RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/29UG/LSC/2007/0054**
Property:	**52 St. Marks Avenue** **Gravesend** **Kent** **DA11 9LW**
Applicant:	**Miss A. Little**
Respondent:	**Mr. M.J. Mitchell**
Date of Hearing:	**10th August 2007**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. R. Athow FRICS MIRPM** **Ms T. Wong**
Date decision issued:	

RE: 52 ST. MARKS AVENUE, GRAVESEND, KENT, DA11 9LW.

Background

1. Miss A. Little ("the Applicant") is the lessee of 52 St. Marks Avenue, Gravesend, Kent, DA11 9LW ("the subject property") and Mr. M.J. Mitchell ("the Respondent") is the freeholder of the subject property.

2. The Applicant had made an application under Section 27A of the Landlord and Tenant Act 1985 ("the Act") in respect of service charges from 2005 to date and had stated that the items of service charge which were in dispute were (1) replacing/repair of the roof and (2) repair and redecoration of internal walls and ceiling damaged by the faulty roof for two years and the replacement of damaged carpets cause by the lengthy roof fault. The Applicant wished the Tribunal to decide (1) when would the problem with the roof be dealt with, (2) who would be paying for the repair/replacing of the roof, (3) would the Respondent be held liable for his failing in his duty of care and (4) would the Applicant be compensated for the damage caused to the interior of the subject property, her health and stress. She also applied for an order under Section 20C of the Act that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

3. Directions were given on the 6th June 2007. The Respondent did not comply with those directions but the Applicant provided a bundle of documents to the Tribunal and to the Respondent.

Inspection

4. On the 10th August 2007 in the presence of the Applicant and the Respondent we inspected the subject property which is a first floor maisonette in a two storey mid-terraced house.

5. Access to the subject property is through a passageway from the front to the rear of the property and then up two flights of concrete steps.

6. We could see that a metal handrail had been provided at the side of the steps and we were told by the Applicant that work, including the provision of the handrail which could be seen and work to the roof which could not be seen, had been done on the 9th August 2007. The Respondent told us that on the 7th, 8th and 9th August 2007 Mr. Darby, a builder instructed by him had fitted the handrail and had carried out work to the roof which the Respondent said was a flat roof with a parapet. The Respondent had not inspected the roof since the work had been done and he had not yet received an invoice from the builder but the work which the builder had been instructed to carry out was the work set out in two quotes from Mr. Darby.

7. The first dated 3rd May 2007 was for the following:

> "Knock down the back chimney to the top of the parapet and blank it off with a concrete slab (the same as neighbours). Knock down vent pipe brick work to top of parapet and make good with render. Insert a small section of pipe into a cast iron pipe to bring back above roof level and put balloon on top.
>
> Cut out 8 ft x 4 ft approx of roof where boarding has gone rotten and replace roof timbers in area as necessary replace 18mm ply boarding and 3 layers of hot pitch bonding felt to match the existing. Re-dress the lead flashing along the back wall up under a stop bead and re-render as necessary clear all debris away from site.
>
> Materials and labour £1450 + VAT"

8. The second dated 10th May 2007 was for the following:

> "Remove existing hand rail to the right hand side of the stairs when looking up, leave the gate.
>
> Replace with 48.3mm galvanised key clamp hand rail with 2 centre bars, 4 vertical up rights concreted into the floor and supported on the side of concrete stairs by screwed fixings.
>
> Materials and labour £625.00 + VAT"

9. Inside the subject property the Applicant pointed out to us areas in the main bedroom, hallway, bathroom and living room which were damp and where there was black mould. The Applicant was using a dehumidifier in the main bedroom to improve the situation and she told us that there were no damp related problems in the second bedroom and the kitchen.

Determination

10. (a) The sum of £433.59 in respect of the works detailed in paragraphs 7 and 8 above is to be included in the demand for service charges on 29th September 2007 and is to be paid by the Applicant within 28 days of receipt of the demand.

(b) We make an order that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

(c) The fees of £250 paid by the Applicant in respect of this application are to be reimbursed by the Respondent by his paying to the Applicant the sum of £250 within 28 days of the issue of this determination.

Reasons

11. At the hearing we heard evidence from the Applicant, the Respondent and, on behalf of the Applicant, Ms Nima Vanson.

12. We explained that the jurisdiction of the Tribunal did not extend to all the matters upon which the Applicant wished to have a decision. Section 27A (1) of the Act provides that an application may be made to a Leasehold Valuation Tribunal for a determination 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.

13. The other matters upon which the Applicant wished to have a determination are matters over which the County Court has jurisdiction. We made it clear that although we informed the parties that in the event that they could not agree the other matters in dispute the Applicant could commence proceedings in the County Court that did not imply that we considered she would necessarily be successful in such proceedings.

