THE RESIDENTIAL PROPERTY TRIBUNALSERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

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

Case Number:	**CHI/21UG/LSC/2010/0077**
Property:	**28a Sea Road Bexhill on Sea East Sussex TN40 1ED**
Applicants:	**Hossein Ahari and Susan Lee**
Respondent:	**Julie Lewis**
Date of Hearing	**6th September 2010**
Tribunal:	**Mr. R T A Wilson LLB (Lawyer Chairman) Mr. BHR Simms FRICS (Surveyor Member)**
Date of the Tribunal's Decision:	**11th October 2010**

THE APPLICATION.

1. This was an application made under section 27A of the 1985 Act for a determination of the liability of Ms Lewis to pay service charges in respect of her flat at the property for the service charge years 2008/9 and 2009/10.

THE DECISION.

2. The tribunal determines that for the challenged years the following sums are payable within 28 days of a statutory compliant demand being made for them:

a) Insurance

Year	amount	5%	Total
2008/9	£300.94	£15.05	£315.99
2009/10	£303.64	£15.18	£318.82
2010/11	£267.77	£13.39	£281.16

b) Property Repairs Invoice Dated 21st September 2009

£250 inc of 5% admin charges

c) Property repairs to the flat roof

£250 inc of 5% admin charges

In every case less the amounts already paid by the respondent on account for these items of expenditure.

JURISDICTION.

3. **The Statutory Provisions**

The relevant statutory provisions in the 1985 Act are as follows:

"Meaning of "service charge" and "relevant costs"

18. (1) in the following provisions of this Act service charge means an amount payable by a tenant of a dwelling as part of or in addition to the rent–

(a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) the relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose–

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Limitation of service charge: reasonableness

19. (1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period–

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Limitation on service charges: time limit on making demands

20B (1) if any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Summary of Consultation Requirements

S.20 of the 1985 Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.

The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.

In order for the specified consultation requirements to be required, the relevant costs of the qualifying work have to exceed an appropriate amount, which is set by regulation and at the date of the application is more than £250 per lessee.

Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. The requirements include for example, the need for the landlord to

state why they consider the works or the agreement to be necessary and for further statements setting out their response to observations received and their reasons for selection of the successful contractor. Consultation notices must be sent both to individual tenants and to any Recognised Tenants' Associations (RTAs); both the tenants and the RTA have a right to nominate an alternative contractor depending on the circumstances, and the landlord must try to obtain an estimate from such nominees. The procedures also provide for two separate 30-day periods for tenants to make observations.

Liability to pay service charges: jurisdiction

27A (1) An application may be made to a leasehold valuation tribunal for a determination of whether a service charge is payable and, if it is, as to–

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to–

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which–

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.

(5) but the tenant is not to be taken to have agreed or omitted any matter by reason only of having made any payment.

THE LEASE.

4. The tribunal was provided with a copy of the lease relating to the subject property dated 20th February 1962, which had been varied by a deed of modification dated 3rd September 1980. Ms Lewis does not contend that the service charge expenditure is not contractually recoverable as relevant service charge expenditure under the terms of her lease as amended and therefore it is not necessary to set out the relevant covenants in the lease giving rise to her liability to pay a service charge contribution in any detail. However the tribunal noted that coloured lease plans were not contained in its hearing bundle and the deed of modification appeared to contain drafting errors which lead to uncertainty as to the exact manner in which it had varied the lease.

INSPECTION.

5. The tribunal inspected the property prior to the hearing in the presence of the parties. The property comprises a self-contained first floor flat (28a) formed by conversion, probably in 1962, as part of a three-storey Edwardian building in Bexhill's shopping area identified as 28 Sea Road. The building is semi-detached adjoining number 24/26, built of brick with rendered panels and mock half timbering to the upper parts. The second floor has a gabled dormer at the front and the roof is of pitched design covered with tiles. The ground floor is occupied by a local supermarket which is combined with the ground floor of 24/26. At the rear there is a flat roofed addition to the ground floor of the supermarket which is mainly behind 24/26 but is partly at the rear of 28. At the front, the ground floor extends beyond the face of the wall with a flat roofed area to the back of the pavement. The property has a small rear yard which is available to the occupier of the first floor flat (28a) for a washing line, a cold store for the supermarket and another outbuilding which is not part of the subject premises.

6. Access to the subject flat is by way of an open side passage leading from the street at the front to an internal staircase towards the rear of the building which also gives access to the second floor premises (28b).

