



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

Case Reference : CHI/00ML/LVT/2021/0003

Property : 23-24 Old Steine, Brighton, East Sussex
BN1 1EL

Applicant : 1825 Residence Ltd Management Company

Representative : Oakley Property (Sussex) Ltd

Respondents : The Lessees

Representative :

Type of Application : Landlord & Tenant Act 1987 – S. 37
Application by majority of parties for
variation of leases

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision : 20 October 2021

DECISION

Background

1. The Applicant seeks to vary the leases of all 11 flats under Section 37 of the Landlord & Tenant Act 1987 (“the 1987 Act”).
2. The applicant states that the current service charge percentages add up to 102% and should be adjusted in accordance with the respective floor areas.
3. The proposed variations are to replace the service charge percentages in Table A with those in Table B;

Flat No.	Sq.Ft.	TABLE A	TABLE B
1	797	8.000	9.4937
2	958	11.0000	11.4116
3	689	8.0000	8.2073
4	807	10.0000	9.6129
5	721	9.0000	8.5884
6	721	9.0000	8.5884
7	721	9.0000	8.5884
8	721	9.0000	8.5884
9	1087	13.0000	12.9482
10	603	9.0000	7.1828
11	570	7.0000	6.7898
		102.00	99.9999
			Say 100.00

4. On 17 March 2021 Rosie Johnson, Chair of the freehold company wrote to all lessees outlining the issue and setting out the proposed alterations. A form was attached for Lessees to return indicating whether they agreed or disagreed with the proposals.
5. All 11 Lessees responded all of whom agreed to the proposed alterations.
6. In its Directions of 29 July 2021 the tribunal identified the following issues:
 - a) Whether the Tribunal’s determination is required given the ability under the definition of Tenant’s Proportion” contained within the lease as “x% or such other percentage as the Landlordmay notify the Tenant from time to time.”
 - b) Should the tribunal order the proposed variations to be made to the leases?
 - c) Do the proposed variations fall within the grounds set out in section 37(3) of the Act, that is to say, *the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.*
 - d) If it does make an order varying the lease, should the tribunal order any person to pay compensation to any other person (see section 38(10) to the Act).

7. The Tribunal's Directions indicated that the application was likely to be suitable for determination on the papers alone without an oral hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the date of receipt of the directions. These directions together with a copy of the application and proposed variation were required to be sent by the Applicant to the lessees who were invited to submit any objection to the Applicant with a copy to the Tribunal.
8. There have been no calls for an oral hearing and no objections have been received.
9. On receipt of the hearing bundle the Tribunal considered whether it had sufficient information to make its decision without an oral hearing and decided that it did. There were no disputes as to the facts of the case that could be illuminated by the receipt of oral evidence.

The Law

10. Section 37 of the Act states:

(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 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 leases are varied to the same effect.

(4) An application under this section in respect of any leases may be made by the landlord of any of the tenants under the leases.

(5) Any such application may 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.*

Section 38 provides that:

(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 subsection (6) and (7) make an order varying each of the leases in such manner as its specified in the order.*

Section 38 provides;

(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 any variation would be likely to 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*

(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.*

Evidence

11. The application submitted contained the signed responses to the Applicant's letter of 17 March 2021 indicating that the proposed variations were approved. In the absence of a draft order submitted with the application the Tribunal directed that one should be served on the lessees and a copy provided to the Tribunal. The draft order was attached to an email of 24 August 2021 and was in slightly different wording to that

contained in the application. Firstly, following each proposed percentage were the words “or such other percentage as the Landlord may notify the Tenant from time to time. Secondly, the proposed percentage for Flat 11 was indicated to be 6.6898 rather than the 6.7898 referred to in the application. Given that the use of the former would result in the total being less than 100% it has been assumed that this was a typographical error.

Decision

12. In the absence of any objections the Applicant was not required to submit further representations and the questions posed in paragraph 6 above have not therefore been addressed.
13. Whilst I consider that it could be argued that the terms of the leases already provide the landlord sufficient powers to vary the “Tenants Proportion” given the unanimous support of the lessees I accept that greater clarity may be provided by the making of an Order.
14. The Tribunal is satisfied that the Applicant’s object in seeking the lease variations cannot be met unless all subject leases are varied to the same effect and that none of the reasons for not granting an order as set out in Section 38 applies.
15. The Tribunal is further satisfied that it is not appropriate to make an order for compensation under Section 38(10).
16. In the absence of a specified commencement date the variations will take effect from the date of the order.
17. **The Tribunal therefore makes the following Order.**

IT IS ORDERED THAT:

1. Pursuant to section 38(3) of the Landlord and Tenant Act 1987 (“the Act”) all the residential long leases at the Property are varied from the date of this Order, as follows.

The existing percentages referred to under the definition of Tenants Proportion contained in s.1.1 of Agreed Terms shall be varied as follows;

Flat No.	Revised %
1	9.4937
2	11.4116
3	8.2073
4	9.6129
5	8.5884
6	8.5884
7	8.5884
8	8.5884
9	12.9482
10	7.1828
11	6.7898

All other terms to remain unchanged.

2. Pursuant to section 38(9) of the Act it is ordered that the Chief Land Registrar shall make such entries on the registers relating to the titles hereby affected for the purpose of recording and giving effect to the terms of this Order.
3. A copy of the Order is to be sent to each of the 11 Lessees.

D Banfield FRICS
20 October 2021

RIGHTS OF APPEAL

1. 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 rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.