THE RESIDENTIAL PROPERTY TRIBUNALSERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property TRIBUNAL SERVICE

S.27A & S.20C Landlord & Tenant Act 1985(as amended)("the Act")

Case Number:	**CHI/45UH/LSC/2009/0052**
Property:	**56 Station Road Portslade East Sussex. BN41 1DF**
Applicants:	**Doranne Reid Venessa Goldsmith**
Respondent:	**Mr Varney**
Appearances for the Applicants:	**Doranne Reid Venessa Goldsmith and Philip Hall of Philip Hall Associates**
Appearances for the Respondent:	**Miles Clark Martyn Surman FRICS and Oliver Judge all of Parsons Son and Basley**
Date of Inspection /Hearing	**24th September 2009**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Mr N Cleverton FRICS (Valuer Member) Ms J Dalal (Lay Member)**
Date of the Tribunal's Decision:	**9th October 2009**

THE APPLICATION

The applications made in this matter are as follows;

1. This was an application made by the applicants under section 27A of the Landlord and Tenant act 1985, (as amended,) ("the Act,") for a determination of their liability to pay service charges arising out of a major works contract carried out to the Property in 2006.

2. The applicants also sought an order pursuant to section 20C of the Act that their costs incurred in these proceedings not be relevant costs to be included in the service charge for the Property in future years.

3. The tribunal is also required to consider, pursuant to regulation 9 of the leasehold valuation Tribunal's (fees) (England) Regulations 2003 whether the respondent should be required to reimburse the tribunal fees incurred by the applicants in these proceedings.

DECISION IN SUMMARY.

4. The tribunal determines for the reasons set out below that the amounts payable by way of service charge for the disputed items are as follows:-

a)	Rainwater goods (item 2.1 of the schedule).	**No reduction**
b)	Replacement or broken tiles.	**A reduction is given of £68**
c)	Lead flashings (Item 2.3 of the schedule).	**Upheld at £610**
d)	Rendering (Item 2.5 of the schedule).	**Upheld at £890**

5. An order is made under section 20C of the Act

6. No order is made in relation to the repayment of tribunal fees.

JURISDICTION.

7. The tribunal has power under section 27A of the 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 a service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard.

THE LEASE.

8. The tribunal was provided with a copy of the lease relating to flat 56A and was told that the lease of Flat 56B was on the same terms and the service charge liability arose in the same way. The applicants do not contend that the service charge costs in issue are not contractually recoverable as relevant service charge expenditure under the

terms of their leases. It is therefore not necessary to set out the relevant covenants in the leases that give rise to liability to pay a service charge contribution.

INSPECTION.

9. The property comprises a part 2 storey and part 3 storey terraced building constructed of brick walls rendered at the rear under a pitched and tiled roof. The ground floor comprises a retail shop and upper parts two residential maisonettes.

THE ISSUES IN DISPUTE.

10. In the directions of the tribunal dated 5 May 2009 the tribunal identified the issues to be determined. The issues all arose out of the execution of external repair and decoration works carried out in July 2006. The directions provided for the parties' surveyors to meet at the Property to inspect the premises and thereafter to prepare and agree a schedule of matters and service charge items remaining in dispute to be determined by the tribunal.

11. In the event, rather than preparing a new schedule, the surveyors had utilised an old schedule prepared by Philip Hall associates in July 2008. This schedule had identified the issues and disputed service charge items as at July 2008 and showed that the amount in dispute at that time was in the order of £3,000.

12. At the hearing the parties were able to further refine the issues and following negotiations, which took place outside the hearing room, the issues in dispute were reduced down to just four items, each of which is considered below.

13. Both parties had set out their respective positions in their statements of case and both parties had prepared and submitted a bundle of evidence.

THE HEARING.

14. The hearing in this matter took place on 24th September 2009. The applicants represented themselves with the assistance of their expert witness Philip Hall of Phillip Hall Associates. Three members of the managing agents, Parsons Son and Basley, represented the respondents. The parties' evidence in relation to each disputed item, and the tribunal's consideration and determination are set out below:

a) Rainwater Goods.

