FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CHI/43UG/LSC/2022/0068**
Property	:	**111-113 Guildford Road, Chertsey, Surrey.**
Applicant	:	**Tracey Roberts**
Representative	:	**None**
Respondent	:	**Jonglore Properties Limited**
Representative	:	**Paul Jeffries LLP**
Type of application	:	**Determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985**
Tribunal member(s)	:	**Judge David Clarke**
Hearing Venue:	:	**Determination on the papers**
Date of decision	:	**9 January 2023**

DETERMINATION AND STATEMENT OF REASONS

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Determination

The Tribunal determines that the service charge payable in respect of the repair and decorating works undertaken to the Property in October 2018 was reasonably incurred.

Statement of Reasons

The Application

1. This application was made on 9 June 2022 by the Applicant, Tracey Roberts, under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The Application was made solely in relation to the reasonableness of the charges made in respect of external repair and decorating works to the property known as 111-113 Guildford Road Chertsey, Surrey KT16 9AS ("the Property") which were undertaken in October 2018. At the time, the Applicant was the leaseholder of one of the two flats in the Property. She has subsequently sold the flat in question.

2. Following the Application, and prior to this determination, no less than eight sets of Directions were made in relation to this case between 27 July 2022 and 22 December 2022. The Tribunal does not consider it necessary to recount the details of these Directions in full, but a summary will suffice. After the usual Directions relating to the submission of the cases by the parties and providing for a determination on the papers (neither party requested an oral hearing), there was a series of case management applications relating to requests for amendment, for the inclusion of photographs (which was refused) and relating to the bundle of papers required to be prepared by the Applicant. On 7 December, Judge Tildesley OBE ruled that the bundle of papers provided was sufficient for a determination to be made on the papers. A subsequent application by the Respondent to strike out the Application was dismissed on 19 December 2022. The final Direction on 22 December decided that the application should proceed to determination on the papers received including the Respondents three witness statement and exhibits, which were not included in the bundle prepared by the Applicant.

The Property and the Lease

3. The Property is a listed building known as Market House consisting of a commercial unit on the ground floor and two long leasehold residential units above. The Applicant was the leaseholder of the top floor Flat 2, with the postal address of 111b Guildford Street Chertsey, Surrey. The Flat was demised on 30 April 1991 for 99 years from 24 June 1990 at a rent of £25 per annum, increasing during the term. However, the Lease was extended on 12 June 2015 to become a lease of 189 years at a peppercorn rent.

4. The only term of the Lease that requires mention is the Tenant's covenant in clause 3.2 to pay the service charge reserved; and the Fourth Schedule which includes within its remit the cost of maintaining repairing amending altering rebuilding renewing and reinstating the Retained parts of the Property, and where appropriate washing down painting and decoration to such standard as the Landlord may from time to time consider

adequate. The service charge to be paid by the Applicant is 25% of the total cost of services, with a further 25% payable by the other leaseholder and 50% by the commercial unit.

The Relevant Facts

5. This summary of the factual background to this application is taken largely from the witness statements filed by Mr. Jeffrey Paul Rosen on behalf of the Respondent. Mr. Rosen is a chartered surveyor and the managing agent for the Respondent. Except where indicated, the facts are not disputed by the Applicant in the papers before the Tribunal.

6. In 2016, the Respondent considered that repair and redecoration of the property was required. A detailed specification of works, attached to the first witness statement of Mr. Rosen, was prepared and the leaseholders advised of the planned works. A formal Notice of Intention to carry out works was sent by post to the Applicant on 13 February 2017. This notice was pursuant to section 20 of the 1985 Act and complied with the statutory requirements. It noted that the reason for the works was that the building was in a poor condition and work was required to the external joinery to the window frames, and to the brickwork, rendering and the roof surfaces. Comments and observations were invited, and the Applicant was also invited to propose the details of a contractor from whom the Respondent as freeholder should try to obtain an estimate for the works proposed. No comments were received, and no contractor had been proposed, when the notice period ended on 17 March 2017.

