

12593



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

Case reference : LON/00AZ/LVL/2017/0005

Property : Flat G, Fordham House, 72 Clifton Rise, London SE14 6JW

Applicant : Mr N Martin (tenant)

Representative : In person

Respondent : Dr A Mikaoam (landlord)

Representative : In person

Type of application : Variation of a lease by a party to a lease

Tribunal members : Mr S Brilliant
Mr D Jagger MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 29 January 2018

DECISION

Decision of the Tribunal

The Tribunal determines that the lease of Flat G, Fordham House, 72 Clifton Rise, London SE14 6JW, made between Kallar Investments Ltd (1) and Clifford Craig Freese and Marcio Moraes Passos (2), dated 5 January 2007, is varied so that in the definitions schedule on page 3 the Maintenance Rent is defined as:

“10% of the costs and expenses that the Landlord incurs pursuant to its covenants contained in the Second Schedule hereto”

The application

1. The Applicant seeks a variation pursuant to s.35 of the Landlord and Tenant Act 1987 (“the 1987 Act”) of the lease of Flat G, Fordham House, 72 Clifton Rise, London SE14 6JW, made between Kallar Investments Ltd (1) and Clifford Craig Freese and Marcio Moraes Passos (2), dated 5 January 2007. The lease is for a term of 125 years from 1 January 2006. The residue of the term is vested in the Applicant. It is a 1-bedroom flat.

The background

3. Fordham House consists of an end of terrace former public house converted into 8 flats.
4. The amount of the contribution from each flat to the service charge is determined by the definition of the “Maintenance Rent” in the Definitions Schedule on page 3 of each lease.
5. There are 2 2-bedroom flats and 6 1-bedroom flats in Fordham House.
6. The 2-bedroom flats each pay a 20% contribution to the service charge.
7. 5 of the 1-bedroomed flats (all apart from Flat G) each pay a 10% contribution to the service charge.
8. Flat G pays a 20% contribution to the service charge.
9. This is clearly a mistake, as all the other 1-bedroom flats pay 10% each and the total contributions amount to 110% of the total service charge.
10. By an application, received on 11 September 2017, the Applicant seeks to vary the definition of the “Maintenance Rent” in the Definitions Schedule on page 3 of his lease from 20% to 10%.

The law

11. s.35(2)(f) of the 1987 Act provides that a party to a long lease of a flat may make an application for an order varying a lease on the grounds that the lease fails to make satisfactory provision with respect to the computation of a service charge payable under the lease.
12. s.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) would either exceed or be less than the whole of any such expenditure.

Directions

13. At a directions hearing on 10 October 2017 the Tribunal identified the following issues:
 - Should the Tribunal order the proposed variation (reducing the contribution to the service charge from 20% to 10%) to be made to the Applicant's lease?
 - Does the proposed variation fall within the grounds set out in s.35(2) of the 1987 Act, that is to say does the lease fail to make satisfactory provision for one of the matters set out in that section?
 - If it does make an order varying the lease, should the Tribunal order any person to pay compensation to any other person pursuant to s.38(10) of the 1987 Act?
14. The Respondent was directed to send to the Applicant a statement in reply to the application by 14 November 2017. The Respondent has not sent such a statement and has not engaged with these proceedings.

Decision

15. The Tribunal is satisfied that the proposed variation falls squarely within the grounds set out in s.35(2) of the 1987 Act, that is to say the lease does fail to make satisfactory provision for one of the matters set out in that section, namely with respect to the computation of a service charge payable under it.
16. The Tribunal is satisfied that it is reasonable to make the variation asked for.
17. There is no loss likely to be suffered as a result of the variation, so no order is made under s.38(10) of the 1987 Act.

Name: Simon Brilliant

Date: 29 January 2018