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

Case Reference : LON/00BJ/LVL/2013/0012
LON/00BJ/LAM/2013/0014

Property : 150 Totterdown Street, London
Sw17 8TD
220 Franciscan Road, London
Sw178HF

Applicants : David O'Connor and Karen Challis
O'Connor

Representative : In person

Respondents : (1) Ma Teresa Umandal
Malabanan and Leonor Balaaldia
Tatlonghari
(Lessees of 220 Franciscan Road);
and
(2) Ma Teresa Umandal
Malabanan and David O'Connor
(Freeholders)

Representative : In person

Types of Application : Variation of the leases and the
appointment of a manager

Tribunal Members : Judge John Hewitt Chairman
Mr Trevor Sennett MA FCIEH

**Date and venue of
Determination** : Tuesday 29 October 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 31 October 2013

DECISION

Decisions of the Tribunal

1. The Tribunal determines that an order shall be made and is hereby made that:
 - 1.1 The lease of 150 Totterdown Street, registered with Title Number TGL12708 shall be varied as set out in subparagraphs 14.1 to 14.4 below;
 - 1.2 The lease of 220 Franciscan Road, registered with Title Number TGL 295759 shall be varied as set out in subparagraphs 14.1 to 14.3 below; and
 - 1.3 The Applicants shall by **5pm Friday 29 November 2013** make applications to Land Registry to enter on the register of the following Title Numbers:

SGL281171;
TGL12708; and
TGL295759

a notice recording the making of the order set out in paragraphs 1.1 and 1.2 above.
 - 1.4 The Applicants have consent to withdraw their application pursuant to section 24 Landlord and Tenant Act 1987.
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the trial bundle provided to us for use at our determination.

Property, titles and parties

3. The Property comprises two self-contained flats. The freehold interest is registered at Land Registry with Title Number SGL281171 [86]. On 10 September 2010 Ma Teresa Umandal Malabanan and David O'Connor were registered as proprietors. The Charges Register records that the title is subject to two leases.
4. The first is a lease dated 28 September 1988 of the first floor flat (and yard) of what is known as 150 Totterdown Street [28]. That lease is registered at Land Registry with Title Number TGL12708 [83]. On 3 November 2004 David O'Connor and Karen Challis O'Connor were registered as proprietors. The lease granted a term of 99 years from 24 June 1988.
5. The second is a lease dated 26 January 2007 of the ground floor flat (and garden) of what is known as 220 Franciscan Road [57]. That lease is registered at Land Registry with Title Number TGL295759 [86b]. On 14 August 2007 Ma Teresa Umandal Malabanan and Leonor Balaaldia

Tatlonghari were registered as proprietors. The lease granted a term of 99 years from 24 June 1988.

6. The two leases are broadly in common form although different in style and layout. By clause 5(3) the landlord is obliged to insure the building against the risks specified and by clause 4(6) the lessee is obliged to contribute one-half of the cost of that insurance.

The lease of 150 Totterdown Street contains a clause in the following terms [38]:

“4(7) At all times during the said term to pay and contribute one half of the Tenant of the other owner’s costs and expense of making repairing maintaining decorating supporting rebuilding and cleansing all ways passages pathways sewers drains pipes watercourses water pipes cisterns and the drains and the foundations of the building of which the Demised Premises form part and one half of the said expenses relating to the gutters party walls party structures fences easements and appurtenances belonging to or used or capable of being used by the Tenant in common with the Lessor”

The lease of 220 Franciscan Road contains a clause 4(7) [68] in broadly similar terms save that the word ‘roof’ has been substituted for the word ‘foundations’ and it appears that the words ‘part and’ may have been accidentally omitted in the sixth line.

7. Both leases contain a proviso in clause 6.2 in the following terms:

“6.2 In case at anytime during this demise any dispute shall arise between the Tenant and any other of the tenants of the Lessor relating to the building to them respectively demised or the party or other walls fences ways passageways sewers drains roofs pipes watercourses and other easements rights or appurtenances whatsoever relating or belonging thereto or any repairs thereto or any nuisance or annoyance arising therefrom then in every such case such dispute shall be referred to the surveyor for the time being of the Lessor whose determination shall be final and binding on the Tenant and”

Procedural background

8. On 10 May 2013 the Applicants made an application pursuant to section 24 Landlord and Tenant Act 1987 (the Act) seeking the appointment of a manager.
9. On 8 July 2013 the Applicants made an application pursuant to section 35 of the Act seeking a variation of the two leases.
10. A preliminary hearing took place on 14 August 2013 which was attended by all of the parties. Jurisdiction and other matters were considered and further directions were issued [16]. It was intimated by

the First Respondents as lessees of 220 Franciscan Road and Ma Teresa Umandal Malabanan as one of the joint proprietors of the freehold interest that there was no objection in principle to the variation of the leases sought (subject to agreement over the final wording) and in those circumstances it was intimated by the Applicants as lessees of 150 Totterdown Street that if the lease variations were agreed, they would consider the withdrawal of their application to appoint a manager.

