RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LONDON RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Part IV Landlord and Tenant Act 1987
Application for the variation of a lease

Residential Property
TRIBUNAL SERVICE

DECISION

Case Number:	LON/LVL/36/06
Property:	Flat D26, Du Cane Court London SW17 7JQ
Applicant:	Dorrington Belgravia Limited Agents: Allsop Residential Management Limited
Respondents:	Mr J F Peters and Mrs S Peters
Application:	9 June 2006
Directions:	7 August 2006
Consideration:	12 September 2006
Decision:	5 October 2006
Tribunal Members:	Ms J A Talbot MA (Chairman) Mr F L Coffey FRICS Dr A M Fox

Summary of Decision

The Tribunal declined to vary the lease for the reasons given.

Application

1. This Application dated 9 June 2006 was made by the landlord Dorrington Belgravia Limited, for the variation of the lease of Flat D26, Du Cane Court, London SW17 7JQ. The Respondents, Mr J F and Mrs S Peters, lessees, opposed the Application.

2. Provisional Directions were issued by the Tribunal on 7 August 2006 and the Application was allocated to the paper track. The Applicant's agents, Allsop Residential Management Limited, provided further information by letter dated 18 August 2006 and on 2 September 2006 the Respondents provided their reply.

Law

3. Section 35(2) of the Landlord and Tenant Act 1987 ("The Act") sets out the grounds on which any party to a long lease of a flat can make an application to the Leasehold Valuation Tribunal for an order varying the lease. The grounds are that the lease fails to make satisfactory provision with respect to one or more of several matters, including the computation of a service charge payable under the lease. This is the ground relied upon by the Applicant.

Jurisdiction

4. Section 38(4) of the Act provides that the Tribunal can by order vary a lease in the terms requested, or in such other way as it thinks fit. Section 39(1) makes any variation binding on the parties and also on others whether or not they were a party to the proceedings. The Tribunal must not make a variation if it appears to the Tribunal that the variation would be likely to substantially prejudice any respondent to the application, or if for any other reason it would not be reasonable in the circumstances for the variation to be effected. (Section 38(6)).

Property

5. The Tribunal did not inspect the property, but it was known to the professional member and floor plans were provided. The Property comprises a 2nd floor studio flat in a substantial purpose-built block of 676 flats constructed in the 1930's and is located in Balham High Street. The floor plans show that the block has 10 wings, A to K, 6 passenger lifts and 1 central service lift.

Lease

6. The lease is dated 17 October 1986 and is between Olayan Europe Limited and Doris Maud Forster, commencing on that date and expiring on 24 June 2099, at an initial ground rent of £25 per year rising thereafter. The Respondents purchased the property on 20 March 2000.

7. The service charge provisions are to be found at Clause 4(2), Part 2 of the Second Schedule, and the Fifth Schedule to the lease. At Paragraph 1(3) of the Fifth Schedule, the lessee is to pay *"such percentage of the Total Expenditure as is specified in Part 7 of the Second Schedule"*. Part 7 of that Schedule reads:

SERVICE CHARGE

General	*0.10%*
Lift	*Nil"*

8. The total expenditure is defined as *"the expenditure incurred by the Lessors ... in carrying out their obligations under Clause 5 of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building".* Clause 5 contains the landlord's repair, maintenance and insurance obligations, including at 5(19) to maintain and repair the passenger lifts.

Consideration

9. The Tribunal considered the matter on the papers, in accordance with the Directions. Neither party requested an oral hearing.

10. The variation sought by the Applicant was to alter the percentage proportion of service charges payable by the lessees at Part 7 of the Second Schedule so that they are liable to pay 0.10% in respect of lifts expenditure as well as 0.10% of general expenditure.

11. The Applicant (through its managing agents Allsop) contended that the existing provision was unsatisfactory because in the Respondents' case, their lease had no provision for recovery as a service charge costs associated with the lifts. According to the Applicant, the leases of every other flat above the ground floor did make such provision, and it was inequitable for the lessees of the subject property not to contribute. This had the effect of increasing the contribution payable by other lessees. It was further contended that the provisions in Part 7 of the Second Schedule of this lease was an erroneous omission.

12. The Applicant provided further information including a Schedule setting out the service charge percentage proportions per flat and audited accounts for the year ended 31 December 2005. The total expenditure was shown across 3 headings: 'General', 'Lift' and 'Boiler' Expenditure. However, the sum total of the apportionment percentages across all the flats was greater than 100%. Accordingly an agreement had been reached between the Applicant and the Residents Association to adjust the amounts recoverable so that the service charges demanded are equal to the total expenditure shown in the accounts.

13. The Respondents submitted that they had raised the issue shortly after purchasing the property in March 2000. They noticed that their service charge demands included a 0.10% contribution in respect of lift expenditure. They had not withheld payment, but wrote to ~~the~~ Allsop pointing out that their lease did not provide for them to contribute towards lift expenditure.

14. The Respondents further contended that the Schedule produced by Allsop was flawed, because it wrongly lists the percentages due from flat D26 as 0.10% for all 3 heads of expenditure. As there are 676 flats listed, it was possible that the Schedule contained further errors and was therefore unreliable. They had no way of knowing the terms of all the other leases in the block. It was possible that other lessees had failed to spot discrepancies in their leases which might well exist.

Decision

15. On jurisdiction, the Tribunal accepted that the variation sought by the Applicant fell within the scope of S.35 of the 1987 Act, in that it related to the computation of the service charge with regard to the percentage proportion payable by the Respondents.

16. The Tribunal agreed with the Respondents that the proposed variation did not amount to a rectification of an erroneous omission. Part 7 of Schedule 2 expressly and specifically provides that the percentage proportion payable by the Respondents for the lift expenditure is "nil", while for general expenditure only it is 0.10%. Whilst it is true that there is no explanation for this provision, it is clear and unambiguous.

17. The Tribunal had some concerns over the Schedule relied upon by the Applicant. Its provenance was unclear and its accuracy was in doubt. It was certainly inaccurate in respect of the Respondents' percentage proportions, and it was possible that it contained other errors, especially given the length and complexity of the Schedule and the similarities between many of the percentages listed. The Tribunal noted that several other flats were also listed as having a nil contribution towards lift and boiler expenditure.

18. In addition, the Tribunal concluded that the variation sought would have no practical outcome, as on the Applicant's own figures, more than 100% was being recovered in respect of total expenditure, even with the adjustments explained above. Further, even though the Respondents were not obliged to pay a service charge for lift expenditure, this was not a case where, in relation to the block as a whole, there was a serious shortfall between the landlord's expenditure and the service charge. Neither the Applicant nor any of the other lessees were being seriously prejudiced.

19. Overall, for all the reasons given above, the Tribunal was unable to conclude that the grounds were made out, or that it was necessary or reasonable in all the circumstances for the variation to be made. Accordingly, the Tribunal declined to make an order varying the lease.

Dated 5 October 2006

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Ms J A Talbot
Chairman