9928

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0804**
Property	:	**Flat 4, 104 Beulah Road, Thornton Heath, Surrey CR7 8JF.**
Applicant	:	**Maidenbridge Properties Limited**
Representative	:	
Respondent	:	**Mr. F. Nwaka**
Representative	:	
Type of Application	:	**Determination of liability to pay service charges.**
Tribunal Members	:	**Miss. A. Hamilton-Farey LLB, FRICS, FCIArb**
Date of Decision	:	**24 March 2014.**

DECISION

Decisions of the Tribunal

(1) The Tribunal having issued a Notice under Rule 23 of the Tribunal Procedure (Firsst-Tier Tribunal) (Property Chamber) Rules 2013 on 10 February 2014 that the decision in relation to Flat 1, 104 Beulah Road, was similar in all respects to this application, and that that decision should be binding on this application.

(2) The parties were given 21 days in which to object to this action.

(3) No objections have been received.

(4) The Tribunal therefore confirms in accordance with Rule 24, that it intends to record that the decision in relation to Flat 1, 104 Beulah Road (Reference: LON/00AH/LSC/2013/)641) shall apply to this application. With the following amendments, in paragraph (2) of the decision the following figures are to be substituted:

- Service charge expenditure account for year ended 24 March 2011 £5,484.91
- On account charges for year to 24 March 2012 £125.00
- Service charge expenditure account for year ended 24 March 2012 £575.20
- On account charge for year to 24 March 2013 £125.00
- Service charge expenditure account for year ended 24 March 2013 £853.22
- On account charge for year to 24 March 2014 £125.00
- Administration fees of £375.00
- In addition to the above the applicant claims interest and fees.

(5) A copy of the decision in relation to Flat 1 is appended to this decision.

(6) If neither party objects to this course of action by 14 April 2014, the Tribunal will not proceed to determine any of the matters within this application and will record the lead decision in relation to Flat 1 as being applicable to Flat 4.

Reasons for the Decision:

(7) The Tribunal has received two applications which appear to be in relation to identical service charge years. The respondent did not attend a case management conference on 19 December 2014, and he has not complied with any subsequent directions.

(8) The Tribunal has heard nothing further from the Respondent since the issue of the Notice under Rule 23, and now considers it appropriate for a final decision to be made.

Aileen Hamilton-Farey

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0641**
Property	:	**Flat 1, 104 Beulah Road, Thornton Heath, Surrey CR7 8JF**
Applicant	:	**Maidenbridge Properties Limited**
Representatives	:	**Ms C Bagley, director of Applicant, and Mr T Bagley, administrator**
Respondent	:	**Ms C Metu**
Representative	:	**Ms F Cooil, Counsel**
Type of Application	:	**For the determination of the liability to pay a service charge**
Also present	:	**A Moloney (Pupil in Chambers) and A Gallagher (Director of Applicant company)**
Tribunal Members	:	**Judge P Korn (chairman)** **Judge W Hansen** **Mr M Taylor FRICS**
Date and venue of Hearing	:	**12th December 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**27th January 2014**

DECISION

Decisions of the tribunal

(1) The tribunal notes that the following points have been agreed between the parties:-

- The £125.00 'on account' service charge payments for 2011/12 and 2013/14 are both payable.
- The Central Communications charge for checking a fault with the Door Entry System will be reduced from £155.00 to £65.00.
- In relation to the cost of lighting the communal areas, the Applicant will credit to the Respondent the sum of £225.00 in respect of the period up to 25th March 2014. The Applicant also undertakes to invoice the other three leaseholders for their share of the cost of communal lighting for the period 26th October 2007 to 28th September 2012 at a rate of £150.00 per year each.
- The £300.00 administration fee is payable.
- The cost of laying the tarmac is payable on the basis that the Applicant agrees to carry out work to prevent the tarmac from catching on the gate at no cost to the Respondent.

(2) The tribunal determines that the building insurance premiums for each year of dispute are fully payable.

(3) The tribunal determines that the Respondent's 25% share of the £1,050 paid for the defective damp-proofing is not payable. The tribunal further determines that 75% of the amount spent by the Respondent on remedial damp-proofing works, namely 75% of £1,299 + VAT, should be reimbursed to her by way of set-off against her service charge liabilities.