7. The front of the building is in fair order only with the woodwork decorations in poor condition. Elsewhere the tribunal noticed that the main rainwater downpipe, which discharges over the flat roof at the rear, is temporally propped on a piece of wood. The surface of the flat roof has no solar reflecting paint or protection and has an unfinished appearance. There are weeds growing from the gutters.

8. Internally the ceiling and walls of the bathroom to the flat and elsewhere show signs of water penetration.

BACKGROUND AND PRELIMINARY MATTERS.

9. The case had been transferred from the Hastings County Court (claim No. OHS00075) pursuant to a claim made by the applicant for the recovery of service charges of £2,691.55

10. At the hearing it was identified that the only issues in dispute over which the tribunal had jurisdiction were: -

    a. Insurance contributions for 2008/9 and 2009/2010.
    b. Property repairs contribution of £784.48.
    c. Roof repairs contribution of £1,492.

11. Both parties had set out their position on the issues in their statement of case and had submitted a hearing bundle. At the hearing the parties agreed that the scope of the hearing should be extended to include consideration of the insurance premium for 2010/2011.

12. At the hearing the parties expanded upon their cases as set out in their written statements and each of the disputed items is considered below.

a) Insurance

The Applicant's case.

13. Mr. Ahari's case simply put was that the lease placed an obligation on the applicants to insure the property and enabled them to recover the cost from the respondent. Mr Ahari told the tribunal that the applicants owned the subject property and also the adjoining property. As the subject property and adjoining property together comprised a standalone self-contained building, the insurers provided one policy which covered both addresses. Mr Ahari had tried to insure the subject property separately from the adjoining property but he contended that this had not been possible. Accordingly to arrive at the respondent's share of the insurance he had halved the total insurance premium for both addresses and then invoiced the respondent for one third of the resultant figure. This calculation he contended was in accordance with the apportionment provisions contained in the lease.

14. On being questioned by the tribunal, Mr Ahari denied that the floor area of the adjoining property and its footprint was considerably larger than that of the subject property. He insisted that both properties were identical and therefore his apportionment of the insurance premium was fair.

15. Mr Ahari told the tribunal that the applicants had an arrangement with the insurance company that they would pay the insurance premium by 10 equal installments over the year. The insurance company provided a credit agreement at an additional cost and the freeholders passed on both the cost of insurance and the cost of the credit to each lessee. In his opinion the provisions of the lease entitled the freeholders to do this.

16. Mr Ahari accepted that the amount charged to the respondent for the insurance had increased three times in each of the years 2008/9 and 2009/10. The reason for this was that the insurance company had issued revised premiums to the freeholders on three occasions and the applicants had simply passed on the increases to the respondent as they incurred.

17. Mr Ahari was able to point to an insurance schedule in his bundle which supported the initial figure demanded of the respondent namely £300.94, however, in spite of being given time he was not able to point to documentation supporting the two higher figures subsequently demanded for each of the years.

18. He confirmed that the respondent had paid the initial amount invoiced in each year but she had not paid the balance in respect of the two revised invoices which had been sent out in each year.

The Respondent's case.

19. Ms Lewis told the tribunal that although she did not accept the apportionment of the insurance premium as carried out by the applicants she had paid in full the first demand in the sum of £300.94. However she had not paid the second and third requests for additional payments for the same year because she had not received an adequate explanation of why the extra amounts were due. She had on a number of occasions asked the freeholders for an explanation but they had ignored her letters and produced revised demands in differing formats claiming the additional amounts without any explanation or documentary evidence from the insurers to support the mid- term increases.

20. She also questioned whether or not the demands/letters that she had received were compliant in so far as they failed to include a Tenants summary of rights and also failed to include the name and address for the service of proceedings upon the freeholder as required by statute.

21. She also contended that the method of apportionment adopted by the applicants was unfair. This was because the adjoining property was considerably bigger than the subject property. This being the case it was not reasonable that she was being asked to pay one third of half the total premium for both properties. She accepted that she should have to pay one third, but only one third of the premium fairly apportioned to 28, which should be less than one half of the total.

The Tribunal's consideration.

22. The tribunal first reviewed the insurance provisions contained in the lease as varied by the deed of modification. Having done so it was satisfied that it was the applicant's obligation to insure the property and the respondent's obligation to pay one third of the cost of insuring the building as defined in the lease. The lease describes the building as 28 Sea Road and contains no reference to number 24/26 Sea Road.

