

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**S.37 of the Landlord & Tenant Act 1987 as amended**

**DIRECTIONS**

Case Number: CHI/21UC/LVT/2010/0004

In the matter of Selmeston House, 45 Upperton Road, Eastbourne, East Sussex, BN21 1LQ

**Date of Decision: 29<sup>th</sup> July 2010**

**Tribunal: Mr. S. Lal LLM (Legal Chairman, Barrister)**

Applicant: Lessees of Flats 3-16, 18, 20-27 and 29 Selmeston House  
Represented by Mayo Wynn Baxter LLP

Respondents: Mr and Mrs Watson (Flat 1)  
Mr. Bishop (Flat 2)  
Ms. Hoad (Flat 17)  
Ms. Collazo (Flat 19)  
Mr. Saville (Flat 28)  
LRB Properties Limited (the "Landlord")

**Decision**

**Preliminary**

1. The matter comes before the Tribunal pursuant to an application made under Part IV (Section 37) of the Landlord and Tenant Act 1987 (the "Act"), for a variation of the leases of the subject premises.
2. Directions were issued on 10<sup>th</sup> June 2010 when notice was given to all the parties that the Tribunal proposed to deal with the matter on the basis of written representations and documents only and without an oral hearing. Both sides were directed to file formal Statements of Case.
3. In due course a Statement of Case was received from Mayo Wynn Baxter, Solicitors for the Applicant's. By way of letter received by the Tribunal on the 12<sup>th</sup> July 2010, Brethertons, Solicitors for the Respondent Landlord indicate that they have no objections to the application currently being made.

4. There has been no Statement of Case received from those 5 flats that have also for the purposes of this application been joined as Respondents.
5. The Tribunal proceeded to determine the matter on the basis of the written material before it.

#### **Statement of Case for the Applicant**

6. This is that the Applicants are the majority of the lessees of the subject premises, which comprise two blocks of 28 Flats, built circa the 1950's and sold on long leases for a term of 99 years from 29<sup>th</sup> September 1969.
7. In December 2009, the lessees exercised the right to manage provisions in CLARA 2002 and formed a Right to Manage Company- Selmeston House (Eastbourne) Limited.
8. The landlord is obliged under Clause 3 of the Lease to keep the main walls, floors, roofs, paths and drives in good and substantial repair together with painting the outside of the premises every three years. The Landlord also has responsibility to replace all fixtures, fittings, carpets and furnishings and to keep clean and in proper order the common parts.
9. The maintenance charge provisions of the lease as currently drafted require the Lessees to pay a fixed sum on each quarter in respect of expenses for the preceding quarter and payment of the balance of a lessee's apportionment on the 24<sup>th</sup> June of every year. The requirement under the Leases is for payment at the end of the financial year for the costs and expenses incurred in the previous year. The Leases do not all for payments in advance of the costs to be incurred.
10. The Right to Manage Company are currently unable to carry out any of the Landlord's obligation because maintenance charges cannot be charged in advance and a reserve fund cannot be retained, there being no provision to charge the lessees by separate levy.
11. It is further submitted that there is no obligation on the Respondent to insure the property or for interest to be charged on any lessee who fails to pay the maintenance charge.
12. The Applicant submits that the subject property is in a seriously dilapidated state requiring major capital works and a fire assessment has also highlighted numerous improvements. In essence the Applicant argues that until the variations are made the above works cannot be done.

### **The Tribunal's Decision**

13. From the papers it is clear that Solicitors for the Applicant have written to both the Respondent Landlord and the lessees involved on 30<sup>th</sup> March 2010 indicating the nature of the variation sought and this has been followed by a further letter dated 10<sup>th</sup> June 2010 indicating a formal application to the Tribunal. There is at Tab 5 of the Bundle, 22 positive responses out of the possible 28 lessees indicating no objection to the proposed variations. The Tribunal has seen nothing from those lessees currently included as Respondents to this application indicating either a positive consent or objection. The Respondent Landlord has no objection to the variation as requested.

### **The Law**

14. The legal provision as contained in Section 37 of the Act only allows for a variation if the object of the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect. The Tribunal also has regard to the provisions of S.37(5), that where the application is in respect of more than 8 leases it is not opposed for any reason by more than 10% of the total number of parties concerned and that at least 75% of the parties consent to it.