(4) The tribunal determines that the Respondent's share of the major works for 2010/11 is payable in full.

(5) The tribunal determines that the Respondent's share of the cost of the works carried out by Southern Builders in 2012/13 is limited to £250.00.

(6) The tribunal determines that the remainder of the charges forming the basis of the county court application are payable.

(7) The tribunal declines to make a section 20C cost order.

(8) The tribunal determines that the Respondent shall not be required to reimburse the Applicant's application fee and hearing fee paid to the tribunal.

(9) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or fees.

The application

1. The Applicant seeks, and following a transfer from the county court dated 13th September 2013, the tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged to the Respondent.

2. The county court claim comprises the following sums (plus county court interest and fees):-

- Unpaid balance of service charge for 2010/11 £4,728.86
- Unpaid 'on account' service charge for 2011/12 £125.00
- Unpaid balance of service charge for 2012/13 £853.22
- Unpaid 'on account' service charge for 2013/14 £125.00
- Administration fee £300.00.

3. The relevant legal provisions are set out in the Appendix to this decision. The Respondent's lease ("**the Lease**") is dated 17th November 1987 and is between Lee Savell Investments Limited (1) and Robert Barnett (2). The Applicant is the current owner of the freehold interest in the Property (and the building of which it forms part), having acquired its interest from General Property Insurance Services Limited on 1st April 2012.

Agreed points

4. In relation to the £125.00 'on account' service charge for 2011/12 and the £125.00 'on account' service charge for 2013/14, the Respondent thought that she had paid them but in any event their payability was not disputed.

5. In relation to the 2011/12 service charge year, the parties agreed at the hearing to a compromise in relation to the charge for £155.00 described

as "Central Communications – Called to check fault with Door Entry System". It was agreed that the charge should be reduced to £65.00.

6. In relation to the lighting of the communal areas, the parties agreed at the hearing that the Respondent had been bearing more than her fair share of the cost of this. It was therefore agreed that the Applicant would credit to the Respondent the sum of £225.00 in respect of the period up to 25th March 2014. The Applicant also undertook at the hearing to invoice the other three leaseholders for their share of the cost of communal lighting for the period 26th October 2007 to 28th September 2012 at a rate of £150.00 per year each.

7. The Respondent conceded that the administration fee of £300.00 was properly payable.

8. The Respondent had a complaint about some tarmac which she said was uneven as it had not been laid to specification. The Applicant did not accept that the tarmac had been laid in a sub-standard manner and had not received complaints from any other leaseholders but Ms Bagley offered nevertheless to stop the tarmac catching on the gate at no cost to the Respondent. On the basis of this offer the Respondent withdrew her challenge to this aspect of the works.

Applicant's case

9. Ms Bagley noted that the Respondent considered the following items either not to be payable at all or not to be fully payable:-

- Building insurance premiums
- Major works charges for 2010/11
- Charges for works carried out by Southern Builders 2012/13.

10. The Respondent was also seeking reimbursement of some costs incurred in relation to damp-proofing and a waiver of charges already made in relation to damp-proofing.

Building insurance

11. Ms Bagley referred the tribunal to the relevant provisions of the Lease. She said that the Applicant went to different brokers in readiness for the June 2011 renewal and then chose one based on the quality of service offered and the premiums obtainable. The broker concerned was able to secure a reduction in premium as against the previous year. The building of which the Property formed part was able to benefit for insurance purposes from the fact that it formed part of a large portfolio.

It was easier administratively to have a block policy, and having a large portfolio with one insurer gave that insurer an incentive to provide a good and competitive service. The premium for the building was assessed independently and therefore was not affected by the risk profile of other properties within the portfolio.

12. The policy was a relatively standard 'all risks' policy and it included terrorism cover which the Applicant understood to be standard practice. The Applicant noted the Respondent's alternative quotations but questioned whether they were based on a full disclosure of all relevant factors, including in particular the previous subsidence claim as the Optima Property Policy Statement of Facts which formed the basis of the Groupama quotation expressly assumed no subsidence. Also, the amount of excess on the Respondent's alternative quotations was considered to be too high.