14. The first matter upon which the Applicant wished a determination namely when would the problem with the roof be dealt with had, just before the hearing, been dealt with, as far as we could tell from the evidence before us and from the further evidence produced after the hearing. The parties were in agreement that work was needed to the roof and chimney to deal with the problem of damp and we were told that such work had been done. Since the hearing the invoice from Mr. Darby in respect of the sums given in the quotes has been produced by the Respondent who, in a letter dated 20th August 2007 stated that the external stair case railings had been fixed in accordance with the drawings but that there had been an omission of a small section of pointing. By a letter dated 28th August 2007 the Respondent stated that the minor defect had been rectified.

15. The second matter was who would be paying for the repair/replacing of the roof and the position is that under the terms of the lease the Respondent has the duty to carry out such work but the Applicant and the lessee of No. 50 St. Marks Avenue each have the duty to pay half the cost. However, where Section 20 of the Act as amended by the Commonhold and Leasehold Reform Act 2002 requires a consultation procedure to be carried out then unless the landlord carries out that procedure or obtains from the Leasehold Valuation Tribunal a dispensation not to do so he is able to claim from the lessee no more than £250. The Service Charges (Consultation Requirements)(England) Regulations 2003 provide for the details of such consultation. In this case, the Respondent failed to comply and has not asked for a dispensation and the result is that in respect of the works to the roof the Applicant is responsible for only £250 of the cost of those works.

16. The Respondent gave evidence that he had been trying for two years to find a builder who would undertake the work, that he was not aware of the full extent of the consultation procedure and that the notice he had issued on 15th June 2007 was taken from a document provided by someone else and which he thought would be sufficient. With that notice he enclosed two estimates. One was from P B Bennett and Sons and was undated but referred to a site meeting on 26th July 2006. The Respondent's evidence was that he had telephoned Mr. Bennett and had been told that the quote would still hold but that the work could not be undertaken for five years. There had not been a proper notice of intention and the use of a quotation for work of this nature with a five year delay we found did not provide the lessees with the information required. We did not accept that with reasonable diligence the Respondent would not have been able to have found a builder to carry out the work required. We did find that ignorance of the consultation requirements was not an acceptable reason for failure to comply particularly as the Applicant in a letter dated 6th July 2006 to the Respondent had drawn his attention to Section 20 of the Act. On the basis of the evidence presented to us we find that the sum charged for the work to the roof is reasonable and that the Applicant's share of the cost is £250.

17. The wording of the lease is not entirely helpful as to the proportion of the cost of repairs to the stairs to be borne by the lessees but the parties have conducted business on the basis that each of the lessees of Nos. 46, 48, 50 and 52 St. Marks Avenue are each responsible for one quarter of such cost. We have not seen the leases in respect of Nos. 46, 48 and 50 but on the basis of the evidence we have and as there are four properties that may well be appropriate. The amount payable by any of those individual lessees in respect of the repairs to the stairs means that the Section 20 consultation requirements do not apply to this work. On the basis of the evidence presented to us we find that the sum charged for the work to the stairs is reasonable and that the Applicant's share of the cost is £183.59.

18. The third and fourth matters upon which the Applicant wished a determination are not within our jurisdiction and therefore we cannot make a determination in respect of them.

19. As to the application for an order under Section 20C of the Act and as to reimbursement of fees we find that it is just and equitable in the circumstances to make an order under Section 20C and to make an order that the Applicant's fees be reimbursed by the Respondent for the following reasons. Letters written by the Applicant and by Tower Homes to the Respondent had failed to bring an end to the delay on the part of the Respondent and the Applicant was justified in bringing these proceedings to try to end that delay and to

clarify the position. Also the Respondent did not assist by failing to comply with the directions given.

20. Because the works had only just been completed, no invoice had been received, the Respondent had not been able to inspect the work done, we were not certain that the screwed fixings referred to in the quotation for the work to the stairs had been provided and the Applicant's evidence was that proper accounts in respect of the service charges had not been produced, we adjourned the matter and directed that by the 7th September 2007 the Respondent provide to the Tribunal and to the Applicant the final invoice from Mr. Darby in respect of the works carried out as detailed in paragraphs 7 and 8 above and provide details of any money in the accounts. The Respondent had given evidence that there was a negligible amount in the accounts, there was no sinking fund, that he sent out an account with the demand and that the only demand for service charges so far had been in respect of insurance. We also directed that the Applicant send to the Tribunal copies of all the accounts she had received.

21. We have received from the Applicant a letter dated 15th August 2007 enclosing a copy of a letter dated 5th April 2006 which she had written to the Respondent and copies of accounts dated 25th March 2005, 25th March 2006 and 29th September 2006 which support the Respondent's evidence that only insurance has been charged under the service charges and that there was just a small amount in the account. We have received from the Respondent a letter dated 20th August 2007 enclosing a copy of Mr. Darby's invoice and a letter dated 28th August 2007 stating that the minor defect in the work had been rectified.

22. On considering the further evidence produced we were able to finalise our determination.

R. Norman
Chairman.