15. The Tribunal is satisfied from the nature of the material presented to it, in particular the fire safety report that the subject premises is in need of substantial capital investment. The Tribunal is further satisfied that the terms of the current lease do not allow for advance charges and that this is a major omission in respect of works being carried out as well as the non existence of any obligation on the part of the landlord to insure the subject premises. The Tribunal is satisfied from 22 out of the 28 positive responses received that the requisite percentage of lessees support the variation and is also satisfied that no one has objected to the variation in the terms as set out. In the circumstances the Tribunal orders that the variation be made pursuant to Section 38 (3) of the Act in the following terms which are contained in the Draft Order in the Applicant Statement of Case.

### **The Order**

16. Pursuant to Section 37(1) of the Landlord and Tenant Act 1987 it is ordered that each and every Lease of Selmeston House, be varied on the terms set out in the Schedule hereto and that the Chief Land Registrar shall make such entries as necessary for the purpose of recording and giving effect to the terms of this Order.

*The Schedule*

1. *The following right be added to Clause 1 of the Lease so that the demise includes the following additional easement:-*

*(v) The right of support shelter and protection from the said Building.*

2. *That the Landlord covenant in Clause 3(i) of the Lease shall be replaced with the following Clause:*

*3(i) From time to time and at all times during the term hereby granted to keep the main walls, foundations and floors, roof and exterior of the said Building and all enclosures ceilings and walls to the same belonging and also the lift or lifts (if any) whether the same be in or upon the parts of the said Building used in common by the Tenants thereof or the part thereof retained by the Landlord or otherwise the said Building in good and substantial repair.*

3. *That the Landlord's covenant contained in Clause 3(ii) of the Lease shall be replaced with the following clause; -*

*3(ii) At all times during the term hereby granted to keep the said Building including all sanitary ware, basins, baths and sinks (but not the Tenant's other fixtures and fittings and not the contents of any flat therein) insured against loss or damage by such risks as may normally be covered by a policy of comprehensive insurance for a building situated where the said Building is sited and against such other risks including public liability for accident and injury to third parties as the Landlord shall reasonably think fit to the full reinstatement value thereof and all architects, surveyors and other fees necessary in connection with the performance of this covenant in some insurance office of repute.*

4. *That the following covenants be added to the Landlords covenants contained in Clause 3 of the Lease:-*

*3(ix) To keep proper books of accounts showing the expenditure incurred under this clause*

*3(x) As soon as reasonably maybe at the end of each service year, to supply the Tenant with a copy of the final account for that year.*

*3(xi) To provided and supply such other services for the benefit of the Tenant and other Lessees and to carry out such other work works and repairs and to defray such costs including borrowing money and paying interest thereon that the Landlord shall reasonably consider necessary or convenient to maintain the said Building or suitable for the convenience or comfort of the Tenant and the other lessees including without prejudice to the generality of this clause the maintenance of common facilities.*

5. *That the mutual covenants by the Landlord and the Tenant contained in the clause:-*

*4(ii)-(iv) inclusive of the Lease shall be replaced with the following clause:-*

*(ii)(a) The Maintenance Year means the year ending on the [ ] day of [ ] in each year or such other accounting period the Landlord acting reasonably shall determine from time to time.*

*(ii)(b) The Maintenance Charge herein after referred to as "the Maintenance Charge" means the total of all sums actually paid and expended by or on account of the Landlord during each calendar year in connection with the management, repair and maintenance of the said Building and any garages now or hereafter erected on the land coloured blue on the said plan and in particular but without limiting the generality of the foregoing shall include the following:-*

- (a) The cost to the Landlord of and incidental to the performance and observance of each and every covenant in clause 3 hereof contained and the other obligations of the Landlord contained in this Lease and shall include the cost to the Landlord making, maintaining, rebuilding and cleansing all ways, roads, pavements, sewers, drains, pipes, water courses, party walls. Party structures, fences or other conveniences which will belong to or be used for the said Building or the cartilage thereof in common with other premises near of adjacent thereto.*
- (b) The costs of an incidental to compliance with every notice regulation or order of any competent local or any other authority and in connection with the compliance with any law.*
- (c) All fees, charges, expenses and commissions payable to any Agent or Agents from time to time employed to manage and maintain the said Building.*
- (d) All fees, charges, expenses and commissions payable to any Solicitor, Accountant, Surveyor, Valuer, Architect, or Agent from time to time employed in connection with the management and maintenance of the said Building including the cost of keeping accounts for and certifying the amount of the Maintenance Charge and in recovering maintenance charges.*
- (e) The cost to the Landlord of complying with the Landlord's covenant to insure.*
- (f) All costs payable in respect of all agents, servant and workman employed in connection with the performance and observance of the Landlord's covenants and obligations herein contained.*