13. In written submissions in support of its contention that the insurance premiums have been reasonably incurred the Applicant also referred the tribunal to the cases of *Viscount Tredegar v Harwood (1929) AC 72, Foreclux Ltd v Sweetman (2001) 2 EGLR 173, Finchbourne Ltd v Rodrigues (1976) 3 All ER 581, Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd (1997) 1 EGLR 47* and *Cullen and others v Three Keys Properties Limited (Ref: CHI/29UN/LIS/2012/0063).*

Major works 2010/11

14. As the Applicant understood it, the Respondent's contentions were that the Applicant had not complied with the consultation requirements in relation to these works and also that the cost of the works was unreasonable as Mr O'Brien – the chosen contractor – failed to carry out a competent job.

15. With regard to consultation, the then landlord's surveyor inspected the building and prepared a schedule of works. The landlord then consulted with leaseholders, and Ms Bagley referred the tribunal to the relevant copy consultation documents in the hearing bundle. Regard was had to the observations received from leaseholders, including the ones received from the Respondent to which the landlord responded in writing.

16. The Applicant felt that the then landlord had fully complied with the consultation requirements and that the Respondent's concerns had been considered and dealt with. The only problem ultimately was that there had been damp in the Respondent's flat, and in recognition of this problem the Applicant offered to – and is still prepared to – deduct from the Respondent's service charge bill the Respondent's 25% share of the £1,050 cost of the damp-proofing. By way of clarification of this

point, Ms Bagley confirmed that it was agreed that the Respondent's share of this cost was not payable.

17. As regards the choice of contractor, the Applicant acknowledged that he was based in Plymouth but said that he travelled to London periodically and that any emergencies could be dealt with by someone else. The Applicant had used him many times and felt that his work was good and his charges were reasonable. Furthermore, he did not charge extra for travel from Plymouth.

18. As regards the reasonableness of the contractor's charges, Mr O'Brien commenced the works on 12th October 2010 and finished on 29th October 2010. The then landlord's surveyor carried out two separate site inspections during that period. He also visited the site on 6th November 2010 and met with the Respondent and other leaseholders and then wrote to Mr O'Brien setting out a snagging list of items for him to remedy. He then sent Mr O'Brien a list of the still outstanding snagging items on 25th January 2011 and later met with him and the Respondent on site. Some or all of these items were still outstanding at the end of March 2011 and the then landlord took the view that it would be in the interests of all parties if an alternative contractor were instructed to finish off the snagging items.

19. The work was finished off by Belsham and Son and the cost came to £3,515.00. The invoice was settled by the then landlord and its surveyor and was not added to the service charge. Instead, the service charge only included Mr O'Brien's charges of £15,450 and – albeit by an indirect route – the leaseholders ended up with a satisfactorily completed set of works at a reasonable cost, this being the same cost as the original contract sum.

20. As regards the fees of the surveyor who was overseeing Mr O'Brien's work, the Applicant contended that the surveyor himself was competent; the problem was Mr O'Brien's poor execution of the works, and even this was only at the snagging stage. Up until then the Applicant felt that Mr O'Brien was doing a good job, and he had previously done a good job for the Applicant on many occasions. This time it became apparent right at the end of the process either that he could not complete the job or could not do so to the Respondent's satisfaction.

Southern Builders 2012/13

21. The Applicant had received a report from the leaseholder of the first floor front flat about a leaking roof and on 17th September 2012 instructed Southern Builders to investigate. Southern Builders advised as to the cause of the leak and the solution, together with a quote, and they were instructed on 4th October 2012 to proceed. Southern Builders confirmed on 6th October that the work had been completed but also

stated that the rear roof cement fillet had fallen out and needed to be re-done and how much this would cost. On 9th November 2012 the Applicant then instructed Southern Builders to carry out this additional work.

22. The aggregate cost of the two items of work was more than £250 per leaseholder (neither being more than £250 per leaseholder on its own) but the Applicant contended that they were two completely separate jobs, that they should not be aggregated for the purposes of the consultation requirements and that therefore the consultation requirements did not apply to either of them. It was accepted by the Applicant that it had not consulted leaseholders in relation to these works.

