



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

Case reference : **LON/00AH/LSC/2017/0431**

Property : **124 Oval Road, Croydon CR0 6BL**

Applicant : **Ms Iram Mir (joint landlord)**

Representative : **In person**

Respondents : **Mr Jason Middleton and Mrs Elisa Middleton**

Representative : **In person**

Type of application : **Liability to pay service charges and/or administrative charges**

Tribunal members : **Judge N Hawkes
Ms S Coughlin MCIEH**

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

Date of paper determination : **5 March 2018**

DECISION

Decisions of the Tribunal

- (1) The respondents are not required to contribute towards the payment of damages in the sum of £990.50 to a third party.
- (2) The Tribunal finds, on the balance of probabilities, that the work in connection with the pathway was not carried out to the area coloured brown on the plan to the respondents' lease. Accordingly, the respondents are not liable to contribute to the relevant costs.
- (3) The respondents are required to make a 45% contribution to the cost of work to the guttering.
- (4) The respondents are not required to contribute to the cost of repairs to the roof of the property

The application

1. By application dated 6 November 2017, the applicant, in her capacity as joint landlord, issued an application pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") concerning the payability of certain service charges.
2. The applicant and the respondents are the joint landlords of 124 Oval Road, Croydon CR0 6BL ("the property"). The Tribunal has been informed that the property is a mid-terraced, three storey house, built in around 1901, which was converted into two flats in the early 1980s. The applicant is the long leaseholder of the upper flat and the respondents are the long leaseholders of the lower flat. The two flats have their own separate entrances.
3. An oral case management hearing took place on 5 December 2017 which was attended by the applicant and by one of the respondents. At this case management hearing, both parties indicated that they would be content for a paper determination to be made and the following issues were identified:
 - (i) Whether by reason of the wording of the leases of the two flats in the building the respondent tenants are liable to contribute to the payment of damages in the sum of £990.50 to the owner of an adjacent property.
 - (ii) Whether the respondent tenants are liable to contribute to the costs already incurred by the applicant in repairing a broken pathway and

stonework on sidewalls leading to the applicant's flat, again by reason of the wording of the leases of the flats in the property.

- (iii) Whether the respondent tenants are liable to contribute to the cost (not yet incurred) of replacing the existing gutters, fascia and soffits at the property by reason of the wording in the leases and, if so, whether the sum of £2,100 is a reasonable sum to be demanded for this work.
4. Following the case management hearing, the directions were varied so as to require the Tribunal to additionally determine whether or not the respondent tenants are liable to contribute to the cost of work which has been carried out to the roof in the sum of £500.

The Tribunal's determinations

The damages which have been paid to a third party

5. The sums which the respondents are required to pay by way of service charge are to be determined by construing the terms of the respondents' lease.
6. The Tribunal is not satisfied that any clause of the respondents' lease requires the respondents to contribute to the payment of damages to a third party. The clauses relied upon by the applicant make no reference to the payment of damages to a third party (as opposed to the costs of repairing, maintaining etc. certain areas).
7. As regards clause 3(ix) of the respondents' lease, the Tribunal notes that the sum in issue in the present proceedings was not incurred by the lessor in or in contemplation of any proceedings under sections 146 and 147 of the Law of Property Act 1925.

The costs incurred in connection with repairing a broken pathway, blown render and stonework on the sidewalls leading to the upper flat.

8. The applicant has incurred costs in the sum of £490 in respect of these matters and seeks a contribution in the sum of £245 from the respondents.
9. In support of the contention that the respondents are liable to contribute towards the relevant costs, the applicant relies upon clause 1(a) of the respondents' lease. This provides that the lessee has the benefit of "a right of way on foot over the front forecourt or pathway

delineated for the purposes aforesaid and coloured brown on the said plan.”

10. The copy of the lease plan which has been provided to the Tribunal is black and white and the Tribunal has assumed that the shaded rectangle between the words “up to first floor flat” and “front garden 124 area” is the area which is coloured brown.
11. In conjunction with clause 1(a), applicant relies upon clause 3(iv) of the respondents’ lease which requires the respondents to contribute towards the costs of certain work to specified items “belonging to or used or capable of being used by the Lessee in common with the Lessor or the tenants or occupiers of the First Floor Flat...”
12. Having carefully considered the description of the work and the colour photographs and documents with which it has been provided, the Tribunal is not satisfied on the balance of probabilities that the work in question was carried out to the area which is coloured brown on the plan to the respondents’ lease. The Tribunal finds that it is likely on the balance of probabilities that the work which gave rise to the disputed costs was instead carried out to the area marked “Up to first floor flat”. Accordingly, the Tribunal determines that the respondents are not liable to contribute to the relevant costs.

Costs (not yet incurred) of replacing the existing gutters, fascia and soffits.

13. By clause 1(b) of the respondents’ lease, the lessee has the right to the free passage and running of water through and along all gutters which are “in under or upon the building” “from time to time contributing a due proportion of the expenses (if any) necessarily incurred of keeping and maintaining all such services as are used jointly with others in a proper state of repair.”
14. The Tribunal is satisfied that the gutters at the property are used jointly by the parties and that the respondents are therefore required to contribute a due proportion of the expenses of keeping and maintaining them.
15. The Tribunal considers the lowest quotation in the sum of £1,800 which has been obtained by the applicant for the proposed work is a reasonable range. The respondents’ tenant’s estimate is for a more limited amount of work and it is unclear whether the respondents’ tenant has the appropriate expertise to carry out such work.
16. The Tribunal notes that if, by agreement, the relevant work can be combined with other work carried out by the applicant in her capacity

as leaseholder there may be a potential reduction in the costs payable by both parties.

17. The Tribunal also notes that no issues have been raised concerning the statutory consultation procedure pursuant to section 20 of the Landlord and Tenant Act 1985 and/or regarding the content of any service charge demands.
18. On the limited information available, the Tribunal finds that the applicant's proposed 55%/45% split based on floor area to be reasonable. Accordingly, the Tribunal determines that the respondents are required to make a 45% contribution towards the relevant costs.

The proposed contribution to work to the roof

19. Each lease must be construed as a whole. Clause 1 of the applicant's lease demises the first and upper floors of the building to the lessee and does not exclude the roof from the demise. It is noted that, as regards the internal and external walls, these walls cannot extend beyond roof level. Clause 1(d) of both leases refers to the roof "of the first floor flat".
20. By clause 3(iv) of her lease, the applicant required (emphasis added) "From time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain drain amend and keep the demised premises **including the roof of the Building...**"
21. Clause 3(iv) of the respondents' lease places obligations on the respondents in respect of the foundations but not in respect of the roof. The respondents are not expressly required by the terms of their lease to contribute towards the cost of work to the roof.
22. In all the circumstances, the Tribunal is not satisfied that on a true construction of the respondents' lease the respondents are required to contribute to the cost of repairs to the roof of the property.

Name: Judge Hawkes

Date: 5 March 2018

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).