23. The tribunal agrees with the respondent that the adjoining property is materially bigger than the subject property and therefore in the opinion of the tribunal the apportionment policy adopted by the applicants is not fair and should be revised in future years. The tribunal considers that it should be possible for the applicants' broker to effect a policy for the subject property which is separate from the adjoining property or alternatively to invite the insurers to apportion the premium for one insurance policy between the two properties having regard to the floor area of each.

24. The tribunal was able to reconcile the first figure demanded by the applicants for each of the years 2008/9 and 2009/2010 by way of documents provided in the

applicant's bundle. For these two years there existed a schedule from the insurance company confirming the annual premium. By dividing the premium by half and the resultant figure by one third the tribunal arrived at the respondents share first demanded namely £300.94 and £303.64 respectively for each year. However the tribunal could find no adequate documentation to support the additional premiums demanded and despite giving Mr Ahari every opportunity to do so Mr Ahari was not able to offer a satisfactory explanation as to how the additional figures had come about let alone how the increases had been apportioned to the respondent.

25. In the absence of either a satisfactory explanation or documentary evidence to support the additional sums demanded the tribunal determines that only the first figure demanded in each year is recoverable in each case plus an administration fee of 5% as provided for in the lease. In arriving at this decision the tribunal used its collective expertise to satisfy itself that the resultant figures are reasonable (not withstanding its misgivings about the method of apportionment) and within a range of premiums that it would expect for a property of this age and location and configuration.

26. Mr Ahari told the tribunal that the amount demanded of the respondent for insurance in 2010/2011 amounted to £267.07. The respondent confirmed that a demand for this sum had been made and the tribunal was able to find in the hearing bundle an insurance schedule issued by the insurers which supported the figure demanded. The tribunal is satisfied that the amount charged for insurance for this year is reasonable and therefore recoverable in full.

b) <u>Repairs carried out in 2009 / £747.12 Croft Development invoice</u>

<u>The Applicant's case.</u>

27. Mr Ahari told the tribunal that in August 2008 masonry fell unexpectedly from the top gable of the second-floor flat onto the pavement below. The fire brigade were called as the situation was judged dangerous. Mr Foreman, the owner of the second-floor flat, offered his services to the applicants to make good the damage and the applicants authorised Mr Foreman to proceed with the work. Whilst attending to this work, the applicants instructed Mr Foreman to carry out other works of maintenance and repair. These works had to be done and it made sense to have them done at the same time.

28. On being questioned by the tribunal Mr Ahari confirmed that a contract with Mr Foreman was oral and no paperwork existed for it. Mr Ahari accepted that the respondent had not been consulted about the work and the applicants had not sought estimates from any other companies.

29. Mr Ahari confirmed that he was aware of the need to consult lessees in respect of expenditure above a threshold, which he believed to be £500. However in this case there had been no time to do this. In any event it was his case that all the work carried out was of an emergency nature and that consultation had not been feasible.

<u>The Respondent's case</u>.

30. Ms Lewis confirmed the evidence given by Mr Ahari in respect of this work. Her objections stemmed from the fact that she was neither consulted nor given any

estimation of what work would be carried out and what would be the cost. She denied that the majority of that work was of an emergency nature and she pointed to the invoice which set out what work had been done. This invoice referred to routine timber repairs, defective guttering and redecoration and none of these items could possibly be called emergency works.

31. She told the tribunal that in January 2009 she had received an invoice for the work of £747.12 directly from Mr Foreman. Up until this point she had not received any communication from either of the freeholders or indeed Mr Foreman. She had assumed that the work was covered by the buildings insurance and that is why she had made no attempt to contact the applicants to find out what was happening.

32. She reminded the tribunal that as no estimates were given for further repairs, and as the contract was oral between the only other two parties liable for payment, she had no idea if the invoice was in her best interests and whether the work was covered by her lease.

33. For all of these reasons she contended that she should not have to contribute to the invoice.

The Tribunal's consideration

34. The tribunal noted that the facts giving rise to the contested invoice were not in issue. It was common ground that the applicants had authorised the work; had made no attempt to supervise the same; or agree a schedule, or obtain estimates for the cost of the work. It was also agreed between the parties that no consultation had been carried out with Ms Lewis before the work was commenced or indeed completed.

35. Statute provides for a consultation exercise to be carried out by freeholders in respect of all work which involves a service charge of more than £250 from any one leaseholder. If this consultation exercise is ignored, and no dispensation is obtained from the Leasehold Valuation Tribunal, then the amount recoverable is limited to £250 per lessee.