Respondent's response

Building insurance

23. The Respondent accepted that the Applicant was entitled to use a block policy, given the number of properties owned by it.

24. Specifically on the question of why the Respondent's alternative quotations were not on the basis of the existence of subsidence, Ms Cooil referred the tribunal to a letter from Cunningham Lindsey dated 25th August 2009 stating that they could not detect any evidence of current subsidence damage to the building. The Applicant confirmed that the problem with subsidence arose back in 2002/03, and Ms Cooil said that the Respondent had been advised that subsidence was not relevant for insurance purposes if it had last occurred more than 5 years previously.

25. The Respondent did not consider that it was reasonable to insure against terrorism, given that this was an ordinary residential block in Surrey.

26. The Respondent's alternative quotations – which were significantly lower than the amounts being charged under the existing policy – were considered to be genuinely comparable, although Ms Cooil conceded that the bundle did not include the detailed conditions on which these quotations had been obtained and that this made it harder for the tribunal to make a proper comparison.

27. The building insurance premiums for 2010/11, 2011/12 and 2012/13 respectively were £1,904.18, £1,730.78 and £1,765.88 respectively. The Respondent's alternative quotations were £1,295.00 (Groupama/Optima), £1,345.00 (APC) and £1,195.00 (Commercial Express).

Major works 2010/11

28. The Respondent felt that Mr O'Brien must have included within the contract price the cost of travel to and from Plymouth and that therefore the contract price was higher than it would have been if a more local contractor had been selected.

29. The Respondent was not consulted adequately. The tribunal was referred to the Respondent's letter to the landlord dated 17th December 2009, specifically the section which stated that the schedule of proposed works omitted any reference to the damp problems affecting the south-facing walls, despite the fact that the landlord was aware of the damp problems. The Respondent accepted that the landlord wrote back on 13th January 2010 stating that the damp problems would be investigated by its surveyor, but the Respondent did not accept that the surveyor did actually investigate this issue.

30. The Respondent also said that her request for a breakdown of costs contained in a letter dated 4th June 2010 was not complied with, but the tribunal pointed out that a written reply was in fact provided that same day.

31. As regards the reasonableness of the charges, the Respondent felt that Mr O'Brien had done a poor job throughout. The tribunal was referred to the Respondent's email of 24th March 2011 in which she stated that she had lost complete faith in Mr O'Brien. The snagging list was enormous. As a result of all the problems the whole process took longer than expected and this caused the Respondent inconvenience.

32. On a separate point, some of the works were carried out to land to which the Respondent did not have access, namely the rear gardens and grounds. As the Respondent understood it, immediately to the rear of her flat was her own garden, and to the rear of that was a communal garden. To the rear of the communal garden was the Applicant's reserved land to which leaseholders did not have access. The Respondent referred the tribunal to a plan showing the building and the land to the rear, although it was accepted by both parties that it was not a very detailed or clear plan in the context of trying to determine which part of the land was the Applicant's reserved land. At the hearing the Respondent drew an alternative plan indicating her understanding as to the detailed position.

33. The Respondent's contention was that a large part of the work carried out to the land to the rear of the Property was carried out to the reserved land and therefore she should not have to contribute towards the cost. She also noted that Mr O'Brien had specifically offered to obtain a quotation for clearing the reserved land.

Southern Builders 2012/13

34. The two sets of works were in reality one job. The tribunal was referred to a letter from Ms Walker (the leaseholder of Flat 2) to the landlord dated 28th March 2009 in which she referred even at that early stage to problems with the roof, and therefore the problems were not simply discovered when the contractor went up onto the roof. In any event, the two issues should have been dealt with as one.

Damp-proofing

35. In written submissions, the Respondent stated that she had been raising concerns regarding damp in the Property since 2008. The landlord's surveyor eventually investigated the damp problem and first said that it was due to the persistent cold weather but then decided that the continuing damp was due to the Respondent's neighbour's downpipe. The neighbour isolated the downpipe but this made no difference, and complaints were also made by the leaseholder of Flat 2.

