



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

Case Reference : **LON/00BE/LVT/2014/0005**

Property : **Ruskin Park House champion Hill
London SE5 8TH**

Applicant : **Ruskin Park House Limited**

Representative : **Sergens Blount Petere solicitors**

Respondent : **239 leaseholders of Ruskin Park
House**

Representative :

Type of Application : **For the determination of the
variation of lease under the
Landlord and Tenant Act 1987
Section 37**

Tribunal Members : **Judge P Leighton LLB**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **30th April 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the leases of the various Respondents be varied in accordance with the draft submitted by the Applicants
- (2) The tribunal is satisfied that the application is supported by over 75 % of the Respondents and is not opposed by at least 10% and therefore complies with the provisions of Section 37(5) of the Act
- (3) The tribunal is also satisfied that the proposals to introduce a system of charging for hot water and central heating on an individual rather than a communal basis are fair and reasonable.
- (4) The tribunal considers that the amendment proposed to Clause 6(1) of Schedule 6 to delete references to the cold season is reasonable but at this stage has no application for such amendment and is not certain whether the requisite majority would be obtained for such further amendment

The application

1. The Applicant seeks a determination pursuant to s.37(5) of the Landlord and Tenant Act 1987 ("the 1987 Act") as to a variation of the leases of the 239 leaseholders of Ruskin Park House Champion hill London SE5 8TH("the property")
2. The Applicant is the freehold owner of the purpose built blocks comprising 241 flats known as Ruskin Park House limited
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The parties consented to the application being determined on the basis of a paper determination and directions were given accordingly .
5. The application is opposed by 11 leaseholders and the basis of their objection is set out in correspondence from Mr Graham Orbell of flat 107 Ruskin Park House who appears to act as the spokesperson for the other objectors.

The background

6. The property which is the subject of this application is a purpose built block or blocks of 241 flats of which 239 are let on long leases.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. In June 2013 the tribunal heard an application by the landlord for a variation of the leases in the block and an application for determination of the reasonableness of service charges. At the conclusion of the hearing the tribunal gave a decision in September 2013 and finally in November 2013 in which it stated: –

"The tribunal considers that the applicant should give consideration to separate billing arrangements for each flat in order to equitably charge for additional radiators and usage to the relevant lessee and not to the entirety of the lessee in the subject block or blocks."

9. .Previously the heating and hot water system within the blocks was run from a communal boiler and lessee's were charged under a formula proportion to the size of the flats. As a result of the tribunal's decision the landlord has issued this application in order to replace the system with a charging system based on the consumption of each individual leaseholder.
10. The proposed amendment is set out in the application and involves clause 5(2) of the lease. which involves changing the existing clause to 5(2) (a) and inserting a new clause 5(2)(b) which requires payment of the amount due within 14 days of the submission of a written demand the cost of fuel as incurred as shown by reference to the energy meter installed in the flat in the supply of hot water and heating to the flat as provided by Paragraph 4 and 5 of Part 1 of the Sixth schedule
11. On 17th January 2014 the applicant carried out a ballot of all leaseholders in the block and 211 (88 per cent) leaseholders voted in favour of the proposed amendment and 11 voted against (5 percent).

The issues

12. by paragraph 6 of Schedule 6 of the lease the landlord covenants
 - (i) *During the cold season between a date to be determined by the landlord or the other landlord to keep the central heating system working and the water in the central heating system at a reasonable temperature during appropriate hours*

- (ii) *throughout the year to keep the hot water system working so as to supply hot water at a reasonable temperature at all times.*
13. Having read the submissions from the parties and considered all of the documents provided, the tribunal has concluded that the variations applied for should be granted .
14. The objection raised by Mr Orbell in his letter to the tribunal acknowledges that he (and presumably the other objectors) is in favour of a system which is based on individual charging but he is opposing the amendment on the basis that there is no mechanism in the lease for dealing with inaccuracies and overcharging through the meters.. He also complains that the proposed amendment does not deal with the situation whereby the landlord is only required to keep the radiators heated during the cold season.
15. The points raised by Mr Orbell are dealt with in a letter dated 23rd April 2014 from the Applicant's solicitors in which they answer the two points. In relation to the first matter they state that there is an established statutory right for lessees to challenge the reasonableness of service charges by way of an application to the tribunal and that there is therefore no need for a specific right in relation to the meters. In relation to the second matter they are prepared to consent to an amendment to the deletion of the words "**in the cold season between dates to be determined by the landlord and the other landlord.**" And they would propose an amendment in paragraph 6 (1) of schedule 6 to delete the opening words "**during the cold season between dates to be determined by the lessors.**"

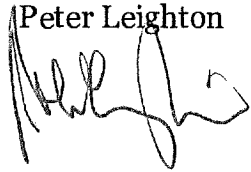
The tribunal's decision

16. As this is an application under Section 37 of the Act and not Section 35 the tribunal is not concerned with the merits of the objections put forward by the objectors. The tribunal only needs be satisfied that the provisions of Section 37(5) have been met.
17. A properly constituted ballot was held and the Applicant obtained the necessary majority for the variation proposed. The necessary majority of leaseholders support the variation (i.e. more than 75%) and less than 10% oppose it . The requirements of the section have therefore been established
18. Although it is not strictly necessary for the decision the tribunal is also satisfied that the proposal is reasonable (which is accepted by the objectors). The landlord is not required to add the condition requested to make it reasonable and the leaseholders are entitled to bring any dispute before the tribunal if it cannot be resolved by agreement. .

19. The tribunal is also content to hold that the variations to clause 6(1) of Schedule 6 of the lease to delete reference to the cold season and to enable the heating to be used throughout the year are reasonable. However this is not currently part of the application and it is not certain whether all leaseholders agree, but if they are it would be a sensible amendment to incorporate within the varied lease.

20. A copy of the lease as varied should be submitted to the tribunal for approval with an indication that the proposed amendment to Clause 6(1) of Schedule 6 also has the support of the requisite majority. This will involve circulating the leaseholders to inform them of the additional amendment and asking if any objection is made.

Name: Peter Leighton



Date: 30th April 2014

Appendix of relevant legislation

Landlord and Tenant Act 1987

Section 37

- (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 the leases in such manner as is specified in the application
- (2) those leases may 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 tech 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 lease is 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 percent of the total number of the parties concerned and at least 75 percent of that number consent to it
- (6) is For the purpose 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.