36. Bearing in mind that no consultation has been carried out for this work, and no dispensation obtained from the Leasehold Valuation Tribunal, the tribunal limits the amount recoverable from the respondent to £250. The tribunal is satisfied that work to this value has been carried out to the property in accordance with the applicants repairing obligations set out in the lease. In arriving at this decision the tribunal took into account that the respondent accepted that work to this value had been carried out.

c) Property repairs £1421.67 and three further invoices from CDS Canings

The Applicant's case.

37. Mr Ahari's evidence in respect of this work was hard to understand. His hearing bundle contained copies of sundry letters, invoices and papers relating to the proceedings started by the applicant in the County Court, but there was no statement by the applicants setting out the background to the work or any legal submissions relating to the respondent's responsibility to contribute.

38. On being questioned by the tribunal, Mr Ahari stated that the majority of the work involved substantial repairs to the flat roof to the rear of the property. He pointed to an invoice from the CDS Canings for £7,500, which contained a description of what work had been done. Other work related to the clearing away of pigeon mess and the clearing of gutters (£170), replacing missing roof tiles (£160) and repairing the chimney (£185).

39. Mr Ahari admitted that he had not consulted Ms Lewis before carrying out any of this work. He told the tribunal that he saw little point in consulting with Ms Lewis, as she was not in the habit of paying any money. He maintained that the work had to be done and therefore the applicants had carried it out and were now only seeking to recover what they had spent.

The Respondent's case.

40. Ms Lewis contended that the flat roof was expressly excluded from her lease and therefore she was not responsible for any of the costs associated with it. Furthermore, she had not been consulted and she had not been supplied with any estimates from other building firms. In addition, most of the flat roof covered the adjoining property and repairs to this property should not be her responsibility.

41. As to the three other invoices, she put the applicants to strict proof that the work had actually been done. She had not seen any evidence of the works being carried out and the documentation was not clear as to which property had benefited. Her flat did not afford a view of the chimneystack so she could not comment on any of the works listed to this part of the building.

42. In summary she told the tribunal that in her opinion all of the invoices were presented in the most unprofessional manner, they did not give an invoice number or VAT registration or list the materials and quantities used. She could not find any listings for CDS Canings in the local paper or on the Internet. She challenged the quality of the work and concluded her evidence by stating that she believed the applicants had employed a casual worker but charged her professional rates.

The Tribunal's consideration.

43. The tribunal first considered the repairing obligations set out in the lease. In particular it reviewed the lease as varied by the deed of modification to see if the documents had the effect of excluding the respondent's liability to contribute towards the flat roof to the rear of the property. On the tribunal's reading of the deed of modification it does not have the effect of altering the repairing obligations as set out in the lease. The lease does contain an obligation on the part of the applicants to repair (and on the part of the respondent to contribute towards the cost of repair) the main structure and the roof of the building, which is defined as ground floor offices known as 28 Sea Road, a first-floor flat known as 28A Sea Road and a second-floor flat known as 28B Sea Road. In the opinion of the tribunal this obligation extends only to the repair of so much of the flat roof to the rear of the property as falls within the boundary of the subject property as defined in the lease. The obligation for Ms Lewis to contribute does not extend to any part of the adjoining property and therefore she is not obliged to contribute to any of the costs of repair of the flat roof which extends over the adjoining property. The tribunal had inspected the property before the hearing and had observed that the majority of the flat roof does extend over the adjoining property.

44. It is common ground that the applicants failed to consult with the respondent before carrying out the roofing works, the costs of which exceeded the threshold for consultation. As the applicants have not obtained a dispensation order from the tribunal in respect of these works the amount recoverable from the respondent is capped at £250 inclusive of the administration fee. The tribunal is satisfied that the value of work carried out to the subject property is at least £250.

45. As to the remaining three invoices Mr Ahari was not able to clarify what work had been carried out. At the hearing he withdrew the invoice of £170 in respect of the guttering work and he could offer no explanation in respect of the other two invoices. In the absence of a satisfactory explanation the tribunal could not be satisfied that the work was covered by the repairing obligations set out in the lease and therefore determines that none of these invoices are recoverable as service charge.

46. In each case the demands/invoices provided to the respondent were confusing and the tribunal was not satisfied that the demands complied with the statutory requirements. The tribunal feels that it is important to stress in this case that sums demanded from any tenant are only payable when a statutory compliant demand is made for the sums. This regulation is in addition to the requirement to consult as set out in statute.

Chairman Signed
R.T.A.Wilson LLB solicitor

Dated 11th October 2010