36. Damp-proofing works were later carried out by the Applicant, but the Respondent later had the damp wall assessed by a damp-proofing and structural water-proofing specialist who concluded that the damp-proofing course had failed and a new damp course was needed. The work was carried out in May 2013, the wall dried in less than two weeks and the Respondent was able to decorate after four weeks. Subsequently she has had no problems with the wall.

37. At the hearing Ms Cooil said that the Respondent spent £1,299.00 plus VAT in remedying the damp-proofing problems and that she had been forced to take matters into her own hands as the Applicant (and the previous landlord) had initially failed to address the problem.

Applicant's follow-up comments

38. Ms Bagley said that Mr O'Brien's offer to obtain a quotation for clearing the reserved land was not taken up.

39. The Applicant did not agree with the Respondent's analysis that she was being charged for a proportion of the cost of works that were carried out to the reserved land. Nevertheless, Ms Bagley offered to reduce the Respondent's contribution by £75.00. The Respondent's rejected this offer, countering that the Applicant should also waive the Respondent's share of the £685.00 tree-removal charge. This was not agreed.

40. Mr Bagley said that the Respondent's analysis as to where the reserved land begins seemed to be based on a comment originally made by Mr Bagley himself. However, he had been trying to work out the distance

based on a scale plan and the distance estimated by him may well have been completely wrong.

Tribunal's analysis and determinations

41. It is noted that the following items are no longer in dispute:-

- the payability of the £125.00 'on account' service charge payments for 2011/12 and 2013/14;
- the Central Communications for checking a fault with the Door Entry System (a compromise having been reached on this point);
- the reimbursement of part of the cost of lighting the communal areas (a compromise having been reached on this point);
- the payability of the £300.00 administration fee; and
- the payability of the cost of laying of the tarmac (a compromise having been reached on this point).

Building insurance

42. The tribunal notes the various arguments made by each party on this issue. In the tribunal's view, the amount charged each year whilst arguably at the higher end of the spectrum of reasonable charges was still reasonable. As pointed out by the Applicant in its analysis of the case law, whilst insuring a property as part of a block policy could lead to a higher premium, there were advantages of insuring under a block policy which it was legitimate to take into account as long as the resulting premium was not out of line with market norms: see *Forcelux v Sweetman* and *Viscount Tredegar v Harwood.*

43. The Applicant was also entitled to take out a policy designed for commercial landlords, and again this could legitimately increase the premium slightly, provided again that it remained within market norms.

44. The tribunal does not accept that it was unreasonable to insure against terrorism. The concept of terrorism can cover a range of risks, and it is not considered imprudent to protect a building against these. The tribunal accepts that the risk of terrorism in Thornton Heath is low, but as a direct consequence of this fact the cost of such terrorism insurance should also be low.

45. The alternative quotations were taken out on the basis of quite a high excess, and it was legitimate for the Applicant to opt for a policy with a lower excess and to pay extra for this. If in practice there are no claims then obviously the cost of insurance will be higher if one has paid extra for a low excess, but a landlord cannot know whether any claims will be made when the policy is taken out.

46. The Applicant states that it has partly chosen the particular insurance broker and insurer on the basis that a good service is being provided. No evidence has been produced by the Respondent to indicate that the insurance service has not been a good one, and again the level of service is considered to be a legitimate consideration. The alternative insurers suggested by the Respondent, on the other hand, may not offer a good service and might just be offering a more attractive premium on a short-term basis so as to obtain more business.

47. The Respondent acknowledges that detailed conditions have not been supplied in relation to the alternative quotations. It is possible that if detailed terms were provided a detailed analysis would reveal that in return for a lower premium the alternative insurers were offering less favourable conditions.

48. In conclusion, taking all of the above factors into account, including the order of magnitude of the difference between the premiums charged and the amount of the alternative quotations, the tribunal determines that the insurance premiums were reasonably incurred for each year of dispute.

Major works 2010/11

49. In relation to the consultation issue, the Applicant has provided documentary and oral evidence of compliance. The Respondent's counter-arguments on this issue are, in the tribunal's view, very weak. The Respondent has asserted that the consultation requirements were not complied with but has not provided any proper evidence to support this assertion, in circumstances where the Applicant's evidence indicates full compliance. As regards responses to observations, the evidence indicates that the landlord did respond to written observations and had regard to them – whilst the Respondent was not satisfied with the landlord's subsequent actions, particularly in relation to damp-proofing, this concern does not demonstrate a failure to comply with the consultation requirements.

