



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

Case Reference : CHI/00ML/LSC/2019/0076

Property : Flat 11, Shawcross House, 235-237
Preston Road, Brighton BN1 6SW

Applicant : Andrew Stoner

Representative : Geoffrey Stoner

Respondent : Orchidbase Limited

Representative : Property Fusion Limited

Type of Application : Determination of service charges

Tribunal Member(s) : Judge Cohen

Date and venue of hearing: Paper determination

Date of Decision : 2nd December 2019

DECISION

The Application

- 1 The Applicant is the registered owner of a long leasehold interest in Flat 11, Shawcross House, 235-237 Preston Road, Brighton BN1 6SW. The Respondent is the lessor.
- 2 The Respondent proposes to redecorate the internal surfaces of the windows and entrance doors to the flats in Shawcross House and to charge to the Applicant by way of service charge a proportion of the cost for so doing. Flat 11 is one of the 31 flats that comprise Shawcross House. However, the Applicant disputes the Respondent's right to charge a proportion of that cost to the Applicant. On 26 July 2019, the Applicant applied to this Tribunal for a ruling under section 27A of the Landlord and Tenant Act 1985 (the **Act**) as to whether that service charge is payable. The Applicant also seeks orders limiting recovery of the Respondent's costs in the proceedings under section 20C of the Act and/or paragraph 5 A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
- 3 The Applicant says that on the true meaning of its lease, the internal surfaces of the windows and the entrance door to Flat 11 are for the Applicant and not for the Respondent to redecorate. The Respondent says that on the true meaning of the lease the relevant works are its responsibility as the lessor.
- 4 A note in the registered title to the lease states that the lease is affected by a deed of variation increasing the term of the lease, which itself was dated 12 March 1984. A copy of the deed of variation has not been produced to the Tribunal which has therefore proceeded on the basis that the only change made by the deed of variation was to the term of the lease and that the covenants in the original lease remain unchanged.

The Lease

- 5 The lease of Flat 11 is dated 12 March 1984. It contains the following provisions:

Recitals

(2) The Lessor is the owner of the freehold property consisting of 31 flats in several buildings Numbers 1 to 31 inclusive "Shawcross House", 235-237 Preston Road, Brighton East Sussex, which together with the co-parking spaces and the grounds thereof is hereinafter called "the Block"

(3) In this Lease the expression "the Flat" means ALL THAT Flat 11 and being on the first floor of the Block

(5) The Lessee's Proportion referred to in Clauses 3(B) and 4(B)(i) herof shall be 3.5 per cent

Clause 4

The Lessee hereby covenants with the Lessor and with the owners and lessees of the other Flats ... comprised in the Block that the Lessee will at all times hereafter:-

(A)(i) Remedy all defects and keep the interior of the Flat in good and substantial repair and condition ...

(A)(ii) without prejudice to the generality of Clause 4(a)(i) above the interior of the Flat includes:

(a) all walls enclosing the Flat (but in the case of any external wall of the Block only the interior face of such wall and in the case of any dividing wall between the Flat and any other Flat or Flats in the Block only one half of such wall severed vertically)

(b) the glass in the windows but excluding all parts of the windows under the window sills and excludes the door to the balcony (if there be one) and excluding the front door of the Flat

....

(A)(iii) in the year 1990 and in every subsequent 7 years and in the last 3 months of this demise (howsoever determined) to paint all the insides of the Flat usually or properly to be painted such painting to be done with two coats at least a good oil paint in colours approved by the Lessor and in a workman like manner and in such times to paper grain varnish cleanse and decorate such portions of the interior of the Flat as are wilfully so treated.

(B)(i) pay and contribute in manner hereinafter provided the Lessees Proportion as defined in Recital (5) hereof of all monies expended by the Lessor in complying with its covenants in relation to the Block as set forth in Clauses 6(B) and (D) hereof.

Clause 6

The Lessor hereby covenants with the Lessee as follows:-

(D) That (subject to the conditions and payment of the Lessee's Proportion as hereinbefore provided) the Lessor will:-

(D)(i) Remedy all defects and keeping good and substantial repair and condition throughout the term hereby granted the parts of the Block not comprised of the Flat or any of the Flats ... in the Block and not the subject of the Lessee's covenant in Clause 4(A) hereof or any similar Lessee's covenant in any lease of any other Flat ... in the Block including without prejudice to the generality of the forgoing:-

...

(D)(i)(b) The main structure of the Block (including the foundations external walls and balconies) excluding the glass in the windows but including parts of the windows and the window sills of the balcony doors (if any) and the front doors of the Flats.

(D)(i)(c) the passages staircases fire escapes (if any) landings entrances and any other parts of the Block enjoyed or used by the Lessee in common with other lessees or occupiers of the Block.

(D)(ii)(a) paint varnish oil or distemper all wood and iron work of the exterior of the Block and all parts of the entrance halls passages stairs landings and any other parts thereof (not comprising any of the Flats in car parking spaces in the Block) which are usually painted varnished oiled or distempered with two coats of good paint varnish oil or distemper as often as the Lessor considers it necessary so to do and to re-render or plaster any walls which are usually plastered or rendered any mark out the car parking spaces and to resurface the same as often as the Lessor considers it necessary so to do.

