12815

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/24UJ/LVT/2018/0002
Type of Application(s)	:	Variation of lease under section 35 Landlord and Tenant Act 1987.
Property	:	Flat 5, Brooklands, Gosport Lane, Lyndhurst Hampshire, SO43 7BP
Applicant	:	Lesley Lyle
Representative	:	Scott Bailey LLP
Respondent	:	Greenbush Management Company Limited
Representative	:	Mrs. J Shaw (Director)
Tribunal Member	:	Judge M Davey
Date of decision	:	13 August 2018

Decision

The Application fails and the Tribunal makes no Order.

Reasons for decision

The property and the leases

1. Brooklands, Gosport Lane, Lyndhurst Hampshire, SO43 7BP is a small block of flats together with ancillary premises and gardens within its curtilage ("Brooklands"). The building dates from the mid to late 19th century but was converted to 6 flats (Flats 1 to 6) in or about 1966. The freeholder sold each flat on a 999-year lease ("the Lease") for a premium and annual ground rent. The leases were in common form and each will be referred to hereafter as "the Lease". Greenbush Management Company Limited of Brooklands ("GMC"), a leaseholder owned Management Company, acquired the freehold of the Building on 12 April 1989.

2. When the Leases were granted, clause 3(III) of the Lease of each of the two bedroom Flats 1, 3, 4, 5 and 6 contained a covenant by the Lessee that "The Lessee will pay in advance on the said First day of January in each year during the term hereby granted two elevenths of the estimated costs expenses and outgoings incurred by the Lessor in any year in respect of the items of expenditure set out in the Second Schedule hereto and of any other expenditure properly incurred for the purpose of or incidental to the management and supply of services to the Building and the liability accruing in respect of such expenditure (to be certified in accordance with the provisions of the Second Schedule) shall be determined from time to time by the Landlord's Surveyor whose decision shall be final." The Lease of the smaller one bedroom Flat 2 contained an identical provision save that the service charge was one eleventh of the relevant costs. Two-elevenths amounts to 18.18% and one eleventh to 9.09%.

3. The first sentence of Paragraph 1 of the Second Schedule to the Leases stated "Expenses and outgoings of which the Lessee is to contribute 2/11ths."

4. In 1978 the then freeholder of the Building granted a 999-year lease of what until then was the former common room in the Building, but which had been converted to a one bedroom flat (Flat 7). The service charge payable under the Lease of Flat 7 was specified as one twelfth (i.e. 8.33%) of the service charge

expenditure. Thus the total payable by the 7 Flat Lessees thereafter amounted to 108.33% of the service charge costs.

5. The Lease of Flat 5, which is owned by the Applicant leaseholder, was granted on 14 January 1967 for a term of 999 years from 1 January 1965. The Lessor was Denis Edward Noel and the Lessee was Elsie Clarice Henson Bostock. On 8 March 2002 the then Lessee of Flat 5, Sylvia Grant Bradley, entered into a deed of variation ("the DOV") of her Lease with the Respondent freeholder, whose registered address was stated to be 5 Brooklands, Gosport Lane Lyndhurs Hampshire SO 43 7BP. The DOV varied the opening part of Clause 3(III) of the Lease of Flat 5 so as to provide that "The Lessee will pay in advance on the said First day of January in each year during the term hereby granted a fair and reasonable proportion reasonably determined by the Lessor from time to time of the estimated costs expenses and outgoings incurred by..."

6. The DOV also varied the first sentence of paragraph 1 of the Second Schedule to the Lease by deleting the reference to 2/11ths and substituting for it "a fair and reasonable proportion reasonably determined by the Lessor from time to time."

7. The DOV was signed on behalf of the Lessor by (1) the then Lesssee of Flat 6, Del Hassell, who was at the time a Director of GMC and (2) the Company Secretary, Sylvia Grant Bradley, who also, being the Lessee of Flat 5, signed as such as the other party to the deed. On the same day Sylvia Grant Bradley entered into a Transfer of Flat 5 to the purchaser, Jason Merrifield. The registered proprietor of the Lease of Flat 5 is now the Applicant, Lesley Lyle, who acquired the Lease on 22 June 2004.