11. In agreement with the parties the Tribunal gave notice that it was proposed to determine the applications on the papers and without an oral hearing pursuant to Rule 31. The parties were reminded that they were entitled to object to that course and were informed that if they requested an oral hearing they should do so by 13 September 2013. The Tribunal has not received any objection to the proposed course and has not received a request for an oral hearing.
12. In compliance with the directions the Tribunal has received a trial bundle from the Applicants which contains the documents listed on the cover sheet, all of which are material to the matters before the Tribunal.
13. The Tribunal met on 29 October 2013 to consider the issues and to make its determinations.

The variation of the leases

14. From the materials before us we are satisfied that the parties, whether in their capacities as lessees under the two leases or in the capacities as joint proprietors of the freehold interest, are agreed that the leases should be varied as follows:

14.1 Delete the existing subclause 6.2;

14.2 Insert a new subclause 6.2 in the following terms:

“6.2 Any dispute arising under or in connection with the lease, which cannot be resolved through negotiation, may be referred to the final and binding determination of an independent surveyor. The independent surveyor may be appointed by agreement between the leaseholders or, in default of agreement, appointed by the President of RICS at the request of either leaseholder.”

14.3 Insert a new subclause 6.2(a) in the following terms:

“6.2(a) The independent surveyor appointed under clause 6.2 must allow the parties to make representations, and shall determine whether works need to be carried out on the property. If the independent surveyor determines that works must be carried out on the property, he/she shall apportion responsibility for the works in terms of who should pay for what proportion, including the surveyor’s fees for any supervision of works. Unless the parties agree

otherwise in writing, the independent surveyor shall arrange for the proper supervision and implementation of such works, and ensure the works are appropriately certified when completed.”

Note:

- 14.4 In the lease of 150 Totterdown Street the figure ‘6’ enumerating clause 6 has been inserted in brackets. That appears to be a typographical error. For the sake of clarity and consistency that lease should be varied so as to delete those brackets.
15. Evidently a recent dispute between the Applicants and the First Respondents concerning repairs to the building (or part of it) led them to focus on the original wording of clause 6.2 and the practical application of it given that the freehold is now jointly owned by one of the joint lessees of 150 Totterdown Street and one of the joint lessees of 220 Franciscan Road.
16. We are satisfied that the ensuing practical issue relating to the repair and maintenance of the building and the flats in question falls squarely within the provisions of section 35(2) of the Act. We are also satisfied that this is an appropriate case in which we should exercise our discretion to vary the leases in the agreed terms and that no person will suffer prejudice in consequence of the variation of the leases.
17. We therefore determine that the leases should be varied as set out in paragraph 14 above and that in both cases such variation shall take effect as from the date of this Decision.
18. No party has made any request or application for compensation. We thus determine that we should not order any person to pay compensation to any other person pursuant to section 38(10) of the Act.
19. We have required the Applicants to make applications to Land Registry seeking the entry of notices on the relevant titles drawing attention to the orders made in paragraphs 1.1 and 1.2 above so that in the event of any future dealings with the freehold title or either of the leasehold titles a person undertaking a title search will be on notice of the fact of those orders.

Appointment of a manager

20. In the light of the agreement reached on the variation of the leases as set out above the Applicants wish to withdraw their application pursuant to section 24 of the Act. In a letter to the First Respondents dated 3 September 2013 [24] the Applicants gave notice of their wish to withdraw the application. In their reply dated 11 September 2013 [25] the First Respondents (and we infer the first-named Second Respondent, as joint proprietor of the freehold interest) did not raise any objection to such withdrawal.

21. We are pleased to note that the parties have been able to resolve the issues between them and that in consequence the Applicants no longer seek the appointment of a manager.
22. In these circumstances the Tribunal is satisfied that it is appropriate to grant its consent to the withdrawal of the application pursuant to Rule 22.

Judge John Hewitt
31 October 2013