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Residential  
Property  
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

INTERIM DECISION AND DIRECTIONS OF THE LEASEHOLD VALUATION  
TRIBUNAL

ON AN APPLICATION UNDER SECTION 38 OF THE LANDLORD AND TENANT  
ACT 1987

**Case Reference:** LON/00AN/LVL/2011/0016

**Premises:** 5 Amor Road, London W6 0AN

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**Applicant(s):** Troy and Jordi Fores Masculet (Flat B), Jamie  
Glover (Flat C) and Advanced Enterprise Ltd  
(Freeholder)

**Representative:** Urban Owners

**Respondent(s):** Martin Thurlaway (Flat A)

**Representative:** N/A

**Date of decision:** 30<sup>th</sup> January 2012

**Leasehold Valuation  
Tribunal:** Mr Adrian Jack

### **Procedural**

1. By an application received on 16<sup>th</sup> November 2011 the applicants applied for a variation of the leases of the three flats in the block. The Tribunal gave directions on 24<sup>th</sup> November 2011. The respondent tenant failed to comply with the directions and the Tribunal determines the matter on the basis of the applicants' evidence.
2. The directions gave directions for the determination of the matter on paper but gave any party a right to request an oral hearing. In the event no one requested an oral hearing and the matter is determined on paper.
3. The variations sought are those set out in the Order attached to this decision.

### **The law, the facts and discussion**

4. The freeholder and two of the three leaseholders at the property seek the variations sought. The requisite majority for the purposes of section 37 of the Landlord and Tenant Act 1987 therefore exists.
5. The nature of the variation is such that all the leases need to be varied in order that the costs of the freehold company in the running of the block can be met. Accordingly in my judgment section 37(3) of the 1987 Act is satisfied.
6. I have considered whether the making of the order is likely to prejudice the respondent to the application. In my judgment it does not. The variations are in the interests of the good management of the block and are for the benefit of all the tenants. There is no other person who might suffer prejudice from the order. Nor is there any other reason why it might not be reasonable in all the circumstances to make the order. Section 38(6) of the 1987 Act does not therefore apply.
7. I have also considered whether this is a case in which an order for compensation should be made. In my judgment it is not. All of the tenants are equally effected by the order. There is no gain or loss to any particular tenant.
8. Lastly I have stood back and considered whether the Tribunal should exercise its residual discretion and refuse to make an order. In my judgment the order is for the benefit of all the tenants and there is no good reason to refuse the order. In my discretion therefore I make the order sought.

## DECISION

I determine that the order attached be made.



Adrian Jack, Chairman 31<sup>st</sup> January 2012

### ANNEX: The law – Landlord and Tenant Act 1987

#### 37 Application by majority of parties for variation of leases.

- (1) Subject to the following provisions of this section, an application may be made to the tribunal in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.
- (2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.
- (3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.
- (4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.
- (5) Any such application shall only be made if—
  - (a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or
  - (b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent. of the total number of the parties concerned and at least 75 per cent. of that number consent to it.
- (6) For the purposes of subsection (5)—
  - (a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and
  - (b) the landlord shall also constitute one of the parties concerned.

#### 38 Orders... varying leases.

- (1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.
- (2) If—

(a) an application under section 36 was made in connection with that application, and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

(6) The tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal—

(a) that the variation would be likely substantially to prejudice—

(i) any respondent to the application, or

(ii) any person who is not a party to the application,

and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

(7) The tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

(a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) The tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it

in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) The tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where the tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.

APPLICATION MADE UNDER SECTION 37 OF THE LANDLORD AND TENANT ACT 1987

BETWEEN:

T. & J. FORES MASCULET, J. GLOVER AND ADVANCED ENTERPRISES LIMITED

Applicant

-and-

M. THIRLAWAY

Respondent

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~~DRAFT~~ ORDER

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Pursuant to Section 37 of the Landlord and Tenant Act 1987 it is ordered that each and every Lease of 5 Amor Road, details of which are attached hereto, be varied in the following terms:

**The Fourth Schedule of each lease shall be amended by inserting the following clause 16 after clause 15:**

"16 - The expenses of the Lessor incurred in managing the property and conducting its own business in accordance with the provisions of its Memorandum and Articles of Association and any statutes for the time being in force and for that purpose or for any of the foregoing purposes to employ such servants, agents, surveyors, solicitors, accountants and others as may be appropriate. These expenses shall include, but shall not be limited to the filing of Annual Returns and the filing of Company Accounts.

**The Fourth Schedule of each lease shall be amended by inserting the following clause 17 after clause 16:**

"17 - The costs of the Lessor incurred in any LVT or third party dispute or adjudication that are brought against it in relation to 5 Amor Road."

**The Fourth Schedule of each lease shall be amended by inserting the following clause 18 after clause 17:**

"18 - The expenses of the Lessor incurred in acquiring sufficient Directors and Officers insurance for the Freehold Company provided that the Freehold Company's activities include only the management of 5 Amor Road."

**The second clause of each lease shall be amended by inserting the following sub clause (XX) after sub clause (XIX):**

"(XX) - To indemnify the Lessor against all costs incurred directly or indirectly from any breach by the Lessee of any of obligations in this Lease."

The second clause of each lease shall be amended by inserting the following sub clause (XXI) after sub clause (XX):

"(XXI) - To pay to the Lessor interest on any sum due under this lease that is unpaid for 14 days after it is due. Such interest shall be payable on demand at the rate of 4% per annum above the base rate of National Westminster Bank plc from when any such sum was due until actual payment.

**IT IS FURTHER ORDERED:**

That subject only to the variations expressed in this Order all the clauses, covenants, conditions and provisions of each Lease (as varied if applicable) shall continue in full force and effect and the Lease shall henceforth be construed as if such amendments were originally contained therein.

**IT IS FURTHER ORDERED:**

That the Chief Land Registrar shall make such entries in the registers relating to the titles hereby affected or to open a new title or titles as shall be deemed appropriate for the purposes of recording and giving effect to the terms of this Order.

Dated this

30<sup>th</sup>

day of

January

2012

*Adrian Jack*