

Southern Rent Assessment Panel & Leasehold Valuation Tribunal

Case No.CHI/21UF/LVT/2005/0002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER Part IV LANDLORD AND TENANT ACT 1987
FOR THE VARIATION OF LEASES**

Property:	12 The Esplanade, Seaford, East Sussex BN25 1JL
Applicants:	Mrs Ann Allen
Respondents:	Bradley Management Limited Albert Beaumont Peters
Appearances:	For the Applicants: Mr Waller, of Earle & Waller, Solicitors For the Respondents: Mrs Husband, on behalf of Mr Peters
Date of Application:	3 February 2005
Hearing:	29 April 2005
Decision:	16 June 2005

Members of the Leasehold Valuation Tribunal
Ms J A Talbot MA Cantab. (Chairman)
Lady Davies FRICS
Mr R A Wilkey FRICS

Application

1. The application is for the variation of leases at the Basement Flat, Ground Floor Flat and First & Second Floor Maisonette at 12 The Esplanade, Seaford, East Sussex BN25 1JL, made by the landlord, who is also the lessee of the Maisonette, on 4 February 2005. Provisional Directions were given by the Tribunal on 9 March 2005, and the applicant provided a further written submission on 6 April 2005 in accordance with the Directions.

Law

2. Section 35(2) of the Landlord and Tenant Act 1985 ("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 several factors. Those include the recovery by one party to the lease from another party of expenditure incurred or to be incurred for the benefit of that other party (whether alone or together with others).

Jurisdiction

3. 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 that for any other reason it would not be reasonable in the circumstances for the variation to be effected. (Section 38(6)).

Inspection

4. The Property comprises a mid-terrace house, constructed c.1900, with 4 storeys including the basement, and converted into 3 flats. It is in an exposed position on the seafront. The front elevation is of pebbledash render. The main roof is pitched with interlocking tiles. There is no access to the basement at the front. There is a balcony on the first floor. The front door and entrance porch are in poor condition. Internally, the common parts consist of the ground floor hall only, as the front door of the maisonette is on this level and the stairs to the first floor are within the maisonette.
5. The rear of the property is partly repainted, with defective rendering in parts, and the gutters blocked by vegetation. There are double glazed UPVC replacement windows, apart from the rear doors to the ground floor and basement flats. At the rear is a garage to the maisonette and shared parking

space for the other flats. On the wall are metal brackets for a staircase, but the stairs have been removed.

Hearing

6. The hearing took place in Seaford on 29 April 2005. It was attended by the landlord, Mrs Allen, represented by her solicitor, Mr Waller of Earle and Waller. Mrs Husband attended on behalf of her uncle, Mr Peters, who is elderly and in poor health.
7. Mr Waller set out the case for the landlord who sought the lease variations. He submitted that the existing leases were defective in that they failed to provide for a payment date by which service charges were payable, or for interest on late payments.

Payment date

8. The variations proposed were that the service charges would be payable within 21 days of being demanded, and that interest would be charged on late payments at the prevailing Law Society Interest Rate, which was 4% above Barclays Bank base rate. A draft order had been provided to this effect.
9. In response to the Tribunal's observation that the leases did not have specific payment dates for service charges on account, or a requirement for the landlord to provide annual accounts, Mr Waller submitted that the service charge provisions were "as and when", meaning that the landlord could send demands as and when necessary, but only after incurring actual expenditure. In his view, these provisions were sufficient and appropriate for the size and type of property.
10. In response to questions from the Tribunal, Mr Waller accepted that it would be preferable to substitute the word "invoices" rather than "vouchers" in the proposed variation, in support of the service charges demanded, as this would make it clear that the demands related to expenditure actually incurred by the lessor.
11. Mrs Husband explained, on behalf of Mr Peters, that although he had originally agreed to the proposed variations, he had changed his mind and now did not want his lease changed at all. She indicated that there had been concerns for some time about the condition and management of the property. In her view the property had been neglected, to the extent that major works would probably be necessary, with the prospect of large service charges becoming due. In addition, there had been previous allegations of service charge arrears, which were disputed. She was concerned that if the leases were varied as sought, interest might become due on the alleged arrears.

12. On the question of whether the variations might have retrospective effect, Mr Waller submitted that they would, although he had no legal authority in support. He indicated that the effect on any arrears had been considered by Mrs Allen, and that if the variation were to have retrospective effect, and if any alleged arrears were valid and enforceable, then she undertook not to charge interest on those arrears for a period of 6 months. The Tribunal noted this offer, but made it clear that it had no power to make an order in these terms.

Interest Rate

13. On the question of the interest rate, Mr Waller submitted that it was a standard provision in all modern leases for interest to be recovered on late service charge payments. The advantage of the Law Society rate was that it was easily ascertainable and linked to the Barclays Bank base rate. Mrs Husband, whilst accepting that such a provision was standard, did not see any necessity for a change, as if any arrears were sought in the County Court then the court interest rate would apply to any judgment.

External Staircase

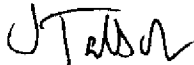
14. Mr Waller submitted that the leases to the ground floor flat and the maisonette needed clarification with regard to the apportionment of service charges for work to the external staircase. Although that staircase was currently missing, it would need to be replaced and subsequently maintained. As the staircase served only the ground floor and maisonette, it made sense for the cost of repair and maintenance of the staircase to be borne only by the lessees of those flats, and not the basement. Mrs Husband did not oppose this.

