THE RESIDENTIAL PROPERTY TRIBUNALSERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property TRIBUNAL SERVICE

S.27A Landlord & Tenant Act 1985 (as amended)("the 1985 Act")

Case Number:	**CHI/21UG/LSC/2009/0100**
Property:	**15A Mitten Road Bexhill-on-Sea East Sussex TN40 1QL**
Applicant:	**Samantha Cooper**
Respondent:	**Daniel Rowe**
Appearances for the Applicant:	**Mr N Relton**
Appearances for the Respondent:	**Ms L Mogridge**
Date of Inspection /Hearir	**7th December 2009**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Mr B Simms FRICS (Valuer Member) Mr N Cleverton FRICS(Valuer Member)**
Date of the Tribunal's Decision:	**13th January 2010**

THE APPLICATION.

1. This was an application pursuant to section 27A of the 1985 Act for a determination of the liability of Mr Rowe to pay service charges in respect of works carried out to the property by the applicant in 2009.

2. The tribunal is also required to consider pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 whether Mr Rowe should be required to reimburse the tribunal fees incurred by the applicant in these proceedings.

THE DECISION.

3. The tribunal determines that the service charges payable by Mr Rowe in respect of the items before the tribunal are as follows:-

   a. Works to lobby 50% of £158 £79

b. Works to the boundary wall 50% of £292 £146

c. External damp proofing works. Nil.

JURISDICTION.

4. The tribunal has power under Section 27A of the 1985 Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable.

5. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE.

6. The tribunal was provided with a copy of the lease relating to flat 15A. Clause 1(6) provides that the lessor is to pay and contribute a one half share of the cost reasonably incurred by the lessor in keeping the boundary walls and fences of the gardens in good repair and condition.

7. Clause 3(3) of the lease relates to the decoration of the building but does not, in the opinion of the tribunal, extend to the painting of the boundary walls of the building. It is therefore not necessary to set out the wording of this clause in this decision.

INSPECTION.

8. The tribunal inspected the property prior to the hearing in the presence of the parties' representatives. The subject property is a semi-detached two storey house part-tiled part-rendered under a pitched roof built circa 1920. At some stage, probably in the early 1960s, it has been converted into two self-contained flats which share a common entrance lobby.

BACKGROUND AND PRELIMINARY MATTERS.

9. The case had been transferred from the Lambeth County Court pursuant to a claim made by the applicant for recovery of legal costs in respect of a previous tribunal application and for recovery of building repair costs.

10. A pre-trial review of the case had been held where it was identified that the only issues in dispute over which the tribunal had jurisdiction were three items as follows:-

    a. Costs relating to the repair and repainting of the boundary wall amounting to £584.

    b. Repair costs to the lobby amounting to £158.

    c. Damp proof works amounting to £272.

11. Both parties had set out their positions on the issues in their statement of case and both parties had submitted bundles containing their evidence. At the

hearing the representatives expanded upon the points made in the statements and each of the disputed items is considered below.

THE APPLICANT'S CASE.

12. Mr Relton addressed the tribunal on the background of the case. In particular he sought to defend the allegations made by Mr Rowe that he had not been properly consulted on the work. Mr Relton told the tribunal that in May 2008 the applicant had served on Mr Rowe a notice of intention which described the work to be carried out and the reasons why it had to be carried out. The notice invited Mr Rowe to obtain his own estimates but none were received.

13. In November 2008 the applicant had sent another notice to Mr Rowe which enclosed estimates for a different program of works. The change was necessary because since the notice of intention, Mr. Rowe had applied to the tribunal for the appointment of a manager alleging that the applicant had allowed the property to fall into disrepair. The applicant therefore considered it prudent to carry out a program of works to deal with the matters complained of by Mr Rowe.

14. In January 2009 a further letter had been sent to Mr Rowe advising him that the program of works would have to change again. It would now take place in three phases and would start with phase 2 which included re-pointing the rear wall and making good and repair of the boundary wall. Mr Relton told the tribunal that Mr Rowe had a long track record of failing to pay service charges when demanded. It was therefore felt prudent to split the repair of the building into smaller jobs and to obtain payment at the end of each phase.