15. The 2006 works specification allowed £165 to remove detritus and flora from the gutters and allowed for the repair/replacement or two gutter joints. It was the applicants' contention that plant growth had been allowed to build up to the back addition gutter and that this plant growth was directly related to the fact that the gutters had not been correctly installed. They should therefore not have to pay this sum which was as a result of faulty workmanship.

16. The respondents accepted that there had been some vegetation in the gutter but that it had now been removed. In their opinion there was no evidence that the gutter falls or the gutters were inadequate and they considered that the sum charged was fair and reasonable and should be upheld.

17. At the inspection the tribunal had observed the gutters which were free from obstruction. Furthermore the falls of the gutters appeared to be satisfactory and the tribunal could not see any evidence of faulty workmanship. In these circumstances the tribunal could see no justification for reducing the figure of £165.00, which in its opinion was a reasonable amount for the work in question.

b) Replacement of broken tiles.

18. The 2006 works specification had provided for the roof to be checked and for 10 tiles to be replaced at a cost of £405. The parties accepted that only two tiles had been replaced but could not agree over the credit that should be given. The applicants accepted that some credit had been given but that a further £68 was due to them. This was because the contract price itself was too high. The respondents did not accept that any further credit was due. This was because each item on the specification, including the tile replacement, had included an element of the contract preliminaries (rather than the preliminaries being included as one separate item). In the circumstances the right credit had already been given and no further credit was justified.

19. The tribunal found the evidence of both parties in relation to this item to be less than clear. It is common ground that only two tiles have been replaced and on balance the tribunal accepted the argument put forward by the applicants that the per item cost for this job was excessive and therefore determines that a further reduction of £68 should be awarded to the applicants.

c) Lead flashings.

20. The specification allowed £610 for the condition of the lead flashing to be checked and for repairs to be carried out to the firewalls and chimney. It is the applicants' case that £610 was excessive for this job. Furthermore there was evidence that one of the flashings was split. In these circumstances no charge should be made as the split should have been picked up and reported back to the managing agents.

21. The respondents denied that the figure of £610 was too high. They referred the tribunal to the two other tenders, which had been received in respect of the 2006 works specification. One firm had quoted £575 for the same work and the other firm £700. It was their case that these two comparable figures showed that the figure of £610 was not too high. Furthermore they disputed that the flashings were torn at the time of inspection. They referred the tribunal to a number of photos taken at the time the work concluded and they contended that these photos did not show, beyond all reasonable doubt, that the flashings were torn.

22. The tribunal accepted that the costing for the work at £610 was a reasonable sum bearing in mind that two other similar costings had been obtained at the same time.

The tribunal could gain no assistance from the photos. Firstly they were not dated and secondly the quality was poor and it was not possible to conclude whether there had been any damage to the flashings. In these circumstances the tribunal upholds the contract figure of £610.

d) <u>Repairs to the rendering.</u>

23. The specification had made an allowance for £890 to hack off and re-render 15 metres of the surface of the building. It was the applicants' case that although some rendering had been done it was not 15 metres. What had been done amounted to only 6 metres and therefore the maximum figure allowable should be £356 based on £59.33 per linear metre.

24. The respondents did not accept that only 6 metres of wall had been re-rendered. It was their case that approximately 6 metres had been rendered to the top surface and a further 6 metres to the inside face and that the remaining 3m was made up of spot repairs. In other words 15 metres in total could be accounted for. The respondents accepted that initially this work had not been carried out properly, but they had required the original contractor to go back and make good the work which they now regarded as satisfactory. The respondents referred the tribunal to a number of photographs, which they said were taken contemporaneously with the work and which they contended supported their view that the whole of the contract amount should be allowed.

25. It was not possible from the tribunal's inspection to ascertain how much rendering work had indeed been carried out and the tribunal gained no assistance from the photographs. It was common ground that some rendering had taken place and the tribunal concluded that there was no verifiable evidence presented by the applicants which called into question the respondents contention that the full area of rendering as per the specification had been applied. In these circumstances it upholds the contract price of £890.

