

LON/00AW/LAC/2006/0003



Residential
Property
TRIBUNAL SERVICE

**DECISION BY THE RESIDENTIAL PROPERTY TRIBUNAL
SERVICE**

- **COMMONHOLD & LEASEHOLD REFORM ACT 2002 -
SCHEDULE 11, PARAGRAPH 8**
- **LANDLORD AND TENANT ACT 1987 Section 35**

Applicant: Alessandra Montioni

Respondent: Grace Margolies

Re: **FLAT B, 44 UVERDALE ROAD, LONDON, SW10 0SR**

Application date: 21st March 2006

Hearing date: 1st June 2006

Members of the Residential Property Tribunal Service:

Miss Dowell
Mr Power
Mrs Moss

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF :

**FLAT B, 44 UVERDALE ROAD,
LONDON SW10 0SR**

ALLESANDRA MONTIONI

- and -

GRACE MARGOLIES

Applicant

Respondent

THE APPLICATION

1. The Tribunal received two applications on 27th March 2006:
 - (1) an application dated 21st March 2006 for a determination of liability to pay and reasonableness of an administration charge pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The application relates to a licence in respect of alterations at the subject property.
 - (2) An application for a variation of the Applicant's lease pursuant to section 35 Landlord and Tenant Act 1987 (the 1987 Act).

THE HEARING

2. The hearing of both applications took place at 10 Alfred Place, London WC1 on 1st June 2006. The Applicant appeared in person and was accompanied by Mr Gavin Parkinson. The Respondent was present and was accompanied by Mr Sam Florey. She was represented by Mr D.C. Radford BSc (Hons) who had prepared a written report dated 19th May 2006.

THE INSPECTION

3. The Tribunal inspected Flat A and Flat B, 44 Uverdale Road, London SW10 in the morning of 1st June 2006. The property comprises a mid Victorian terraced three-storey house situated in a pleasant residential area. The house has been converted into two self-contained flats. The Applicant's accommodation is arranged on the first and second floors with a roof terrace at the rear. The Respondent's flat is on the ground floor with a bathroom located in the lower ground floor area, previously used as a cellar. The ground floor flat also has exclusive use of the rear garden. The Tribunal inspected the alterations which had been carried by the Applicant which consisted of,

- (a) alterations to the existing door to the patio to widen the aperture;
- (b) installation of underfloor soundproofing;
- (c) removal of a chimney breast in the kitchen;
- (d) installation of an entry phone system;
- (e) the re-fitting of the old first floor bathroom as a shower/WC and minor partition changes to the adjoining bedroom doorway.

PRELIMINARIES

4. The Respondent is the freeholder owner of 44 Uverdale Road. She purchased the freehold at some time prior to August 2004. There is no lease in respect of the ground floor flat which she occupies. The lease in respect of the upper maisonette was assigned to the Applicant in August 2004.

THE LEASE

5. The lease of Flat B, the upper maisonette at 44 Uverdale Road is dated 16th February 1996 and made between Dennis Martin Williams (1) and Susanna Gabrielle Allfrey (2). A summary of the relevant provisions in the lease are as follows:
 - (a) The term is 125 years from the 24th of June 1978.
 - (b) The proportion of service charge is 75%.
 - (c) The initial interim payment is £600.
 - (d) The building is shown on the site plan "A".
 - (e) The flat layout plan is shown on the plan marked "B".
 - (f) The tenant's covenant in relation to alterations and additions is at clause 2(xii) of the lease.
 - (g) The tenant's covenant to pay all costs and expenses (including solicitor's costs and surveyor's fees) incurred by the landlord in connection with any application made by the lessee under the lease is at clause 2(xv).
 - (h) The landlord's covenants are at clause 4.
 - (i) The Second Schedule sets out details of the service charge.

AGREEMENT IN RESPECT OF APPLICATION TO DETERMINE LIABILITY FOR AND REASONABLENESS OF THE ADMINISTRATION CHARGE

6. At the beginning of the hearing the parties informed the Tribunal that agreement had been reached in respect of the amount to be paid by the Applicant in connection with the grant of a licence relating to the alterations at Flat B, 44 Uverdale Road. The Tribunal was given a copy of the licence in its agreed form. The parties asked the Tribunal to record that the Applicant had agreed to pay the Respondent a global figure of £1,774.25 inclusive of solicitor's fees, surveyor's fees and VAT. We were asked to also record that all terms of the licence had been agreed and that it would now be completed with expedition, the agreed fee of £1,774.25 to be paid by the Applicant on completion of the licence agreement.