The Application

8. The Applicant now applies to the First-tier Tribunal (Property Chamber) (Residential Property) ("the Tribunal") under section 35 of the Landlord and Tenant Act 1987 ("the 1987 Act") for an order under section 38 of that Act varying the Lease of Flat 5 in the terms set out in the document annexed to the Application.

9. In that document the Applicant asks for an order that Clause 3(III) of the Lease of Flat 5 be amended to read:

10. "That the Lessee shall pay in advance on the first day of January in each year during the term hereby granted 9.86% of the estimated costs expenses and outgoings incurred by the Lessor in any year or part of a year in respect of the items of expenditure set out in the Second Schedule hereto and of any other expenditure properly

incurred for the purpose of or incidental to the management and supply of services for the building"

and that the first line of the Second Schedule to the Lease be amended to read

"Expenses and outgoings of which the Lessee is to contribute 9.86%."

11. The Applicant relies on section 35(2) of the 1987 Act which says that the grounds on which an application may be made are "that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely.....(f) the computation of a service charge payable under the lease."

12. Section 35 (4) of the 1987 Act provides that "For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b)either exceed or be less than the whole of any such expenditure.

The Law

13. The relevant provisions of the Landlord and Tenant Act 1987 are set out fully in the Annex to these reasons.

The Applicant's case

14. The Applicant says that she is asking the Tribunal to declare what is a fair and reasonable proportion for the purposes of Clause 3(III) of the Lease as amended by the DOV of 8 March 2002. She says that if the freeholder is not to recover more than one hundred per cent of the service costs, her contribution should be no more than 9.86%, being the difference between the total sums payable by the remaining 6 flats and 100%. She submits that this would be a fair and reasonable proportion. She says that ideally contributions should be based on floor area with which her proposed contribution would also be consistent. The Applicant

says that when she bought Flat 5 she was told, notwithstanding the DOV, that her contribution would be 10% of the service costs, based on floor area.

15. In a letter to all Lessees and GMC Directors, dated 18 January 2018, the Applicant stated that the DOV of 8 March 2002 was entered into at the request of the purchaser at that time, Jason Merrifield, as a condition of purchasing Flat 5. This was because, since 1999, service charges at Brooklands had in practice been calculated on a floor area basis. The Applicant says that before then charges had been calculated on a rateable value basis.

The Respondent's Case

16. In its submission (signed by Mrs J Shaw, a Director of the Company) the Respondent explained the background to the Application. As originally drafted the Leases of Flats 1 to 6 made provision for recovery of 100% of the service costs. Five Lessees paid 2/11ths each (i.e. 18.18%) and one paid 1/11th (9.09%). When the Lease of Flat 7 was granted it required the lessee to pay 1/12th (8.33%) of the service costs. The Respondent says that the reason why 1/12th was written into the Lease of Flat 7 was that the additional service charge collected would be shared back to the existing six flats "as part of the arrangement at the time." The Respondent says that it would seem reasonable to assume that the longer term intention would have been that the six original Leases would be varied to provide that the five two bedroom flats would pay 2/12th (16.67%) each and the one bedroom Flats (2 and 7) would pay 1/12th (8.33%) each. However, this never happened and therefore the Lessor was thereafter, under the terms of the seven Leases, able to recover 108.33% of service charge expenditure. (The Applicant says that there is no evidence to support these conjectures).

17. The Respondent says that this in fact never happened because in practice, for over 20 years, service charge costs were apportioned according to floor area. Indeed from 2006-2011 negotiations took place with a view to varying the Leases to that effect but those negotiations broke down because, whilst the floor area of the Flats was not contentious, there was disagreement as to the ownership of the ancillary buildings. Thereafter service charges reverted to the original arrangement in accordance with the terms of the Leases. With regard to Flat 5, the Respondent argues that the DOV was *ultra vires* and therefore of no effect because it was entered into, without authority of the other Directors, by a sole Director and the Company Secretary, the latter also being the Lessee of Flat 5 who arguably stood to benefit by the variation to the detriment of the other Lessees. The Respondent submits that even if the DOV were to be effective it considers a fair and reasonable proportion, for the purposes of Clause 3(III) to be 2/11ths as provided for by

the Lease as originally worded.

