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

Case Reference : CHI/00ML/LSC/2017/0052

Property : 33 Shoreham Road, Brighton BN1 5DQ

Applicant : Martyn Sullivan

Representative :

Respondent : Mr A S Ramdham acting by his Attorney
Mrs M A Mohanaei

Representative : Ellmans Property Management & Lettings

Type of Application : Liability to pay service charges

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 10th November 2017

DETERMINATION

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether an interim service charge for major works is payable.
2. The Applicant is the long leaseholder of 33a Old Shoreham Road, Brighton ("the Flat"). The Respondent is the owner of the freehold interest in 33 Old Shoreham Road, Brighton ("the Property"). The Respondent also owns the other flat at the Property.
3. Directions were initially issued on 20th June 2017 proposing a telephone case management hearing. Further directions were issued on 25th July 2017 which were subsequently amended. Each party has filed paginated and indexed bundles.
4. The Tribunal identified within its directions of 20th June 2017 that the following matters were to be determined:
 - Who is liable for payment of the works specified within an Improvement Notice served on the Respondent?
 - Whether the freeholder has failed to carry out repairs in accordance with the lease incurring costs and additional damage
 - Why the managing agents are continuing to demand payment for works that they have agreed are not the Applicants liability
 - In view of the Respondent's intention to re-tender the contract due to the delays in commencing work should a fresh S. 20 Consultation take place

DETERMINATION

5. The Tribunal has considered both parties bundles in reaching its decision.
6. A copy of the lease was included within the bundle prepared by the Respondent at pages 19-56 inclusive. In accordance with this lease the Applicant is required to contribute 33 and 1/3rd percent of the service charge costs. Clause 5 (D) at page 38 sets out what the Respondent is required to repair and maintain. Pursuant to clause 4 (B) (ii) of the lease to pay an estimated service charge for the next half year with such payments being due on the 25th March and 29th September in each year.
7. The demand being challenged is included at pages 1-5 of the Respondents bundle. This is dated 27th April 2017 and includes "External repair/redec 27/04/2017 £6736.49". It is this element which

the Applicant challenges. Given no works have as yet been undertaken this is an estimated service charge.

8. Firstly the Tribunal determines this is not a valid estimated service charge in accordance with the terms of the lease. Such charge should be claimed as an estimated service charge in accordance with the dates given within the lease. Accordingly, currently none of the sum is payable.
9. Turning to the amounts themselves it is notable that the Respondent was served with an Improvement Notice by Brighton and Hove City Council dated 17th February 2015. Such notice was to be complied with by 1st May 2015. As far as the Tribunal is aware the notice has not been appealed and is valid. The notice lists various deficiencies and hazards. A copy is found at pages 73-82 of the Respondents bundle.
10. The Tribunal determines that the obligation to comply with the notice is the Respondents. Save as set out below all costs in connection with compliance with the same are for the Respondent to settle and should not form part of the service charge.
11. The Tribunal finds that the notice is evidence that the Property was in a state of disrepair and that the Respondent had failed to comply with his covenant to keep the Property in repair. The Tribunal is satisfied that the Respondent is in breach of his covenant to keep the Property in repair.
12. It appears at some point in 2015 a S. 20 Consultation for major works was undertaken. No works were undertaken following this and unfortunately none of the documentation concerning this consultation are included in either parties' bundles. The Respondent appears to be indicating that in their opinion they do not need to consult given the earlier exercise and the fact the works are now urgently required.
13. The Tribunal determines that the earlier consultation is not sufficient. A revised specification has been prepared and sent out for tender. Clearly different works are required and the earlier consultation took place some 2 years previously. If the cost to any one leaseholder will exceed £250 then such works should be consulted on although this does not prevent the Respondent seeking an estimated service charge within the lease.
14. The Applicant indicates that an agreement was reached that certain items would not be charged to him. He relies on a letter dated 12 November 2015 from Ellmans (page 29 of the Applicants bundle). Whilst the letter indicates that Ellmans will recommend certain concessions to their client it does make clear in their penultimate paragraph that they need to take instructions. What seems clear is the Respondent, via his agents, never followed this up and perhaps not unsurprisingly the Applicant thought this was agreed.

15. Looking at the works to be undertaken the tribunal has had regard to the specification of Philip Hall Associates at page 7-18 of the Respondents bundle and the report commissioned by the Applicant from Grummitt Wade at pages 12-26 of the Applicants bundle. Further the Tribunal has considered the documents headed "Analysis of Tenders Received" at page 59 of the Respondents bundle.
16. The Tribunal is satisfied that the Internal works are not recoverable. These are not recoverable under the lease.
17. It is alleged by the Applicant, and not challenged by the Respondent, that in or about 2013, the Respondent undertook substantial building works to create a loft conversion. The Applicant contends that it is the poor quality of such works which have led to the necessity of the current major works.
18. On the face of the specification certain items do fall within the Landlords covenant to repair and for which he would, in normal circumstances, be entitled to recover a proportion of the cost from the Applicant. To be clear this does not include works to windows and doors which are expressly demised to the individual flats within the lease and so are not recoverable costs.
19. It is clear that even prior to the service of the Improvement Notice the Property must have been in a state of disrepair and the Tribunal so finds. Since 2015 the Respondent appears to have done nothing meaningful to repair the Property and the Tribunal finds the costs will have risen.
20. This Tribunal determines that none of the costs of the repair works to be undertaken as a consequence of the Improvement Notice are costs which may be included within the service charge.
21. The Tribunal determines this since it finds that the Property was and remains in disrepair as a result of the Respondents loft conversion works. Whereas certain of the works might in normal circumstances be a service charge item the Tribunal finds in this instance given the evidence such sums should not be recovered from the Applicant as a result of the Respondents breach of the leasehold covenants. The Tribunal finds the costs have been incurred as a result of the Respondents actions in undertaking poor quality works to his retained flat and then subsequently not properly or at all dealing with the same.
22. The Tribunal finds that any future estimated service charge should not contain any element of the costs of the major works required to comply with the Improvement Notice.
23. Finally the Tribunal notes that the Applicant seeks an order under Section 20C preventing the Respondent from recovering any of the costs of this application as a service charge item. Given the determination made it is just and equitable for the Tribunal to make an

order pursuant to Section 20C preventing the Respondent from recovering any costs as a service charge item.

Judge D. R. Whitney