



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AN/LVM/2022/0013**

**Property** : **112 Askew Road, London W12 9BL**

**Applicant** : **Ms Joanna Roznowska**

**Representative** : **N/A**

**Respondents** : **Mr Sunil Patani (1)  
Mr Alex Gordon and Ms Lolita  
Laguna Crespo (2)  
Mr Vas Hava (3)**

**Representative** : **N/A**

**Type of application** : **Application by a tribunal-appointed  
manager for variation of  
order/directions**

**Tribunal member(s)** : **Judge H Carr  
Ms A Flynn MA MRICS**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **16th August 2022**

## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that I was referred to are in a bundle of 98 pages, the contents of which I have noted. The order made is described below.

## **Decisions of the tribunal**

- (1) The tribunal determines that it is just, convenient and proportionate to vary the order to include a new paragraph (vi) to the order as follows:

Service charges for Commercial Premises are to be billed to the Respondent (Landlord of the building). The service charges are to be paid by the immediate landlord within 21 days of a Demand identifying:

- the total sum claimed;
- the manner in which the sum is calculated;
- the relevant lease provisions; and
- copies of demands served

- (2) The tribunal determines not to vary the order so that all four units pay an equal share of all expenses.

## **The background**

2. The background to this application is set out in previous decisions in particular the management order made by the tribunal on 18th May 2021 (under ref. LON/00AN/LAM/2020/0013) and the determination in connection with an application to vary the lease made on 14<sup>th</sup> January 2022 (under ref. Lon/00AN/LVT/2021/0002)
3. Joanna Roznowska the tribunal appointed manager made an application on 20th May 2022 for variation of the order/directions pursuant to section 24 of the Landlord and Tenant Act 1987 (the “Act”).
4. In the directions the tribunal identified the issues to be determined as follows:
  - (i) Whether charging all four units an equal share of all expenses is appropriate?
  - (ii) Should the commercial tenant’s share of the service charges be charged directly to the landlord in light of its refusal to contribute and now being in administration

## **THE DETERMINATION**

### **THE APPLICANT'S ARGUMENTS**

5. The Applicant argues as follows: the tenant of the commercial unit has been charged 1/3 of the general expenses like the buildings insurance, electrical and fire safety work, management fee and accountant's fee. There is not an official lease agreement between the landlord and the commercial tenant as such. The tenants of flats A and B pay 1/3 each of the general expenses and 1/2 each of the common area expenses like cleaning or internal repairs.
6. No service charges have been demanded from flat C to date as there is no official lease agreement available either.
7. Flat C and the commercial unit benefit from the use of the internal common parts, however, do not contribute into the internal expenses.
8. The leases for Flats A and B make reference to a recalculation of service charges if additional properties are added to the building (whether or not a lease is in place for this additional property).
9. The Applicant asks whether charging all four units an equal share of all expenses is appropriate and whether the commercial tenant's share should be charged directly to the landlord.
10. The Applicant proposes the following additional paragraphs to the Management Order
  - (vi) All service charges are to be split equally four ways between the commercial premises and three flats. This split is to have taken effect from the start of the management order (1st June 2021).
  - (vii) Service charges for Commercial Premises are to be billed to the Respondent (Landlord of the building).

### **THE RESPONDENT'S ARGUMENTS**

11. The Respondent argues that the proposed variation does not fall within any of the grounds set out in s.24 of the Landlord and Tenant Act 1987 and therefore the tribunal should not order the proposed variation.
12. The Respondent refers the tribunal to its decision in Lon/00AN/LVT/2021/0002 that there should be no variation of the service charge provision.
13. The Respondent also argues that Judge McGrath in the case of *Oung Lin Chuan-Hui & Others v K Group Holdings Inc & Others* [2019] UKUT 0371 (LC), noted that only section 24(4) allows the Manager to apply for directions for the variation or discharge of an order under section 24(9). Importantly, she provided that such an application

would not be suitable to deal with service charges. See paras [55] – [57] of that case.

14. The Applicant has provided no evidence to support their request for a variation, including no specific statutory provision for the basis of this application.

#### **THE DECISION OF THE TRIBUNAL**

15. The tribunal determines that it is proportionate, just and convenient to vary the order as follows:

To add a paragraph (vi) to the order as follows:

Service charges for Commercial Premises are to be billed to the Respondent (Landlord of the building). The service charges are to be paid by the immediate landlord within 21 days of a Demand identifying:

- the total sum claimed;
- the manner in which the sum is calculated;
- the relevant lease provisions; and
- copies of demands served

#### **THE REASONS FOR THE DECISION OF THE TRIBUNAL**

16. The tribunal agrees with the Respondent that, in the light of its decision in Lon/00AN/LVT/2021/0002, it is not appropriate for the tribunal to order that the costs are divided equally between the four parties and therefore it makes no order in connection with this.

17. The tribunal notes that the Respondent has not commented on the second aspect of the application, whether the service charges owed by the commercial tenant should be paid by the Respondent except in so far as the Respondent says that the Applicant has not made clear the statutory basis for the application.

18. Section 24(9) of the 1987 Act provides as follows:

“9. The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.”

19. S.24(9A) provides as follows:

9A "The tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied:

(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and

(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

20. The tribunal agrees that the Applicant has not made the statutory basis for the order explicit but considers that there is implicit in her application the argument that it is just, convenient and proportionate.
21. The tribunal notes that the Applicant is not legally represented, and that the property is a low value property. It is not appropriate in these circumstances to expect the Applicant to present her application in the manner of an expert lawyer. Nor would it be proportionate for her to engage the services of such a lawyer. If the application is sufficiently clear then the tribunal is able to determine whether it should exercise its discretion and grant the variation.
22. In the particular circumstances of this case the tribunal considers that it is clear what the Applicant wants to achieve and why and that it is for the tribunal to make a determination as to whether to exercise its discretion and find that the variation sought is just, convenient and proportionate.
23. The tribunal considers that it is just and convenient to vary the order in the way it has because the shortfall in contributions from the commercial tenant is making it difficult for the manager to fulfil her obligations to manage the property.
24. It draws on the decision of Deputy Regional Judge Vance in *Unsdorfer v Riverside CREM3 Ltd and others* LON/00BG/2021/0005 to reach its determination. In that case the commercial tenant ceased to trade and the Judge accepted the argument that a useful starting point is to consider what the position would be if there was no manager appointment in place. In those circumstances the landlord would be obliged to meet the shortfall in service charges from its own resources. This was so even though the landlord had no control over the decision of the commercial tenant. The judge determined to vary the order so that the manager was able to collect the outstanding service charges from the landlord.
25. The position is even more compelling in this case as (a) it is not clear what the relationship between the Respondent and the commercial tenant is or has been, although there is some evidence that it was not an arms length relationship and (b) it is within the Respondent's control as to whether or not the commercial premises are relet and service charges raised from the new commercial tenant.

**Name:** Judge H Carr

**Date:** 16<sup>th</sup> August 2022

### **Rights of appeal**

**By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.**

**If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.**

**The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.**

**If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.**

**The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.**

**If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).**