18. The Respondent also explained that there is an associated dispute between it and the Applicant as to alleged service charge arrears with regard to Flat 5, which turns upon the conflicting interpretations of the amended Clause 3(III).

19. The Respondent says that Brooklands had been self-managed by the Lessees for many years until 2012/13 when five leaseholders (Flats 1, 3, 4, 6 and 7) applied to the Leasehold Valuation Tribunal (LVT) (whose functions have since 13 July 2013 been transferred to this Tribunal) for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987. The LVT appointed Napier Property Management Limited who carried out major works during their tenure and issued service charge demands to all Lessees based on the terms of the Lease and also refunded or credited service charges annually on that basis. The Respondent says that unfortunately Napier presided over the accumulation of a material level of debt on GMC's balance sheet of unpaid service charges. It says that at year end 2016 the debt level was £27,770 and at the end of 2017, £20,405, the majority of which is believed to be unpaid service charges payable by the Applicant. The Respondent says that recently received service charge statements show unpaid service charge for the Applicant to be £13,442.62, reduced from £22,778.97 on 6 February 2017 due to one off service credits as a result of the property manager's tenure ending.

20. In conclusion the Respondent asks the Tribunal to reject the Applicant's submission that the sum of 9.86% is fair and reasonable and to dismiss the Application. It says that the DOV of 8 March 2002 was ambiguous in its content and intention and is moreover *ultra vires* because it was a case of one Director assisting an acquaintance. It says that the Applicant's argument that the difference between 100% and the total contributions of the other six lessees is a fair and reasonable proportion is in itself unreasonable and unfair to the other six leaseholders.

21. The Respondent says that if on the other hand the Tribunal is not minded to dismiss the Application it asks the Tribunal to provide an outcome " which gives some clarity and places GMC in a position where it can address the Applicant's service charge arrears."

The Applicant's response

22. The Applicant, in a reply prepared by her solicitors Scott Bailey LLP, denies the Respondent's assertion that the Lessees have been required to fund the annual budgetary cash shortfall. She says that tenants have been required to pay service charge according to their contribution as stated in their respective Leases. She says that in

the case of Flat 5 the DOV was properly executed by a Director and the Company Secretary and has been accepted by and registered with HM Land Registry. Furthermore, all subsequent purchasers of Flat 5 have relied on the deed. She therefore submits that her contribution is limited to 9.86% and asks the Tribunal to vary her Lease to specify this as the proportion of costs due under her Lease.

23. The Applicant denies that she is in arrears with service charge payments on the ground that her contribution is limited to 9.86%.

Consideration and decision

24. This is a case where a scheme, under which the Lessees of the six flats in a block ("Brooklands") each covenanted to pay a defined percentage contribution by way of service charge, ceased to function as originally intended because of the later addition of a seventh flat whose Lease also contained a defined percentage contribution.

25. Under the original scheme the Lessees of Flats 1, 3, 4, 5, and 6 were each obliged to pay contributions of 2/11ths (18.18%) and the Lessee of Flat 2, a contribution of 1/11th (9.09%). Thus the total sum recoverable was 100% of the service costs.

26. However, on 22 June 1978 the then Lessor granted a 999 Lease of the newly created Flat 7, under which the Lessee of that Flat covenanted to a pay a service charge of 1/12th (8.18%) of the service costs. Thus the Lessor was thereafter contractually entitled to recover 108.18% of the service costs.

