requested, and all issues could be determined on paper. The documents that the Tribunal were referred to are in a bundle of 244 pages, the contents of which have been noted.

The tribunal's summary decision

- (1) The tribunal grants the application to vary the clauses of the respondent's lease in respect of (i) the variation of the percentage from 10% to 9.75% of the service charge payable by the respondent under clause 4(2) and (ii) the addition of a new clause 4(4) of the making of a provision for the recovery of costs and administration charges in the terms of the orders detailed below.
 - (2) These lease variations are to take effect as of the date of this decision. Further, the tribunal directs that a memorandum of the said variations made by the tribunal's Orders shall be endorsed on the respondent's lease.
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The application

1. This is an application by the freeholder seeking a variation to the long lease held by the respondent dated 21 November 1984 of premises situate at Flat 6, 68 Sinclair Road, London W14 ('the premises'). The subject premises comprise a flat in a converted building of 10 flats over commercial premises.

Background

2. The applicant asserts that the other 9 flats in the building are all subject to 'new' leases which specify the percentage of service charge payable based on the size of each flat. However, the respondent is required to pay a contribution amounting to 10% of the total service charges payable, thereby making the total collectable more than 100%. Consequently, the applicant seeks to reduce the respondent's liability to contribute to service charges, by reducing the amount to 9.75% and in this way, making the total recoverable to be 100%.
3. Secondly, the applicant seeks a new clause to be included in the terms of the lease, making recoverable legal and administration costs and charges from the respondent lessee as the current lease is silent on the recoverability of such costs and charges.

The applicant's case

4. In support of the application the applicant provided the tribunal with a bundle of documents comprising 244 pages. This included a witness statement of Henry Yik, director of the applicant company, dated 13 December 2021, and a witness statement also dated 13 December 2021 of Hugo David Alexander Gately, a director of the applicant company,

who 'adopted' the contents of Mr Yik's statement. The tribunal was informed that the applicant company is a lessee owned company with all lessees holding 1 share each and that new modernising leases had been granted to all lessees except the respondent, who despite expressing an interest in acquiring a new lease, had not followed this up with the applicant.

5. The tribunal were also informed that the respondent had a history of not paying his service charges either on time or at all and was as of 10 December 2020 in arrears of £8,677.14. However, due to the lack of a clause in the respondent's lease allowing the recovery of contractual costs, the applicant was not able to effectively pursue the respondent for payment of the arrears, using the available legal processes due to the costs involved. In addition, the tribunal were informed of the other lessees at the current state of the respondent's arrears as it was felt that they were effectively unfairly subsidising the respondent's occupation of the said premises.

The respondent's case

6. The respondent failed to comply with the tribunal's Directions dated 19 October 2021 and failed to provide the tribunal with any documentation or statement in opposition to the application.

The tribunal's decision and reasons

7. In making its decision the tribunal has regard to sections 35(2), (3A) and (4) of the Landlord and Tenant Act 1987 on which the applicant relies. The tribunal is satisfied that the respondent and all other lessees in the building have been made aware of this application and that the tribunal's Directions dated 19 October 2021 have been sent to the respondent at the subject premises. The tribunal is also satisfied that none of the other lessees in the building have objected to this application and that the respondent has failed to provide the tribunal with any statement or other documentation setting out any agreement, with or objection to the application.
8. The tribunal is satisfied that the reduction in the percentage payable by the respondent towards the service charges, requires to be varied to bring it into line with the other 9 leases and to ensure that no more than a total of 100% is collectively payable.
9. Therefore, the tribunal approves the use of the wording of variation put forward by the applicant and orders that Clause 4(2) of the respondent's lease is to be varied in the following terms:

The words 'COVENANTS with the Landlord to pay one-tenth' is to be deleted and substituted with the words COVENANTS with

the Landlord to pay on demand 9.75% or such other proportion as the Landlord deems reasonable in all the circumstances....

10. The tribunal is satisfied that in contrast to the provisions in the 'new' modernised leases grant to the lessees of the other 9 flats, the respondent's lease fails to make any provision at all for the recovery of legal costs and administration charges. The tribunal is satisfied that the applicant and the other lessees are unduly prejudiced by this omission and is therefore satisfied that the requirements of section 35 of the Landlord and Tenant Act 1987 are met and exercises its powers under section 38 of the 1987 Act.
11. Therefore, the tribunal orders that an additional Clause 4(4) is to be included in the respondent's lease which is to state:

The Tenant HEREBY COVENANTS with the Landlord to indemnify the Landlord against all costs charges and expenses (including solicitors costs barristers fees surveyors fees and county court cost or otherwise and also its own administration expenses) incurred by the Landlord in all and any action or remedy available to the Landlord in enforcing any of the Tenant's failures to comply with any of their obligations hereunder.

11. The tribunal also orders that the variations specified above are to take effect as of the date of this Decision. Further, the tribunal directs that a memorandum of the said variations made by the tribunal's Orders shall be endorsed on the respondent's lease.
12. The tribunal considers whether there should be any order for compensation to the respondent in respect of the orders made, but finds that the respondent has failed to demonstrate any loss or prejudice as a result of the tribunal's variations and orders.

Name: Judge Tagliavini

Dated: 6 January 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).