First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**LON/00AG/LVT/2021/0003**
Property	**:**	**Palmer House, 76-84 Fortess Road, London NW5 2HH**
Applicant	**:**	**Faze Investments Ltd.**
Represented by		**Ringley Law solicitors**
Respondent	**:**	**The 21 long leaseholders of flats in the property**
Represented by		**Fursdon Knapper solicitors represent 14 of such leaseholders**
Date of Application	**:**	**22nd March 2021**
Type of Application	**:**	**Application to vary leases (Part IV Landlord and Tenant Act 1987 as Amended ("the 1987 Act"))**
Tribunal	**:**	**Bruce Edgington (lawyer chair)** **Bruce Bourne MRICS**
Date of Decision	**:**	**8th December 2021**

DECISION

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1. The application to vary the long leases of the flats in the property is refused.

Reasons

2. This is an application for the Tribunal to vary the leases of all the flats in the property. The Tribunal issued directions orders on the 4th May and 12th August 2021 timetabling the case to a determination on the papers. No party has requested a hearing.

3. A paginated bundle of documents has been delivered to the Tribunal and any reference to a page number will be from that bundle.

The Inspection

4. With the present pandemic, Tribunals do not usually inspect properties and as the terms in dispute do not need the Tribunal members to carry out an inspection, there has been none.

The Leases

5. Only one copy lease has been provided by the Applicant namely the lease of flat 15 commencing at page 47. It is for a term of 99 years commencing on the 25th March 1994. The Tribunal assumes that the other leases are in basically the same terms. The relevant clause is 2(27) which provides that the leaseholder will pay a fixed percentage of the service charges.

6. As at the current time, the scheme is that on or before 1st March 2022 the Applicant must deliver an estimate of the service charges for the year commencing on the previous 25th December 2021 together with a reconciliation account for the year ending on 24th December 2021. The amount due must be paid "*in advance by four equal payments on the usual quarter days the first of such quarterly payments to be payable on the next succeeding quarter day*" i.e. the first payment in the above situation will be on the 25th March 2022.

7. The Applicant says that this is does not make satisfactory provision for the 'computation of the service charge' and it is supported by at least 4 leaseholders.

The Law

8. Section 35 of the 1987 Act permits any party to a long lease of a flat to apply to this Tribunal for an order varying such lease if it "*fails to make satisfactory provision with regard to one or more of the following matters*". There then follows a list of matters such as repair or maintenance of the building, insurance, repair or maintenance of 'installations' or services and the ability to recover all the service charges from the tenants. In particular, as is stated by the Applicant, if the lease fails to make satisfactory provisions relating to the "*computation of a service charge payable under the lease*".

9. The represented Respondents oppose the application because they assume that section 37 prevents the application being made because 14 of the 21 leaseholders oppose it. With respect to those Respondents' representatives, that is not the case. An application under section 35 is valid where the Tribunal accepts that the lease or leases fail to make satisfactory provision in respect of the matters set out therein. For example if a block of flats has long leases which only enable the landlord to collect 95% of the service charges, that would be a failure. The landlord may apply to vary to increase that to 100% and such application may be opposed by all the leaseholders. It would be likely to succeed.

10. Section 37 is quite separate and allows for an application by the majority of parties for any variation of leases in a building where "*the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect*".

11. However, there is an additional legal matter i.e. the legal doctrine of *res judicata*. This is a Latin term meaning 'a matter judged' which prevents a case which has already been litigated from being brought back before a court or tribunal. The Respondents say, in effect, that as a previous application under section 37 of the 1987 Act was brought by the Applicant and determined by this Tribunal's predecessor on the 11th July 2005 (pages 119-121), it cannot

be brought back for re-determination.

12. Once again, this is not a correct inference because this application is made pursuant to section 35. The matter adjudged in 2005 was that an application under section 37 could not be accepted because a majority of the leaseholders were opposed to it. There was no assessment in that decision as to whether the leases failed to make satisfactory provisions relating to the computation of a service charge.

Discussion

13. The Tribunal has some difficulty in understanding the Applicant's case. In paragraph 13 of its grounds of claim at pages 35 and 36 it says:

> "*The landlord finds itself in an impossible position insofar as the lease requires the first demand of the year is 25th December (first demand of new year)*
>
> *Requires the 1st demand to be the NEXT SUCCEEDING quarter day (25th March)*
>
> *And the amount due to be demanded cannot be known until the accounts are required compiled (as the balancing charges is added to/deducted from the service charge budget) and whilst the deadline for accounts is shortened from the norm of 6 months to 3 months (the lease requires them by 1st March)*
>
> *so*
> *on the 1st demand date of the year is 25th December the amount to be demanded cannot be known*
>
> *and*
> *if the lease is to be interpreted strictly that the 1st demand is 25th March*
>
> *then*
> *the budget cannot be split in 4 equal payments as the demand of 25th December has passed*
>
> *and/or*
> *the 1st demand of 25th December would be invalid, as it is contrary to Clause 27)(i) of the lease*"

14. The majority of the leaseholders simply say that if the Applicant or its managing agent dealt with its office work promptly, there would not be a problem and it is said, by implication at least, that the provisions in the leases are satisfactory.

15. The fact of the matter is that these leases do not allow the landlord to collect all the estimated service charges before they are incurred and there is no modern sinking fund provision allowing the landlord to plan for and collect the costs of future major expenditure over the years. However much the Applicant landlord may not like these provisions, the question is whether the leases

actually fail to make provision for the computation of service charges. These are quite different things.

Conclusions

16. Having considered all of the documents and representations made, and using its knowledge and experience, the Tribunal concludes that whilst the service charge provisions do not necessarily suit the landlord Applicant, the process of computing the service charge cannot be described as a 'failure'.

17. The service charge year ends on the 24th December when the reconciliation accounts have to be prepared based on the actual service charges incurred in that year together with an estimate of the service charges needed for the year commencing 25th December. Then, by the 1st March in the following year, the landlord has to have prepared an account showing the reconciliation and the estimate which is then payable by 4 instalments on the 25th March, 24th June, 29th September and 25th December, when the cycle restarts.

18. As to the future, the Tribunal is unaware of other matters but there appears to be a lease renewal form in the bundle commencing at page 37. If the landlord is prepared to grant lease renewals with a premium of £1 and a peppercorn ground rent, it may be that this would greatly assist the leaseholders. In those circumstances, they may be prepared to agree to a change in the service charge arrangements to provide for a proper sinking fund which, it is generally accepted, it a sensible provision. However, that is obviously a matter for them.

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Judge Bruce Edgington
8th December 2021

ANNEX - RIGHTS OF APPEAL

i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to London.RAP@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. 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.

iii. 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.

iv. 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.