27. The Tribunal agrees with the Respondent that it is quite likely that the 1/12th contribution of Flat 7 was predicated on the supposition that the other Leases would be varied so that the five two bedroom flats paid 1/6th (16.66%) and the 2 one bedroom Flats 1/12th (8.33%). That did not happen. The problem of over recovery was avoided, the Tribunal is told, by the adoption of a non-contractual arrangement which operated from at least 2006 until 2011 whereby the Lessor sought service charge payments based not on the proportions specified in the Lease but on the basis of proportions related to the respective floor area of the Flats. The Lessees considered that this more properly reflected the fact that not all the two bedroom flats were the same size. This solution seems to have worked until negotiations for a new contractual arrangement based on floor areas broke down and the original arrangements again came into operation. The negotiations had broken down over the matter of how ownership of the ancillary buildings should be reflected in the new formula.

28. With regard to the establishment of a ground under section 35 the

Applicant relies on section 35(2)(f) and section 35(4). Had the Lease of Flat 5 not been varied in 2002 the requirements of these provisions would have been satisfied because the total service charge recoverable would have been 108.33%. The Applicant says that the DOV of 2002 means that the Respondent Company can necessarily only recover as a fair and reasonable sum no more than 9.86% and that the Lease of Flat 5 should be varied to reflect that position.

29. The Tribunal does not accept this argument. Had the intention of the DOV been to fill the gap between the total of the proportionate sums payable by the lessees of the Flats other than Flat 5 and 100% the relevant fraction could have been supplied. It is far more likely that the DOV was meant to reflect the alternative method of assessment that had been operated in practice hitherto, although it is far from clear why the Lessor would want to do this for the benefit of one Flat only.

30. Furthermore, if the Applicant's interpretation of the Lease were correct the ground in section 35(2)(f) would not be satisfied because the contributions would total 100%. The issue therefore is whether, following the DOV, section 35(4) is otherwise satisfied.

31. The Lease of Flat 5 as varied refers to the contribution being "a fair and reasonable proportion reasonably determined by the Lessor from time to time...." Thus if the Lessor reasonably demands more than 9.86% section 35(4) is satisfied because that would bring the total payable by all Lessees to more than 100%. In this case the Lessor is seeking to recover 2/11 (18.18%) by way of a fair and reasonable sum for Flat 5, thus leading to a total of 108.33%. It follows that section 35(4) is thereby satisfied.

32. It is important to note that the Application before the Tribunal is one made under section 35 of the 1987 Act for an Order varying the Lease of Flat 5. It is not an application by either the Lessee or the Lessor of Flat 5 for a determination under section 27A of the Landlord and Tenant Act 1985 as to the payability and reasonableness of a service charge. The limited evidence adduced by the Lessor as to alleged service charge arrears is therefore not of direct relevance to the issue before the Tribunal.

33. The Respondent also sought to argue that the DOV was *ultra vires* and of no effect and therefore the original Lease provisions stand. The Tribunal acknowledges that the circumstances in which the DOV was executed are far from clear. What is clear is that it was executed on behalf of the Lessor GMC by the Lessee of Flat 6 acting as a Director and by the Lessee of Flat 5 (as the Company Secretary), the latter also being the other party to the Deed as Lessee of Flat 5. However, the DOV was apparently executed without the knowledge of the other Directors. The effect of the DOV is also uncertain because it did not vary Clauses 2 or 3 of the

Second Schedule to the Lease which provide that

"2. The Lessor will cause proper accounts of the cost of the aforementioned services to be kept and will each year commencing from the first day of January render to the Lessee an audited statement of such yearly cost and will calculate the appropriate portion thereof attributable to the Lessee in the proportion of 2/11ths of the total yearly cost and the certificate of the Lessor's Auditors as to the correctness of the appropriate proportion of these charges will be final and binding on all parties.

3. At the end of such yearly period commencing from the first day of January one thousand nine hundred and sixty seven the portion of such costs attributable to the Lessee for the preceding year in accordance with paragraph 3 (*sic*) hereof shall be certified by the Auditors and on receipt of such certificate the Lessee shall pay to or recover from the Lessor in every year the difference between the service charge determined by the Lessor's surveyors and paid by the Lessee and the amount certified by the Auditors as payable by him."