7. As the property is a Grade II listed building within a conservation area, it was necessary to obtain approval of the local council to the works proposed. Three contractors then provided costs estimates based on the specification of works, ranging from £16,975 to £21,811. The selected contractor, Abacus Property Solutions ("Abacus"), estimated £17,958 for the necessary works. They were chosen since the firm that offered the lowest price would require a long lead in period and also because Abacus appeared to have a more professional approach and fewer contingency figures.

8. On 18 August 2017, a Notice of Intention to undertake the works was sent to the Applicant in accordance with section 20 of the 1985 Act setting out the details of estimates received and the intention to place a contract with Abacus. The Applicant did not respond to the invitation to make observations by 23 September 2017, though she did indicate that she did not have the funds to pay for her share of the works. The Applicant was asked for her share of the costs (£4,489.50) as a payment in advance on 5 December 2017. No payment was received.

9. Abacus were instructed to commence the works on 20 August 2018 and the works were completed by November 2018. The final invoice showed a slight reduction from the estimated figure and the Applicant was then asked for her 25% share of the total, namely £4,381.55. Once again, payment was not forthcoming. In response to pressure to pay the Applicant did raise issues about the works that had been undertaken. Nevertheless, payments were made on account and the final balance due from the Applicant was paid immediately after the Applicant sold her flat on 22 March 2022.

10. The Applicant does not, in the documents before the Tribunal, challenge this factual account except for comments about the letters received. After being told orally by Mr. Rosen that external decorating works were proposed, she states that she later received a letter saying that the external decorations were going ahead. She indicates that she does not remember receiving a formal notice of intent. The other residential leaseholder sent a text to the Applicant exhibited to her statement of case saying that she was unsure about communications received as she was 'not around at the time' but questioned whether she had ever received a 'proper' letter. It is not clear from the Applicant's statement of case whether the letter she admits to receiving was the letter containing the Notice of Intention to carry out works posted to the Applicant on 13 February 2017 of whether it was the Notice of Intention to undertake the works was sent to the Applicant setting out the details of estimates received and the intention to place a contract with Abacus sent on 18 August 2018.

The Applicant's case

11. In her application, the Applicant states that the question that she wishes the Tribunal to decide is the "reasonableness of charges (if indeed necessary) as £17,956 seems excessive'. In other words, she questions whether the amount of the service charge for the works undertaken in October 2018 were reasonably incurred within section 19(1)(a) of the 1985 Act.

12. The Applicant does not, either in the application, or in her statement of case, raise the issue of whether the works were undertaken to a reasonable standard within section 19(1)(b) of the 1985 Act. She does mention that shortly after the work had been done, she had difficulty in opening her bedroom windows as paint had stuck together, and that the tenant of the other flat had the same problem, but there is no suggestion that that was a long-term issue once the windows had been opened. There is a witness statement by her son, Leo Roberts, confirming that the bedroom sash windows were stuck as paint had not dried properly. He says that 'the woodwork was old and had just been painted over' and in his opinion 'not only was the work of poor quality but wasn't all that necessary in the first place'. But that is all that is said, and the Applicant does not in her statement of case refer to her son's witness statement or otherwise adopt his argument. There is moreover no other evidence that the work was unnecessary or not of a reasonable standard; nor has the Respondent been put on notice that the standard of the work might be an issue. The Tribunal therefore considers that the only case put forward by the Applicant is that the costs within the service charge for the works of repair and maintenance in 2018 are excessive and nor reasonably incurred within section 19(1)(a) of the 1985 Act.

13. At the heart of the Applicant's case are the independent quotes that she has obtained from other companies that are exhibited to her statement of case. The first is dated 1 March 2022 and is from a firm called Decorwise. This sets out detailed work with a total with VAT of £6,618. Secondly, there is a poor, incomplete and undated photocopy of what may be an email from a person called Rocco Falzon which detailed works amounting to £8,505.77 (but this did not include £400 for the pavement licence). Finally, there was an even poorer copy of an email from a company or individual whose name cannot be identified from the copy that is stated to be an 'initial estimate, subject to inspection' for erecting scaffolding at the front only and for 'decorating' amounting to £5,220 including

VAT. Once again there is no mention of the cost of the necessary pavement licence and no suggestion that there might be work other than decorating.

