12199

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2016/0437**
Property	:	**23 Canning Road, Croydon, Surrey CR0 6QD**
Applicant	:	**Cloygate Limited**
Representative	:	**Mr J. Benaouaich of Engel Jacobs LLP**
Respondents	:	**Denise Maria Thompson (Basement)** **Mr and Mrs Chappell (Ground floor)** **Ms R A Jones (First floor)** **Andrew George Leach (Second/Third floor)**
Representative	:	**Ms R A Jones in person**
Type of Application	:	**Application under s.27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge W Hansen (chairman)** **Alison Flynn MA MRICS**
Date and venue of Hearing	:	**11 May 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**11 May 2017**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the Respondents are liable to pay £45,631.68 by way of service charges in respect of the proposed external repairs and redecorations to 23 Canning Road, Croydon CRO 6QD ("the Works").

(2) It is likely that the works will be completed in 2017 and that the service charges will therefore be payable on 24 June 2018;

(3) The percentage of the total sum of £45,631.68 which each individual lessee shall be liable to pay will be as set out in paragraph 3 of this Decision;

(4) The Applicant shall not be entitled to be reimbursed any tribunal fees paid;

(5) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Applicant shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.

The Application

1. This is an application by the landlord of premises known as 23 Canning Road, Croydon CRO 6QD ("the Property") for a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of the Respondents' liability to pay and the reasonableness of services charges which it proposes to incur in connection with a reasonably substantial programme of external repairs and redecoration to the Property.

2. The Respondents are the four long lessees of the flats within the Property. At the hearing before us the Applicant was represented by Mr J. Benaouaich, a director of Engel Jacobs LLP, the Applicant's managing agents. Of the four Respondents, only

Ms Jones, the tenant of the first floor flat, appeared at the hearing although there was also a witness statement from Mr Chappell, the tenant of the ground floor flat, to which we have had regard.

Background

3. The subject property is a substantial semi-detached Victorian house constructed on lower ground (basement), ground, first and second floors. It has been converted into 4 self-contained flats. The flats are let out on long leases, in materially the same terms, save that a distinction is made in terms of contributions towards the service charge between the flats on the upper floors and the basement flat. In fact, there is an apparent anomaly in the leases in that the required contributions from each lessee total more than 100%. As to external repairs (i.e. those that fall within Clause 3(1), (3), (4), (5) & (6)), the percentage contributions are stated to be one third, one third, one third and 25% (basement). As to internal repairs to the common parts (Clause 3(2)), the percentage contributions are one half, one half, one half and nothing for the basement. The latter aspect makes sense given the layout of the Property but contributions totalling 150% does not make sense. It was common ground before us and we proceed on the basis that in fact the leases should be construed on the basis that the lessees of Flats 2, 3 and 4 are each liable for one third of the cost of repairs to the internal common parts (Clause 3(2)), but otherwise the total cost of the repairs (Clause 3(1), (3), (4), (5) & (6)) should be divided between the four lessees in equal shares, i.e. 25% each.

4. The Applicant acquired the freehold in 2010. It is common ground that the Property has not been repaired for at least 15 years, possibly longer, except for minor responsive repairs. Mr Chappell has been the tenant since 2005 and says in his statement that to his knowledge no work has been undertaken during his ownership.

5. As a result, in or about January 2015, the managing agents instructed Cubic Building Surveyors to prepare a specification of works for external repairs and redecorations. This they did and the specification is to be found in the bundle at pp.52-59. Three contractors were then invited to tender and the lowest price tender was £33,720+VAT from Rui M & G. No point has been taken by the tenants about the consultation procedures followed by the landlord. The tenants were invited to nominate their own proposed contractors but did not do so. The three tenders received were all very close: see page 88. The Applicant proposes to proceed with the lowest price tender of Rui M & G to which it has added surveyors' fees of £4,046.40

plus a management administration fee of £260.00 bringing the total cost of the proposed Works including VAT to £45,631.68. The service charge under the leases is payable in arrears which explains why the Applicant considered it necessary to make this application when it did.

Determination

6. The tenants, or rather Ms Jones, commissioned an expert's report from Mr Schofield FRICS. It is at pages 20-32 of the bundle. We have carefully considered the terms of that Report. Materially, it says as follows:

   (i) The specification, in terms of its structure and approach, was appropriate;
   (ii) The extent of the proposed works is appropriate, having regard to the terms of the leases;
   (iii) The proposed works are not improvements;
   (iv) The proposed works are reasonable;
   (v) The proposed cost of the works is reasonable.

7. So far so good for the Applicant. However, Mr Schofield goes on to say this:

   > *"Had the property been properly and regularly maintained and decorated, it would not be in the condition that it is now and the cost of carrying out works would be significantly less. [...]. It is practically impossible to assess with any certainty how much the failure to maintain has caused the cost of the works to increase but because no works have been carried out for a considerable length of time, I would have thought that it would be reasonable to conclude that they may have risen by a third".*

8. Ms Jones relied on this report to contend for an equitable set-off, relying on *Continental Property Ventures Inc v. White* [2006] 1 EGLR 85. Whilst there is no difficulty in principle with an equitable set-off in circumstances involving historic neglect by the landlord of its repairing obligations, there must be proper, reasoned evidence to justify a set-off and quantify the amount of any set-off. Ms Jones herself frankly accepted that there must be, to use her words, "concrete" and "quantifiable" evidence to support the alleged set-off. In our view, there is no such evidence before the Tribunal. Mr Schofield's report in this regard is far too speculative and unsubstantiated by any detail to begin to justify any set-off. We note in directions dated 21/2/17 the Tribunal specifically ordered Mr Schofield's attendance to give evidence, no doubt having regard to the rather nebulous nature of Mr Schofield's

written evidence on this issue. Ms Jones chose not to call Mr Schofield, for reasons of economy, and declined our invitation to consider an adjournment to allow him to be called. Accordingly, we must proceed on the basis of the evidence as it stands, and we are not satisfied that there is any or any sufficiently particularised evidence before us to justify any deduction by way of set-off from the proposed service charge total of £45,631.68. There being no other reason advanced as to why we should make any deduction or disallow any part of the sum claimed, we determine that the full sum of £45,631.68 is payable and reasonable.

9. Mr Benaouaich very fairly agreed not to pursue reimbursement of any fees incurred in connection with this application and also agreed that we should make an order under s.20C of the Landlord and Tenant Act 1985 and we therefore do so.

Name: Judge W Hansen **Date:** 11 May 2017