34. It follows that both sums paid in advance (under Clause 3(III) and the sums to be paid or refunded (in accordance with paragraphs 2 and 3 (but not paragraph 1) of the Second Schedule) are to be calculated on different bases. However, notwithstanding this ambiguity and the circumstances surrounding the execution of the DOV, the Tribunal considers that it is beyond its powers to reopen and set aside the DOV entered into in 2002. The existence of the Deed, which on its face is properly executed, is noted on the charges register of the freeholder's title at HM Land Registry and the current Lessee of Flat 5 appears to have bought the Lease as varied in good faith. Furthermore, even if the original provisions stand section 35(4) is satisfied because the total service charge would amount to more than 100% of the service costs.

35. The first question then is whether the variation proposed by the Applicant or some other variation will cure the defect. Both the Applicant and the Respondent believe that the present position is far from satisfactory. That is why the non-contractual scheme was operated until 2011 and why the Lessees have been trying to reach agreement on a new basis of calculation. However, it does not follow, even if the Applicant makes out a groundm that either the Tribunal must make an Order or if it does that the Order should be in the terms proposed by the Applicant. Section 38(1) of the 1987 Act provides that

"If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal the tribunal ***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." (Emphasis supplied). Thus the Tribunal has a residual discretion.

Furthermore, subsection (6) provides that

"A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal –

(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."

36. Although the Applicant's argument is framed as one relating to the interpretation of Clause 3(III) of her Lease as varied, her Application is made under section 35 of the 1987 Act and in essence her Application seeks to replace the varied Clause 3(III) by an obligation to make a defined proportionate contribution of 9.86% as compared to the original 18.18% payable under the Lease when granted.

37. The Respondent submits that a change for one Lessee would not cure the defect of the contributions being more or less than 100% because the remaining Lessees would be liable to make the defined contributions specified in their Leases and this would still produce a total of more than 100%. This is not in itself a compelling reason for refusing an Order. Indeed the Lessor and all other Lessees were invited to make an application under section 36 of the 1987 Act for an Order making variations to the other Leases. No such application has been received although the Tribunal was told that it is intended that an application/applications would be made later this year.

38. Nevertheless, the application before the Tribunal relates to Flat 5 and the Tribunal does not have sufficient evidence as to a satisfactory new basis of calculation that could be applied to the Lease of that Flat. It may be the case that a fair and reasonable solution would be for contributions to be based on relative floor areas. However, the Tribunal has no evidence relating to the same. It is important to note that there are unresolved disputed ownership rights with regard to some ancillary premises and this may clearly have a bearing on the appropriate formula in so far as those premises are comprised in the Building. It may be that a solution would be for the DOV variation to be applied to all the

other Leases but again neither the Respondent nor any other Lessee has made such an application at this stage. Another solution would be for revised defined proportions to apply to all Flats (save Flat 7) to reflect the fact that there are five two bedroom flats and two one bedroom Flats although again no such proposal has been made, not surprisingly because not all two bedroom flats are the same size.

39. In these circumstances the Tribunal has decided on balance that it would not be reasonable to exercise its residual discretion to vary the Lease of Flat 5 in the terms proposed in the Application or in any other terms and the Application is therefore dismissed.

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 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, that 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.

Martin Davey

Chairman

Annex

Landlord and Tenant Act 1987 as amended

Section 35 Application by party to lease for variation of lease.

(1) Any party to a long lease of a flat may make an application to the tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—
(i) the flat in question, or
(ii) the building containing the flat, or
(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f) the computation of a service charge payable under the lease.

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and
(b) other factors relating to the condition of any such common parts.

)

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

(5) Rules of court shall make provision—

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any Respondent to the application, on any person who the Landlord, or (as the case may be) the Respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined

as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) In this section "service charge" has the meaning given by section 18(1) of the 1985 Act.

Section 38 Orders 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 tribunal, the tribunal 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 tribunal with respect to the leases specified in the application under section 36,

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

(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) A tribunal 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) A tribunal 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) A tribunal 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 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.