14. There is no further evidence put forward by the Applicant. The estimates she has obtained are left to speak for themselves.

15. The Applicant has chosen not to file a Reply to the case set out by the Respondent even though the first set of Directions case given on 27 July 2022 provided for a concise reply to the Respondent's case and the deadline for such a reply was extended in the Directions given on 23 September 2022.

The Respondent's case

16. The Respondent's case is contained in two witness statements of Mr. Rosen, supported by a witness statement of Mr. Jeremy Harold Manuel, a solicitor who acts for the Respondent. Mr. Rosen, after noting the poor quality of the documents submitted by the Applicant, making it difficult to properly comment, submits that there is insufficient evidence to substantiate the case put forward by the Applicant. In particular, he says:

(1) There is no evidence that the contractors put forward by the Applicant provided quotations for the entirety of the works detailed in the specification that was prepared in 2017.
(2) There is no evidence that those contractors were aware that the Property is in a conservation area and is Grade II listed.
(3) There is no evidence that those contractors were aware of the difficulty of obtaining access to the rear of the Property for scaffolding purposes.
(4) Neither the leaseholder of the other flat, nor the commercial tenant made objections to the works proposed and undertaken and paid the service charge without delay.

17. Mr. Rosen further notes that works to the bedroom window frames in question was limited because the Applicant refused Abacus access to the interior of her flat to undertake remedial repairs to the window frames.

18. Finally, he stresses that neither the leaseholder of the other flat nor the commercial tenant raised objections to the work and paid the amount due without delay. He does point out, with confirmation by Mr. Manuel, that the Respondent covered the Applicant's share of the costs of the works, refrained from legal action to recover what was due from the Applicant and, though they did not have to, they accepted payments on account and waited for the balance due when the flat was sold.

Determination

19. The Tribunal determines that the Applicant has failed to substantiate her claim that the costs of the repair work in October 2018 to the Property was excessive.

20. The Tribunal considers it cannot give any evidential weight at all to one of the quotations submitted by the Applicant. This is a 'initial estimate', is for 'decoration' only and the person or company submitting it is unknown. The second quotation, which is from a Mr. Rocco Falzon, is more detailed but is clearly limited to decoration only and

does not include any repairs; moreover, it does not disclose Mr. Falzon's address or details of his business. The quotation from Decorwise is more professional and lists the work to be done in some detail. However, on close examination, this quotation is for decorating and does not include any repair work and is stated to be confined to the front elevation of the Property.

21. The Respondent says that the quotations cannot be relied upon to show that the costs of Abacus were excessive since there is no evidence that Decorwise, or indeed the other two persons who submitted quotations, provided for the cost of the entirety of the works undertaken in 2018. An examination of the specification shows that minor repairs to the brickwork and coping stones was listed. The quotation submitted by Abacus specifically provided for timber repairs, repointing of brickwork, replacing any spalled brickwork and undertaking epoxy cill repair, and removing and refixing pigeon spikes. Moreover, Abacus set out the costs of scaffolding the rear of the Property whereas the Decorwise quotation is clearly limited to the front elevation. For these reasons alone, it is not possible to conclude that the works undertaken in 2018 were excessive in terms of costs incurred.

22. The Tribunal comments that the contractors inspecting the building in early 2018 would have quoted for the work in the light not only of the specification but also in the light of the condition of the Property that they could see at that time – which is said to have been poor. Decorwise not only did not have the benefit of the specification on which to prepare their quotation but also would have inspected a property that had been repaired and decorated only three and a half years previously.

23. The Applicant was given the opportunity to put forward the name of another potential contractor in 2017 and could have made comments and observations before the works were commenced but chose not to engage with the process at that time. She is perfectly entitled to challenge the service charge four years later, and after she has paid, but she has not provided the evidence that could demonstrate that the works were not reasonably incurred.

24. The Tribunal therefore determines that the service charge payable in respect of the repair and decorating works undertaken to the Property in October 2018 were reasonably incurred.

Right of Appeal

25. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case (RPSouthern@justice.gov.uk). The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

26. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then

decide whether to extend time or not to allow the application for permission to appeal to proceed.

26. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the party who is making the application for permission to appeal is seeking.

11 January 2023