Decision

15. The Tribunal accepted in principle that it was reasonable for the leases to be varied to provide for a clearly identifiable payment date for service charges, and for interest to be payable on late payments at the rate sought. It also approved the variation sought in relation to the external staircase.
16. However, the Tribunal did not accept that the variations would have retrospective effect. It took the view that, in general, orders made by courts or tribunals took effect from the date on which they were made, unless there was a specific statutory provision to the contrary. The Tribunal noted that the Act is silent on this point, and considered that had Parliament intended lease variations made under the Act to be retrospective, it would have specifically provided for this.
17. Even if wrong in taking this view, the Tribunal further decided that it would not be reasonable in all the circumstances (pursuant to S.38(6)(b) of the Act) for

the variation to be retrospective. If that were the case, then interest on any alleged arrears of service charges, which had been demanded before the date of the variation order, would incur interest. The Tribunal considered that this would unfairly prejudice the Respondents. It noted that any party, if it so wished, could make a separate application to the Tribunal for a determination on the payability and reasonableness of any disputed service charges. In making its decision, the Tribunal took into account the representations made by Mrs Husband at the hearing, and in correspondence, by Dyer & Crowe, solicitors for the lessees of the basement flat.

18. For the avoidance of doubt, the Tribunal decided that the provisions regarding interest on late payments would only take effect on service charges demanded after the date of the Order attached to this Decision.
19. The Tribunal has the power, pursuant to Section 38(10), to order compensation to be paid in respect of any loss or disadvantage that a person is likely to suffer as a result of an order for a variation of a lease. In its Directions the Tribunal asked the parties for any submissions relating to compensation. No such submissions were made and the Tribunal did not consider that it was appropriate to make any order under Section 38(10).



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Ms J A Talbot
Chairman

16 June 2005

Southern Rent Assessment Panel & Leasehold Valuation Tribunal


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ORDER

It is ordered that:

1. Pursuant to Section 38(1) of the Landlord and Tenant Act 1987, the leases for the basement flat, ground floor flat, and maisonette at 12 The Esplanade, Seaford, East Sussex, shall be varied as set out in the Schedule attached.
2. The variations to the leases shall take effect from the date of this Order and shall not have retrospective effect.
3. There shall be no order for compensation under Section 38(10) of the Act.
4. Each party shall file a certified copy of this Order against their respective titles as registered at H M Land Registry.

Dated 16 June 2005


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**Ms J A Talbot
Chairman**

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SCHEDULE

The under mentioned Leases referred to in the Charges Register of the Freehold Title (SX 64958) of the property be varied from x June 2005 as follows:

The Lease dated 17th April 1978 – Basement Flat – Lessee's title number ESX35800

As to clause 2(p):

The insertion of the words:

"within twenty-one days of written demand of the same accompanied by copy supporting invoices" after the words "to pay to the Lessor" and before the figure "30"; and the addition of the words: "with the exception of the external staircase serving the ground floor flat and the first and second floor maisonette" at the end of sub-clause (i); and at the end of the said clause the addition of the words: "and if default in payment is made to pay to the Lessor interest thereon at the Law Society's interest rate from time to time from the date on which payment became due until actual payment".

The Lease dated 27th April 1978 – Ground Floor Flat – Lessee's title number ESX32533

The deletion of clause 2(k) and the substitution therefor the following clause:

"To pay to the Lessor within twenty-one days of written demand for the same supported by copy invoices one-half of the costs incurred by the Lessor in keeping in good and substantial repair and decoration and renewing where necessary first the entrance and hallway and secondly the external staircase serving the demised premises and the first and second floor maisonette and if default in payment is made to pay to the Lessor interest thereon at the Law Society's interest rate from time to time from the date on which payment became due until actual payment".

As to clause 2(q):

The insertion of the words: "within twenty-one days of written demand of the same accompanied by copy supporting invoices" after the words "to pay to the

Lessor" and before the figure "35"; and the addition of the words: "with the exception of the external staircase serving the demised premises and the first and second floor maisonette" at the end of sub-clause (i); and at the end of the said clause the addition of the words: "and if default in payment is made to pay to the Lessor interest thereon at the Law Society's interest rate from time to time from the date on which payment became due until actual payment".

Lease dated 15th February 1985 – First and Second Floor Maisonette – Lessee's title number ESX114543

The deletion of the first paragraph of clause 2(l) and the substitution therefor of the following clause:

"To pay to the Lessor within twenty-one days of written demand for the same supported by copy invoices one-half of the costs incurred by the Lessor in keeping in good and substantial repair and decoration and renewing where necessary first the entrance and hallway and secondly the external staircase serving the ground floor flat and the demised premises and if default in payment is made to pay to the Lessor interest thereon at the Law Society's interest rate from time to time from the date on which payment became due until actual payment."

The second paragraph of Clause 2(l) is to remain as drawn.

As to clause 2(p):

The insertion of the words: "within twenty-one days of written demand of the same accompanied by copy supporting invoices" after the words "to pay to the Lessor" and before the figure "35"; and the addition of the following words: "with the exception of the external staircase serving the ground floor flat and the demised premises" at the end of sub-clause (i); and at the end of the said clause the addition of the following words: "and if default in payment is made to pay to the Lessor interest thereon at the Law Society's interest rate from time to time from the date on which payment became due until actual payment".