



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

Case reference : **LON/00AR/LVT/2021/0012**

HMCTS code : **P: PAPERREMOTE**

Property : **Victoria Court, Victoria Road, Romford,
Essex, RM1 2NU**

Applicant : **Victoria Court Romford RTM Company
Limited**

Representative : **Grayfield, Solicitors**

Respondent : **Stenau Properties Limited**

Representative :

Type of application : **Part IV of the Landlord & Tenant Act
1987 – lease variation**

Tribunal members : **Tribunal Judge I Mohabir
Miss M Krisko FRICS**

Date of decision : **4 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing on the papers. The order made is described at the end of these reasons.

Background

1. This is an application made by the Applicant under section 35 of the Landlord and Tenant Act 1985 (as amended) (“the Act”) to vary the terms of the residential leases granted in respect of Victoria Court, Victoria Road, Romford, Essex, RM1 2NU (“the property”). The Applicant is Right to Manage company and has acquired the right to manage the property.
2. The property is described as being part of a purpose built block comprised of 30 long leasehold flats. The Respondent is the freeholder who does not oppose the application.
3. It is assumed that all of the residential leases were granted on the same terms.
4. The Tribunal was provided with a specimen lease of Flat 22 in the property dated 5 March 1968. By clause 2(3)(i) of the lease, the lessee covenanted to pay the lessor a one thirtieth contribution towards the service charge expenditure set out at sub-clauses (a) to (f) of the lease. However, sub-clause 2(3)(ii)(f) limits the service charge contribution payable in advance on account to two half yearly payments of £12, being £24 in total. Any additional service charge expenditure incurred by the lessor (now the RTM company) is, therefore, payable in arrears.
5. By an application dated 30 November 2021, the Applicant is seeking to vary clause 2(3) of the lease to permit the Applicant to:
 - (a) recover service charge payments on account greater than £24.
 - (b) permit the establishment and maintenance of a reserve fund.
 - (c) permit the lessor to claim interest on service charge arrears owed by any leaseholder.
6. On this basis, the Applicant submits that the lease fails to make satisfactory provision for “*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 the other party*” pursuant to section 35(2)(e) of the Act.

7. The reasons given in support of this ground are, firstly, that the Applicant being a RTM company has no assets or alternative income and its inability to obtain sufficient funds from advance service charge payments on account and/or a reserve fund has meant that it has not been able to manage the block satisfactorily.
8. Secondly, the proposed amendments would not cause any of the lessees any overall net financial prejudice if the service charge contributions are paid in advance or in arrears.
9. Thirdly, the inability to recover interest on service charge arrears would potentially mean that the Applicant runs the risk of becoming insolvent or being unable to service the cost of any borrowing.
10. Fourthly, paragraph 7.5 of the RICS Code of Practice recommends the establishment of a reserve fund to spread the cost for leaseholders, for example, in relation to proposed major works.
11. The Tribunal was informed that the lessees named in the application and any current mortgagees have been served with a copy of the application. So far as the Tribunal is aware, no objection has been made by any of these parties.

Decision

12. The Tribunal's determination took place on 4 May 2022 and was based solely on the statement of case and documentary evidence filed by the Applicant. As stated earlier, the Respondent freeholder does not oppose the application.
13. As a matter of general principle, it is now well established that, it is clear the lease terms are not to be manipulated in order to turn a bad bargain into a good one: see ***Arnold v Britton*** [2015] UKSC 36.
14. However, ***Arnold*** can be distinguished from the present case because the Tribunal was satisfied that the proposed lease variations do not attempt to make significant changes to the leases. They go no further than to attempt to remedy the financial difficulties caused to the Applicant under the current service charge regime.
15. The specimen lease provided to the Tribunal is an old form of lease and the current service charge provisions found in clauses 2(3)(i)(a) to (f) no longer reflect the commercial cost of properly repairing and maintaining a large block of flats such as this one through the service charge income per lessee of £24 per annum payable on account in advance. It is beyond doubt that the potential cost of any major works could not be met in this way. It is also beyond doubt the Applicant, as an RTM company, has no other sources of income, capital or ability to borrow money to meet its repairing obligations under the terms of the leases. The company is simply a legal construct by which the leaseholders have been able to acquire the right to manage the property.

16. As to any potential financial prejudice caused to any leaseholder by the proposed variations, the Tribunal was satisfied that they have the statutory protection afforded by section 27A of the Landlord and Tenant Act 1985 (as amended) to challenge any service charge and/or reserve fund costs demanded or incurred by the Applicant that they consider to be unreasonable. For the same reasons, the Tribunal did not consider that any compensation is payable to any of the lessees or the Respondent who, as stated, does not object to the application.
17. The Tribunal was, therefore, satisfied that the ground under section 35(2)(e) in the Act was made out and the application was granted in part. The approved draft lease is attached to this decision.
18. The Tribunal does not approve the proposed amendment to clause 2(3)(ii)(g) on the basis that it is unnecessary and appears to be covered by clause 2(3)(i)(g). The Tribunal did not consider that a clause permitting the automatic accumulation of any surplus funds into a reserve fund to be appropriate. One of the purposes of a reserve fund is, for example, to carry out any proposed major works for which the Applicant must, firstly, carry out valid statutory consultation and make a separate demand for the estimated cost. To do otherwise, would remove this level of financial scrutiny given to leaseholders by the 1985 Act.
19. In addition, the Tribunal amended clause 5(c) because it did not consider the proposed amendment, that interest would become payable by a lessee within 14 days whether or not a service charge demand was made, was reasonable. The Tribunal considered that 28 days was appropriate and that a service charge demand had to be served before any such liability arose on the part of a lessee.

Name: Tribunal Judge I Mohabir **Date:** 4 May 2022

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).