APPLICATION TO VARY THE LEASE

7. The application was for an amendment to the lease plan, a variation of the proportion of the service charge payable by the Applicant, and the initial interim service charge

payment under the terms of the lease. The application form was defective in that the Applicant had not indicated under which section of the 1987 Act the application was made. However it was agreed that the only section which could be appropriate to this application was section 35(2)(f).

THE LAW

8. Section 35 of the Landlord and Tenant Act 1987: Application by party to lease for variation of lease

- (1) Any party to a long lease of a flat may make an application to a Leasehold Valuation 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)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f) the computation of a service charge payable under the lease.
- (3)
- (4) For the purposes of sub-section (2)(f) the lease fails to make satisfactory provision with respect to the computation of the 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 a landlord or a superior landlord; and
 - (b) where the 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 amount that would in any particular case be payable by reference to the proportions referred in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

Evidence and Submissions of the Applicant

9. The Applicant explained that the reason for her application was because she did not think that the 75% share which she was liable to pay under her lease was fair because Flat A, comprising the ground floor of the property and the bathroom in the cellar had been enlarged with an extension some years ago (i.e. before she purchased her flat) which meant that the 75% proportion of the service charge was no longer appropriate.

The Applicant had obtained measured plans of both flats and submitted that the correct percentage for her flat for the service charge was 59%.

Evidence and Submissions of the Respondent

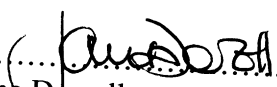
10. Mr Radford on behalf of the Respondent in his report proposed that the service charge apportionment in the lease should be altered so that Flat B paid 62.6% of costs. This proposal was based on a test of “reasonableness” taking into account the respective gross floor areas of each flat. Mr Radford concluded that there was no history as to how the percentage of the total service charge applicable to Flat B was calculated.
11. However as the Applicant had refused to accept this offer at any time right up to the hearing, the Respondent withdrew her offer to vary the service charge by agreement. At the hearing Mr Radford submitted on behalf of the Respondent that having carefully considered section 35 of the 1987 Act, that the Tribunal had no jurisdiction to determine the application to vary the lease.

Decision

12. Having considered the law and representations made by both parties, the Tribunal concluded that it did not have jurisdiction to make a determination on the application to vary the lease.
13. The purpose of section 35 of the 1987 Act is to rectify leases which are inadequately drafted with the consequence that they may prove unworkable. However the Tribunal’s jurisdiction only extends to the specific matters set out in section 35 and our power to vary a lease may only be exercised where the lease fails to make satisfactory provision with respect to certain matters. The Applicant accepted that the only relevant ground for applying to vary her lease was under section 35(2)(f). However the 1987 Act sets out specific factors for determining whether satisfactory provision is made in relation to the service charge and the Tribunal’s power extends only to the computation of the service charge if a lease fails to make satisfactory provision if the aggregate of the service charge contributions of the tenants exceeds or is less than the landlord’s expenditure.
14. In order for an application to vary a lease to succeed, the Applicant must establish one of the statutory grounds set out in section 35. The fact that the Applicant would wish the lease to be drafted differently is not sufficient.

**APPLICATION UNDER SECTION 20C OF THE LANDLORD AND TENANT ACT
1985**

15. The Applicant had indicated on both application forms that she wished to apply for an order preventing the Respondent from recovering any costs incurred in connection with the proceedings before the Leasehold Valuation Tribunal as part of the service charge. At the conclusion of the hearing Mr Radford on behalf of the Respondent informed the Tribunal that the Respondent did not intend to add any of the costs of and in connection with the Leasehold Valuation Tribunal proceedings to the service charge. On the basis of that assurance the Tribunal made no order on the two applications under section 20C of the Landlord and Tenant Act 1985.

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Jane Dowell
Chairman

Dated this 15 day of June 2006