



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

Case reference	:	LON/OOAN/LVT/2018/0011
Property	:	Romney Court, Shepherd's Bush Green, London W12 8PY ("Romney Court")
Applicant	:	Treeview Trading Limited ("the landlord")
Representative	:	Wallace LLP
Respondents	:	The lessees of flats 1 to 70 ("the tenants")
Type of application	:	Lease variation
Tribunal Judge	:	Angus Andrew
Date and Venue of determination	:	16 October 2018 10 Alfred Place, London WC1E 7LR
Date of decision	:	17 October 2018

ORDER

Orders

1. With effect from 12 June 2017 each tenant's lease is varied by reducing the service charge percentage (as defined in each lease) in accordance with the table annexed to this order.
2. The covenants and conditions and the remaining provisions contained in each tenant's lease shall continue in full force and effect except as varied by the above order.
3. The landlord will within 28 days from the date of this order apply to the Chief Land Registrar to make the necessary entries in the registers of both

the landlord's freehold title and each tenant's leasehold title to give effect to the above order.

Application and the determination

4. By an application received on 8 August 2018 the landlord sought an order pursuant to section 37 of the Landlord and Tenant Act 1987 ("the Act") varying each tenant's lease by reducing the service charge percentage (as defined in each lease) in accordance with a table of service charge percentages annexed to the application and also to this order.
5. Directions were issued on 9 August 2018. The directions required the landlord to send in a copy of the application and supporting documents and the directions to each tenant. By letter of 24 August 2018 the landlord confirmed that it had complied with that direction.
6. The directions provided for a determination of the application by written representations whilst informing the parties that they had the right to request an oral hearing by no later than 1 October 2018. The tribunal has not received a request for an oral hearing and consequently I have determined the application on the basis of the documents contained in the bundle received from the landlord.
7. The relevant statutory provisions are set out in the appendix to this order.

Background

8. Romney Court originally comprised 70 flats. Over time each of the 70 flats was let on a long residential lease. It is apparent from the official copies of the entries on the freehold registers that the terms of many of the original leases have been extended either by agreement or under the enfranchisement legislation.
9. Each lease makes provision for payment of a service charge and specifies a fixed percentage of the landlord's total expenditure that is to be paid by way of a service charge. Those percentages are recorded in the second column of the table annexed to this order. Those percentages were based upon the relative rateable values of the 70 flats when the leases were granted. As well be seen if the percentages are correctly applied the landlord will recover 100.18% of its expenditure.
10. In early 2017 three additional flats were erected on the roof of Romney Court being numbered 71, 72 and 73 respectively. The landlord granted leases of the three flats the last lease being granted on 12 June 2017. Those three leases also contained fixed service charge percentages and as will be seen from the table the total percentage attributable to the three flats is 7.9503%. The service charge percentages of these three flats has been

calculated by reference to the relative square footage of all 73 flats in Romney Court.

11. For obvious reasons the landlord decided to vary the service charge percentage in the 70 existing leases by reducing the total service charge percentage to 92.0497%. It considered two methods of achieving that objective. The first method involved recalculating the service charge percentages of the 70 flats on the basis of the relative square footage of all the flats in Romney Court. That is the same method used to calculate the service charge percentages of the three new flats. The second method involved reducing the service charge percentages of all 70 flats by a relative proportion of the 7.9503% allocated to the three new flats.
12. The first method would however result in an increase in the service charge percentage of 22 of the existing 70 flats and the landlord now proposes to adopt the second method because it considers it to be fair and just in that all the tenants will benefit from a reduction in their service charge percentage.

Reasons for my orders

13. Having considered the documents in the bundle submitted by landlord's solicitors I make the following findings of fact:
 - a. At the date of the application to the tribunal 64 of the 70 tenants consented to the application;
 - b. None of the tenants oppose the application.
14. The object of the variations is to ensure that the landlord cannot make a profit by recovering through the service charge more than 100% of its expenditure. I am satisfied that that object can only be satisfactorily achieved if all 70 leases are varied in the manner proposed by the landlord. It is self-evident that all the tenants will benefit from the proposed variation and that none will be prejudiced by it. I agree with the landlord that the method adopted in varying the leases is preferable to the alternative method considered that would result in both winners and losers and would thus be liable to cause conflict between the tenants.
15. I accept the landlord's submission that on the basis of the Upper Tribunal decision in *Brickfield Properties Ltd v Paul Botten* [2013] UKUT 0133 (LC) the variations can be backdated. I equally agree with the landlord's that it is both reasonable and appropriate to backdate the variations to the date upon which the last of the three new leases was granted. Again, the backdating is for the benefit of all the tenants and ensures that the landlord will not make a profit from the service charges since the last of those three leases was granted.