(D)(ii)(b) without prejudice to the terms of clause 60(ii)(a) above the “exterior of the Block” include the exterior of all the moveable and opening parts of the windows and of the balcony doors (if any) and of the front doors of all the Flats and the balconies.

The Facts

- 6 On 13 November 2018 the Respondent’s agent wrote to the Applicant stating first that the flat doors would be painted inside and out, unless a leaseholder requested that the internal face of the door not be painted. Secondly, the agent said that the Respondent was responsible for painting and maintaining all movable parts of the window. However, if any windows did not require repair or painting such works would not be carried out nor charged for. On 20 November 2018 the Applicant’s father wrote on behalf of the Applicant to the agent disputing that interpretation of the lease and that the Applicant is responsible for painting all inside surfaces of windows and the front door, and the Respondent for repairs only.
- 7 On 27 March 2019, the Applicant’s father wrote to the Respondent’s agent enclosing a cheque for £1735.38 which was paid under protest.
- 8 In a letter dated 17 June 2019, the Applicant’s father set out detailed arguments as to how the wording of the lease dealing with repairs to the windows might be explained in favour of the Applicant. He added that Clause 4(A)(iii) stated that the internal painting of the flats is the leaseholders’ responsibility and if this was intended to exclude the window and entrance doors it would say so.

9 In letters from solicitors for the Respondent dated 2 May 2019 and 17 September 2019 reliance was placed on Clauses 6(D)(ii)(a) and (b) as to the costs of decorating the exterior of the Block which includes the front doors of all the Flats and also Clauses 4(A)(i) and 6(D)(i)(b) which mirror each other. The Tribunal's understanding is that the disputed works have not yet been performed.

The true meaning of the lease

10 The Applicant contends that the repairing and redecorating of the windows and front doors are for the lessees and not the lessor to undertake at the lessees' cost. The Respondent contends that its servicing obligations and service charge rights are as reflected in the works done and the charges raised.

11 The Tribunal has considered the wording of the lease seeking to interpret that wording in accordance with what meaning would be conveyed to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time the lease was granted. In the Tribunal's judgment, the correct interpretation of the lease is as follows:

11.1 The covenant by the lessee to keep the interior of the Flat in good and substantial repair and condition applies to the glass in the windows but does not apply either to all parts of the windows and the window sills or to the front door of the flat

11.2 The covenant by the lessor to keep in good and substantial repair and condition the parts of the Block not comprised in any flat applies to parts of the windows and the window sills and the front doors of the flats but does not apply to the glass in the windows.

11.3 The items in dispute and the responsibility for each is shown in the following table

Item	Lessee to repair	Lessor to repair
Glass in the windows	YES	No

Parts of the windows	No	YES
Window sills	No	YES
Front door of flat	No	YES

11.4 The Tribunal considered whether in relation to any of these items but especially the front door of the Flat , a distinction could be drawn between the sides of the door internal to the flat and facing externally. That interpretation would have met the concern that a lessee might wish to decorate the internal face of the front door rather than have this item in the lessor's control. However, the Tribunal has decided that this distinction cannot be drawn for three reasons. First, where the Lease wishes to distinguish an external wall and an interior face it does so (see clause 4 (A)(ii)(a).Secondly, the lease provides for the lessor to perform repairs to the parts of the windows and window sills within the flat. Access may be required for these works and so the decoration of the door is not the only cause for intrusion upon the lessee. Thirdly, it does not follow that a lessor would seek to intrude as indicated in the correspondence referred to at paragraph 6 above.

12 The Tribunal considered also whether the general words of Clause 4 (A) (i) or Clause 6(D)(i) overrode the specific wording of Clause 4(A)(ii)(b) and Clause 6(D)(i)(b) respectively. The specific wording in each case was without prejudice to the generality of that general wording. The Tribunal has decided that the wording of the specific wording has the specific effect described in the table and above. The Tribunal also considered the Applicant' point that clause 4(A)(iii) was a lessee's covenant to paint the interior of the Flat. Therefore painting the windows and door were not service charge items for the lessor to perform. The difficulty for the Applicant is that "Flat" is a defined terms and it is the definition of "Flat" that transfers those items from lessee's work to service charge items for the lessor to perform.

The Tribunal's determination

- 13 The Respondent is entitled to such sum as relates to the items of work listed above as repair and redecoration to parts of the windows, window sills and the from door of the flats. Repairs to glass in the windows is not be included.
- 14 There is no evidence as to what reduction should be made to reflect the cost of the glass repairs, if any. A substantial sum has been paid by the Applicant, albeit under protest.
- 15 The Tribunal will make no further determination in the expectation that figures can be agreed.

Costs Applications

- 16 The Applicant seeks to limit the recovery of costs by the Respondent. The Tribunal takes into account the following:
- 16.1 The Respondent has been substantially successful
 - 16.2 Clause 6 (D)(v)(b) of the lease allows for solicitors fees to be charged through the service charge including for enforcing performance, observance and compliance.
 - 16.3 The Tribunal determines that the just and equitable outcome is to make no order in relation to either of the Applicant's applications.

The Tribunal

Rights of APPEAL

- 1 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.**

- 2. 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.**
- 3. 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.**
- 4. 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 the party making the application is seeking.**