

# **SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL**



**In the matter of Section 35 of the Landlord & Tenant Act 1987 (Part IV)**

## **DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

<b>Case Number:</b>	<b>CHI/21UD/LVL/2006/0003</b>
<b>The Property:</b>	<b>Flat 5 Furness Mount 2-4 Holmesdale Gardens Hastings TN34 1LY</b>
<b>The Applicant:</b>	<b>Flathold Limited</b>
<b>The Respondent:</b>	<b>Margaret Puxty</b>
<b>Date of the Application:</b>	<b>26<sup>th</sup> September 2006</b>
<b>Dates of the Hearing:</b>	<b>14<sup>th</sup> December 2006</b>
<b>Date Decision issued:</b>	<b>8<sup>th</sup> January 2007</b>
<b>Members of the Tribunal:</b>	<b>Mr R Wilson LLB Lawyer Chair Lady J Davies FRICS Valuer Member Mr T Wakelin Lay Member</b>

## **THE APPLICATION**

1. This is an Application by Flathold Limited the freeholder of the property for a variation of a clause in the lease relating to Flat 5, Furness Mount, 2-4 Holmesdale Gardens, Hastings, TN34 1LY.

## **THE DECISION IN SUMMARY**

2. The Application is granted so that the service charge proportion in the lease relating to Flat 5 shall be changed from the date of this order from 9% to 10% in accordance with the draft Deed of Variation attached hereto.

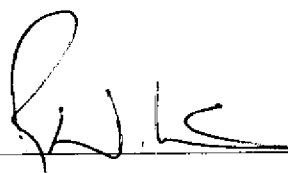
## **BACKGROUND AND CONSIDERATION**

3. This is an Application by Flathold Limited, the freeholder of 2-4 Holmesdale Gardens, Hastings, East Sussex for a variation in the service charge percentage attributable to Flat 5 at the Property. The variation proposed is to increase the service charge payable by Flat 5, from 9% to 10% of the costs incurred by the landlord in complying with its obligations under the lease.
4. The primary ground on which the Application is made is that the current service charge percentage for flat 5, namely 9%, was entered into the conveyancing documents in error whereas the correct percentage should have been 10%. As a result the total service charge percentage for all the flats in the building adds up to 99% leaving a deficit of 1%.
5. By the time of the hearing the Respondent leaseholder had consented to the variation on the basis that neither the Respondent nor any other leaseholder in the building would be responsible for any of the Applicants costs incurred in the application. Furthermore the Applicant, via its solicitors Messrs Rice, Jones and Smith, had confirmed that their clients would not seek to recover any of its costs of the application from any lessee.
6. The Tribunal considered the papers before it which included a copy of the lease for Flat 5 and indeed copies of all the other leases in the building. It is clear that the only matter in dispute is the service charge percentage. A schedule of service charge percentages for the building confirms the annual deficit of 1%. The Tribunal is satisfied that this deficit results in the lease failing to make satisfactory provision for the computation of the service charge. Furthermore the leaseholder herself accepts that there is an error in the lease and has consented to the variation provided she is not put to any expense in respect of the legal costs incurred by the Applicant. In these circumstances the Tribunal is satisfied that the statutory grounds for a variation have been established and it is appropriate that the variation requested be granted.
7. The Tribunal also had regard to Directions that had been given for the case on the 13<sup>th</sup> October 2006. Paragraph 5 of the Directions states the following;

*"If the Respondent is making a claim for compensation under Section 38 of the Landlord and Tenant Act 1987 due to any loss or disadvantage that she is likely to suffer as a result of the variation, the Respondent shall, within 28 days.....send..... a full statement in writing claiming any such compensation and setting out the amount being claimed and the reasons in support of such claim".*

No such statement had been received and therefore the Tribunal makes no order for the payment of compensation.

8. As the Applicants' solicitors have confirmed that their clients will not charge any part of the legal costs of the proceedings to the service charge account, the Tribunal have relied upon this assurance and accordingly make no order in relation to the payment of costs.



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Robert Wilson (Chairman)  
A Member of the Panel appointed by the Lord Chancellor

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Dated 8<sup>th</sup> January 2007

DATE	FILE	02702
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**NOW THIS DEED WITNESSETH** as follows:-

In this Deed:

- ## 2. Recitals

- ### 3. Variation

- #### 4. CONFIRMATION OF LEASE

**IN WITNESS** whereof the parties hereunto have executed this Deed the day and year first before written.

**SIGNED** as a **DEED** by the said )  
**MARGARET PUXTY** in the )  
presence of: )