16. Orders 2 and 3 are made to give effect to the draft deed of variation included in the document bundle. Taken at face value the inclusion of such a deed indicates that the landlord would prefer me to make an order under section 37(8) directing the parties to enter into separate deeds of variations. From past experience I appreciate that it would be difficult, if not impossible, to secure the completion of 70 separate deeds of variation. I have therefore assumed that the landlord would prefer me to make an order under section 38(3) and I have done so by reference to the draft deed of variation.

Name: Angus Andrew

Date: 17 October 2018

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).

Sections 37 & 38 of the Landlord and Tenant Act 1987

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 court 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 by the court 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 court, the court 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 court with respect to the leases specified in the application under section 36,

the court 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 court with respect to the leases specified in the application, the court 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 court 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 court 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) The court shall not make an order under this section effecting any variation of a lease if it appears to the court—

(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) The court 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) The court 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) The court 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 the court makes an order under this section varying a lease the court 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 court considers he is likely to suffer as a result of the variation.

SERVICE CHARGE PERCENTAGES

	Current Percentages	New Percentages
Flat 1	1.47	1.3507
Flat 2	1.65	1.5161
Flat 3	1.65	1.5161
Flat 4	1.65	1.5161
Flat 5	1.47	1.3507
Flat 6	1.65	1.5161
Flat 7	1.11	1.0199
Flat 8	1.25	1.1486
Flat 9	1.11	1.0199
Flat 10	1.25	1.1486
Flat 11	1.47	1.3507
Flat 12	1.65	1.5161
Flat 13	1.47	1.3507
Flat 14	1.57	1.4426
Flat 15	1.47	1.3507
Flat 16	1.65	1.5161
Flat 17	1.47	1.3507
Flat 18	1.65	1.5161
Flat 19	1.11	1.0199
Flat 20	1.25	1.1486
Flat 21	1.11	1.0199
Flat 22	1.25	1.1486
Flat 23	1.47	1.3507
Flat 24	1.65	1.5161
Flat 25	1.47	1.3507
Flat 26	1.65	1.5161
Flat 27	1.47	1.3507
Flat 28	1.65	1.5161
Flat 29	1.47	1.3507
Flat 30	1.65	1.5161
Flat 31	1.11	1.0199
Flat 32	1.25	1.1486
Flat 33	1.11	1.0199
Flat 34	1.25	1.1486
Flat 35	1.47	1.3507
Flat 36	1.65	1.5161
Flat 37	1.47	1.3507
Flat 38	1.65	1.5161
Flat 39	1.47	1.3507
Flat 40	1.65	1.5161
Flat 41	1.47	1.3507
Flat 42	1.65	1.5161
Flat 43	1.11	1.0199
Flat 44	1.25	1.1486
Flat 45	1.11	1.0199
Flat 46	1.25	1.1486
Flat 47	1.47	1.3507
Flat 48	1.65	1.5161
Flat 49	1.47	1.3507
Flat 50	1.65	1.5161
Flat 51	1.47	1.3507
Flat 52	1.65	1.5161
Flat 53	1.47	1.3507
Flat 54	1.65	1.5161

Flat 55	1.11	1.0199
Flat 56	1.25	1.1486
Flat 57	1.11	1.0199
Flat 58	1.25	1.1486
Flat 59	1.47	1.3507
Flat 60	1.65	1.5161
Flat 61	1.47	1.3507
Flat 62	1.65	1.5161
Flat 63	1.47	1.3507
Flat 64	1.65	1.5161
Flat 65	1.47	1.3507
Flat 66	1.65	1.5161
Flat 67	1.11	1.0199
Flat 68	1.25	1.1486
Flat 69	1.11	1.0199
Flat 70	1.25	1.1486
	100.18	92.0503
New Flats	.	
Flat 71	0.00	3.4522
Flat 72	0.00	2.2916
Flat 72	0.00	2.2065
		7.9503
		100.0006