15. Mr Relton contended that the applicant had kept Mr Rowe fully informed throughout and had also adapted to work program to fit in with Mr Rowe's concerns particularly with regard to the damp.

16. The work was then carried out using the cheapest contractor which was Mr Negus.

17. In summary, Mr Rowe had been fully consulted throughout; the cheapest contractor had been engaged and the work had been completed to a high standard. The tribunal should therefore determine that the full amount claimed should be paid forthwith. In addition he invited the tribunal to make an order providing for Mr. Rowe to repay the tribunal fees incurred by the applicant.

THE RESPONDENT'S CASE.

18. Ms Mogridge contended that consultation had not been properly carried out. The estimates from Mr Negus had been sent to Mr Rowe after the consultation period had ended. Furthermore Mr Rowe had obtained his own estimates for the work and had handed these to the applicant's solicitors on the 12th December 2008 at the pre-trial review of this case and the applicant had ignored these. She contended that Mr Rowe had written a number of letters to the applicant objecting to the work specification and also objecting to Mr Negus carrying out the work because he was not confident that Mr Negus was a builder of standing and furthermore he could only be contacted on a mobile telephone number. She contended that the applicant had ignored all these observations.

19. What then transpired was the applicant carried out a program of works which differed from the works described in the unsatisfactory consultation procedure

referred to above. For example, the painting of the lobby had never been included in any quotation passed to Mr Rowe.

20. Furthermore Mr Rowe considered that the works themselves were not of a satisfactory standard. The boundary wall had been patched and in the near future would need further repair. Ms Mogridge contended that only last week a neighbour had seen Mr Relton carrying out repair work to the boundary wall. This was clear evidence that the work carried out by Mr Negus was not of a satisfactory standard.

21. Lastly Ms Mogridge contended that Mr Negus had never inspected the interior of Mr Rowe's flat and therefore was not in a position to be able to properly diagnose what work was needed to cure the damp problem and she contended that damp remained a problem in the flat.

THE TRIBUNAL'S CONSIDERATION.

22. The tribunal first considered if the applicant had complied with the statutory consultation procedure in respect of the works ultimately carried out to the property. The Commonhold and Leasehold Reform Act 2002 has introduced new requirements for consultation in respect of qualifying works, that is to say works involving service charge of £250 or more per lessee. The new procedure involves a two-stage process. Firstly a landlord must serve a notice of intention which describes in general terms what works are to be carried out and the reasons why the landlord thinks that the works should be carried out. The notice must invite written observations. Furthermore the notice must contain an invitation for nominations of persons from whom the landlord should obtain estimates.

23. Secondly the landlord must issue a statement setting out the estimated costs of the work from at least two of the estimates, a summary of the observations received and his responses. The regulations call this a paragraph B statement.

24. The paragraph B statement must be sent out to each lessee with a notice inviting each lessee to make written observations on any of the estimates and the statement must specify the consultation period (at least 30 days) and the end date.

25. On the evidence before it the tribunal was not persuaded that the applicant had complied with these requirements. In particular Mr Relton was not able to point to a notice of intention in the applicant's bundle and on his own admission agreed that the works ultimately carried out where different from the specification set out in the paragraph B statement.

26. We therefore find on the facts that the statutory consultation was not carried out in respect of the disputed items, which means that the maximum amount recoverable by the applicant is capped to £250.

27. The tribunal then considered the standard of works. The lobby work appeared to be of a satisfactory standard and Ms Mogridge made no effective challenge in respect of these works. The tribunal therefore upholds the full amount claimed.

28. The tribunal then considered the quality and type of work carried out to the boundary wall. In the opinion of the tribunal the quality of work was poor and as a consequence the tribunal was not persuaded that the costs incurred by the applicant had been reasonably incurred. Furthermore in its opinion the patching work, which had been carried out, was not what was required and that either a

complete rebuilding was necessary or in the alternative the wall needed to be completely re-rendered.

