

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UQ/LVL/2005/0008

IN THE MATTER OF 1 VALE ROAD, SOUTHBOROUGH, KENT, TN4 0QQ

**AND IN THE MATTER OF SECTION 37 OF THE LANDLORD AND
TENANT ACT 1987**

BETWEEN:

BATEMANS MANAGEMENT COMPANY LIMITED

Applicant

-and-

MR REX MARTIN

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to s.37 of the Landlord and Tenant Act 1987 (as amended) ("the Act") to vary the terms of the leases of the five flats in the subject property so that each lessee shall make a 20% contribution for the total buildings insurance premium and the annual service charge expenditure generally. The ground relied on by the Applicant is that the variation sought cannot be satisfactorily achieved unless all of the leases are varied to the same effect (s.37(3)).

2. The factual background of this matter can be set out fairly shortly. The Applicant is the freeholder. Each of its four directors are the lessees of flats 1, 2, 3 and 4 respectively and all consent to this application. The Respondent is the lessee of the basement flat and has no involvement with the Applicant company. The terms of the leases of flats 1 to 4 are identical. They are all dated 2 December 1976 and were granted by the then freeholder, Roger William Gibbs to various lessees for a term of 99 years from 24 June 1974 ("the leases").
3. At the time the leases were granted the property only contained the four flats. Clause 1 of the leases provides that each of the flats was to pay a contribution of 25% of the amount expended by the lessor in effecting and maintaining buildings insurance for the property. Clause 4(ii) of the leases further provides that each of the four flats shall contribute 25% of the costs, expenses, outgoings and other matters set out in the Fourth Schedule.
4. On 19 July 1982, the freeholder, Mr Gibbs, granted a lease of the basement of the property to Mr and Mrs Robeson, who were then the lessees of the ground floor flat (Flat 2). The lease of the basement provides that it was supplemental to the lease of flat 2 and granted for the residue of the unexpired term of the lease of flat 2. The lease of the basement also provides, *inter alia*, that it was granted subject to the covenants and conditions contained in the lease of flat 2. It is common ground that the lease of the basement flat was granted in those terms because it was only intended to create additional living space for flat 2 and not as a separate dwelling.

5. It appears that in 1999 the lessees of flat 2 were Mr Alex Martin, the Respondent's son, and his partner, Miss Alison Hull. Mr Martin approached the other leaseholders with a proposal to convert the basement of the property into an extra bedroom and home office space. At some point, Mr Martin subsequently converted the basement into a separate dwelling and on 3 August 2000 assigned the lease of the basement to his father, the Respondent. Later, he assigned the lease of flat 2 separately, thereby splitting the leasehold interest of flat 2. There were now 5 separate flats in the property. The lease of the basement flat does not contain any express covenants or conditions requiring the lessee, in this case the Respondent, to make any contribution in relation to the buildings insurance premium and the expenditure envisaged by the Fourth Schedule of the leases. It is also common ground that the Respondent has not paid any such sums since acquiring the leasehold interest on 3 August 2000. Protracted negotiations and correspondence between the parties, to attempt to vary the leases so that the Respondent pays a 20% contribution in relation to these matters, has proved unsuccessful. In this application, the Applicant invites the Tribunal to formally vary the leases in this way.

Inspection

6. The Tribunal inspected the property on 27 July 2006. The property is a detached house and thought to have been built about 100 – 150 years ago. It would appear that, when originally constructed the layout was as a large family house on two floors with a basement area below the front half of the property. The basement area was approached via an internal staircase as well

as an external set of steps to the side. Typically, the use of the basement area was for staff use such as the storing of garden produce, coal, logs, etc.

Decision

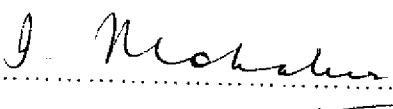
7. The Tribunal's determination of this application also took place on 27 July 2006 and was made entirely on the basis of the documentary evidence before it, as the parties did not request a hearing.
8. It is perhaps material that in a letter to the Tribunal dated 21 December 2005, the Respondent confirmed that he had been asking the freeholder for years to make all leases the same. It is to be inferred from this that the Respondent effectively consents to the leases being varied in the way proposed by the Applicant. However, it seems that his consent is conditional upon the Applicant reimbursing him in the sum of £11,000, being the sum expended by him to treat excessive penetrating and rising damp in his flat in 2000. It is claimed by the Respondent that the Applicant was liable under the terms of the leases generally to carry out this work. The Tribunal should make it clear that it does not have jurisdiction in this application or at all to make any findings in relation to this matter. In any event, the Tribunal understands that there are parallel proceedings in the County Court in this regard.
9. It is clear that when the lease of the basement was granted, it was never intended that it should be used as a separate dwelling. It was only intended to create additional living space for flat 2. This is the reason why the basement lease was granted as being supplemental to the lease of flat 2 and upon the

same terms. It also explains why there are no express covenants and conditions to be found in the leases of the other four flats. This has led to the rather inequitable situation of the Respondent having had the benefit of the property being insured and maintained since 3 August 2000 at no cost to him. These costs are irrecoverable by the Applicant. If the Respondent is correct about the Applicant being liable to repair and maintain his premises, it would place it in the invidious position of having to effect any such repairs and not being able to recover any contribution from him for the cost of the work. The cost would have to be met by way of subsidy from the other leaseholders.

10. Tribunal was satisfied that it was right and proper for each of the lessees to make an equal contribution of 20% for the buildings insurance premium and the expenditure set out in the Fourth Schedule of the leases. Having regard to all the circumstances of this matter and to the fact that the Respondent did not oppose the lease variations sought by the Applicant, the Tribunal granted the application in the terms sought. However, whilst the variations to clauses 1 and 4(ii) of the leases of flats 1 to 4 to reflect the Tribunal's determination are relatively straightforward, the variations required to the terms of the lease of the basement flat are more extensive than those proposed by the Applicant. At the very least, those matters set out in the Fourth Schedule of the leases will have to be incorporated into the lease of the basement flat. It is not for the Tribunal to draft such extensive variations to a lease, but for the legal representatives of the parties. Accordingly, pursuant to s.38(8) of the Act, the Tribunal orders that the parties themselves vary all of the five leases by deed of variation in accordance with its determination. The Tribunal's order is

annexed to this Decision. For the avoidance of doubt, the variations of the leases are limited to giving effect to the Tribunal's determination and shall not include such other matters as the Applicant's repairing obligations. Any additional variations will have to be agreed by the parties otherwise they cannot form part of the deed of variation. Each party must also bear their own legal costs incurred pursuant to the Tribunal's order.

Dated the 3 day of August 2006

CHAIRMAN..........

Mr I Mohabir LLB (Hons)

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BETWEEN:

BATEMANS MANAGEMENT COMPANY LIMITED

Applicant

-and-

MR REX MARTIN

Respondent

ORDER

UPON the Tribunal granting the application dated 1 December 2005

IT IS ORDERED that:

1. By **29 September 2006** the Applicant and the Respondent shall enter into and execute a Deed of Variation ("the Deed of Variation") pursuant to s.38(8) of the Landlord and Tenant Act 1987 (as amended).
2. The Deed of Variation shall be in relation to the lease of the basement flat dated 19 July 1982 and the leases of flats 1, 2, 3 and 4 dated 2 December 1976 in the property known as 1 Vale Road, Southborough, Tunbridge Wells, Kent, TN4 0QQ.
3. The Deed of Variation shall give effect to the Tribunal's determination that each of the five leases be varied so that each of the leaseholders shall contribute 20% of the total annual buildings insurance and the maintenance costs respectively

Dated the 3 day of August 2006

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