- (g) Charges payable for the provision of facilities for the wired reception of television and radio services to the flats in the said Building and whether or not the Tenants shall avail himself of such facilities.*
- (h) An annual sum if any to be determined by the Landlords and its managing agents as appropriate to provide a reserve fund in respect of the Landlord's covenants and obligations in this Lease which shall be held by the landlord as Trustee for each of the Lessees in the respective proportions in which they have contributed to it or have had monies credited as here and after appears.*
- (i) To pay all taxes which may be assessed or charged upon the Landlord or upon the Landlord's Agents in respect of any reserve fund or its income.*
- (j) To pay all outgoings and liabilities now or hereafter due in respect of any facilities, rights or services enjoyed in common by the Lessees of two or more flats in the said Building in common over or along any land not included in the Building.*

*Provided always there shall not be included in the said Maintenance Charge any sum actually paid and expended as aforesaid which is either (A) Properly recoverable by the Landlord from the Tenant under the terms and conditions hereof or by any general law of (B) properly recoverable from the Tenant of any flat in the said Building or of any store and/ or garage appurtenant thereto under the terms and provision of the Lease under which the Tenant holds or would hold the flat if the said flat were let upon terms and conditions similar to those herein contained or by general law.*

*(iii) There shall be deducted from the Maintenance Charge one half percent in respect of each garage now or at any time hereafter erected including garages forming part of the main buildings and garages on the land coloured blue on the said Plan (herein after called "the Garage Charges"). If this Lease shall include a garage there should be added to the proportion of the balance of the Maintenance Charge payable by the Tenant under clause (iv) of this clause after deduction of the Garage Charges one half percent of the Maintenance Charge which amount shall be paid by the Tenant in the same manner and in addition to the proportion of the said balance of the said Maintenance Charge referred to therein.*

*(iv) The Tenant shall pay to the Landlord or its Managing Agents in every year one twenty eight of the said balance of the Maintenance Charge after deduction of the garage charges (which shall be certified in writing by the Agent or Surveyor for the time being of the Landlord and such certificate shall be conclusive and binding on the Landlord and Tenant) in the following manner.*

(a) *To contribute and pay on account of the Service Charge for each service year by equal quarterly instalments in advance on the usual quarter days in each year (or by such other periodic instalment as the landlord shall determine) such sum ("the basic amount") as the Landlord or the managing agents may at any time specify in a Notice in writing given to the Tenant such amount to represent a reasonable estimate by the Landlord or by the Managing Agents of the total service cost or the balance thereof for the relevant service provided further that in the event of any additional expenditure being required for the performance of the Landlord's covenants and obligations the Landlord or its managing agents may give Notice in writing to the Tenant at any time requiring payment within fourteen days from the Tenant of the Tenant's contribution subject to due compliance with any appropriate statutory requirements in this respect.*

(b) *That as and when demanded the Tenant will pay to the Landlord an amount equal to the shortfall (if any) between the basic amount and the Service Charge, if the basic amount exceeds the Service Charge then the amount equal to the difference shall be credited either to the Tenant against the Maintenance Charge of the next service year or to the reserve fund (if any) as the Landlord may determine.*

6. *That the following additional Tenants Covenant to the Lease namely:-*

*3(xvii) If any of the sums which are require to be paid by the Tenants in accordance with the provisions herein contained shall not be paid within twenty one days after the same shall become due that the same shall forthwith be recoverable by action and shall carry interest at the rate of 4 percent above Bank of England base rate from time to time prevailing or 12 percent per annum which ever rate shall be the higher until payment.*

17. The Tribunal makes no further Order.

Chairman.....

Date.....*29/7/10*.....