29. To compound matters the tribunal could find no provision in the lease for the landlord to paint the wall with the lessee being obliged to contribute towards the costs, (bearing in mind that the wall had not been painted in the past). The tribunal therefore concluded that the costs of painting the wall were not recoverable as service charge. Doing the best it could with the evidence before it, the tribunal estimated that one half of the cost of the wall estimate could reasonably be ascribed to the painting which reduced the recoverable costs from £584 to £292. Of this Mr Rowe is responsible for 50%. We think the resultant figure represents a fair amount for Mr Rowe to pay towards the temporary repair work to the wall.

30. The tribunal was also not satisfied with the damp proofing work carried out by Mr Negus. In the bundle there was a report and quotation from Gulliver Timber Treatment Limited to carry out damp proofing work to the building at a cost of £935. The work recommended by the report involved the insertion of a chemical damp proof course to the affected area together with internal re-plastering. In cross-examination Mr Relton was not able to offer a satisfactory explanation as to why this report from a specialist company, commissioned by the applicant, had not been acted on. He could not say what work had actually been carried out by Mr. Negus and did not know whether a damp proof course had been built in to the wall. The tribunal considers it unlikely that an effective damp proof course could be carried out at a cost of less than £300. The tribunal concurs with Gulliver's that a damp proof course would have the effect of reducing the damp to flat 15A.

31. In the tribunals experience it is likely that the specialist company would have backed up their work with a guarantee which would have been of benefit to the parties. The invoice from Mr Negus makes no reference to a guarantee.

32. The tribunal considers that the work carried out by Mr Negus is unlikely to cure the damp problem particularly as no internal plastering has been undertaken. By contrast the work that would have been carried out by the specialist damp proofing company is more likely to have been effective and been supported by a guarantee. In these circumstances the tribunal determines that Mr Rowe should not have to pay any part of Mr Negus's invoice dated 14 March 2009.

33. For the avoidance of doubt it is recorded that the tribunal considered the lobby works and the boundary wall works to be two separate and divisible contracts and therefore the consultation threshold of £250 applies to each contract.

34. Finally Mr Relton invited the tribunal to order Mr Rowe to repay the applicant's tribunal fees. We decline to do so. Mr Rowe has been largely successful in defending the claims made against him and the tribunal takes the view that the applicant failed to conduct the consultation process in an orderly or compliant manner. Furthermore in some cases the work commissioned is not of a satisfactory standard and in these circumstances it would be neither just nor equitable for Mr Rowe to have to refund the tribunal fees incurred by the applicant.

Chairman _____
R.T.A.Wilson LLB

Dated 13th January 2010

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LEASEHOLD VALUATION TRIBUNAL

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TRIBUNAL SERVICE

APPLICATION FOR PERMISSION TO APPEAL

SECTION 175 of the COMMONHOLD AND LEASEHOLD REFORM ACT 2002 ("the Act")

Case Number: CHI/21UG/LSC/2009/0100

Property: 15A Mitten Road
Bexhill on Sea
East Sussex TN40 1QL

Appellant: Samantha Cooper

Respondent: Daniel Rowe

DECISION AND REASONS

BACKGROUND

1. By an application received by the tribunal on the 8th March 2010 the Appellant has applied to the tribunal for permission to appeal the decision of the Leasehold Valuation Tribunal dated the 13th January 2010.

GROUNDS AND REASONS FOR APPEAL

2. In summary the ground for appeal, as far as can be ascertained, is that the appellant disagrees with the tribunals decision.

DECISION

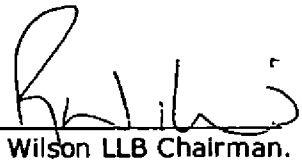
3. Leave to appeal is refused.

REASONS

4. The content of the appeal letter amounts to no more than a series of statements in which the appellant records her disagreement with the decisions made by the tribunal both in

relation to the substantive issues and on the issue of reimbursement of the tribunal fees incurred by the appellant. The letter discloses no discernable grounds for an appeal.

5. The tribunal in reaching its decision made careful findings of fact and applied the law on the basis of all oral and written evidence presented to it whether referred to or not in its written decision. Having given careful consideration to the application letter and the points made within it, the tribunal is not persuaded that a different body presented with the information that was before it at the hearing would have reached a different conclusion on the facts and law.

Signed: 
R T A Wilson LLB Chairman.

Dated 12th March 2010