26. No other specific items from the 2006 work were challenged by the applicants, however, they recorded their dissatisfaction as to the general efficacy of the work. It was their view that the primary purpose of the 2006 work was to eradicate the damp which was evident in particular to the first-floor flat. They maintained that they had drawn the respondent's attention to the damp before the 2006 specification had been obtained and it was their assumption that the specification would deal with this problem. In the event, some six months after the work had been completed the damp started to come back and had got progressively worse over time. They contended that the remedial work commissioned by the respondent had not been organised in a timely fashion and the delay in getting the contractors back to put right defects had caused the damp to get worse. The applicants voiced their criticism at the level of supervision carried out by the respondent's managing agents and also expressed dissatisfaction with the communication that had taken place.

27. The managing agents strenuously denied that they had been made aware of the damp problems prior to the specification being drawn up and they denied that the primary purpose of the specification was to eradicate damp. They maintained that the primary purpose of the specification was to carry out some repair work to the roof and also

redecoration works generally to the outside of the building. They maintained that the damp currently visible in the flats was not due to the defective work relating to the 2006 contract but as a result of the more recent failure of the party wall. They were in discussions with the adjoining owner with regard to this disrepair and they anticipated the damp eradication work would form the subject of a new contract to be commissioned as soon as joint liability had been established.

28. The tribunal noted that the applicants were not able to produce any contemporary evidence that they had brought the issue of damp to the attention of the managing agents prior to the specification being obtained. The managing agents had carried out the statutory consultation process and it appeared that the applicants had not formally raised the issue of damp in writing during this process. The specification makes no reference to damp eradication works and the tribunal could find no 2006 documentation in the hearing bundle in which damp had been mentioned.

29. The tribunal also noted that the applicants had not led any credible evidence establishing a causal link between the alleged defective workmanship of the 2006 work resulting in damp to their flats. On balance therefore the tribunal accept that the managing agents had not been aware of the damp at the time that they commissioned the specification. Taking all these factors into account the tribunal concluded that the primary purpose of the specification was not to eradicate known damp to the building and on this basis the tribunal is of the opinion that subject to the items referred to above, reasonable value for money was obtained and the work was eventually completed to a reasonable standard.

30. Whilst the tribunal has sympathy with the applicants and can understand their frustration with the damp clearly evident in their flats, the tribunal cannot accept that the damp has been caused as a result of the failure of the 2006 works.

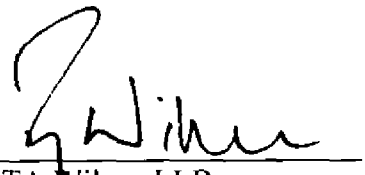
SECTION 20 C APPLICATION AND REIMBURSEMENT OF FEES.

31. Both of these matters can be taken together as the tribunal's considerations in relation to both are largely the same. The legislation gives the tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it being treated as relevant casts to be taken into account when determining the amount of service charges payable. The tribunal has a wide discretion to make an order that is, just and equitable, in all the circumstances.

32. The tribunal is of the view that the applicants were justified in bringing these applications. At the pre-trial review the managing agents accepted that some two years after the contract had been substantially completed some of the work was still unfinished and that the contractors needed to come back to complete the work properly. The tribunal heard evidence that remedial work was still being carried out only six weeks before the hearing. The tribunal is of the view that the managing agents have adopted a reactive approach to the management of the Property not a proactive one. The tribunal considers that it should have been possible for the 2006 works to be signed off in their entirety and to a satisfactory standard much earlier than has been the case. Furthermore, we are led to the conclusion that some remedial work has only been commissioned because of the existence of these applications. Although at the time of the hearing there were not many items left in dispute the evidence before

us suggest that this is because the managing agents had reluctantly accepted that the complaints articulated by the applicants had merit. In the circumstances we consider that it is just and equitable that an order be made under section 20C of the act and we so order.

33. Having regard to all the factors in this case, including the outcome of the proceedings and the conduct and the circumstances of the parties, the tribunal does not consider that it would be just and equitable for it to order the repayment of tribunal's fees in these matters.

Chairman 

RTA Wilson LLB

Dated 9th October 2009