50. As regards the reasonableness of the cost, it is common ground between the parties that Mr O'Brien failed to deal adequately with the snagging items. However, these items were dealt with by another contractor at no cost to the Respondent, and therefore it would appear, on the basis of the evidence provided, that the works were in the end completed in a satisfactory manner for the agreed contract price.

51. It is normal for there to be a snagging list at the end of a major works project. Whilst it is arguable that the snagging list was quite long and whilst it took longer to remedy the snagging items than the parties would have hoped, the end result was a reasonably priced set of works and the tribunal does not consider that it has any proper basis on the basis of the evidence provided for making a reduction in the Respondent's share of the cost.

52. In relation to the works to the open land at the back of the building, the evidence as to whether any part of the works (for which the Respondent has been charged) was carried out on the reserved land is not wholly clear. The tribunal was shown two separate plans, neither of which was at all conclusive. The tribunal has also considered the parties' written submissions and oral evidence. In a case such as this, the tribunal simply needs to decide on the balance of probabilities which scenario is the more likely. It is not easy to make this calculation on the information available. Ultimately, the tribunal finds the Applicant's oral submissions sufficiently credible for it to believe the Applicant's stated position that the charges to the Respondent do not include the cost of any work to the reserved land. Therefore, no reduction to the major works charges is made on this ground either.

Southern Builders 2012/13

53. The Applicant argues that the two sets of works were genuinely separate, in that the need for the second set of works only became apparent once the first set of works had been carried out. The Respondent argues that the issues were already known to the Applicant, but her focus at the hearing was on a letter of complaint sent back in March 2009. It does not seem to the tribunal that the Applicant in September 2012 should have had in mind a specific problem with the roof when the complaint about the roof was made over 3 years earlier and did not identify the specific problem later identified by the Applicant's contractor.

54. It is arguable that the contractor should have spotted – and maybe did spot – the second problem whilst investigating the first problem, in which case the contractor should have notified the Applicant before commencing work on the first problem. However, the tribunal considers it plausible that the contractor genuinely did not discover the second problem until later. Therefore, in the tribunal's view, the second set of works seems – on the balance of probabilities – to be genuinely separate from the first.

55. However, whilst no case law was brought by either party on this issue, the tribunal cannot ignore the High Court decision in *Phillips v Francis (2012) EWHC 3650*. In that case, the Chancellor of the High Court focused on the fact that the applicability or otherwise of the consultation requirements depends on the amount of each leaseholder's

contribution to the cost of the works. The Chancellor saw nothing in the legislation requiring the identification of one or more sets of qualifying works. As contributions were payable on an annual basis the threshold was, in his view, to be applied to any qualifying works to be carried out within the relevant service charge year. On this basis, the Chancellor concluded that all qualifying works carried out within a given service charge year needed to be aggregated, and that if the aggregate cost exceeded £250 per unit this would trigger the obligation to consult.

56. Leave to appeal the High Court's decision in *Phillips v Francis* has been given, but the decision currently stands and the tribunal is bound by it and does not consider that it has any basis for distinguishing this case on its particular facts. It is not denied by the Applicant that the two sets of works relate to the same service charge year, nor that the aggregate cost exceeds £250 per unit, nor that it failed to consult. Accordingly, the Respondent's contribution has to be limited to £250.

Damp-proofing

57. In relation to the damp-proofing, whilst the Applicant does not focus very much on this in its written statement of case, it would seem that by offering to reimburse to the Respondent her share of the cost of the damp remedial works the Applicant accepts by implication that these works were carried out in a sub-standard manner.

58. In the tribunal's view, the Respondent's evidence on this issue is quite strong. There is evidence that the problem was ongoing for a very long time and that it had been raised by the Respondent and others. There is evidence of an apparent failure on the part of the original landlord to respond in a timely manner, followed by an apparent misunderstanding of the cause of the problem, followed by the Applicant putting in sub-standard damp-proofing. The Respondent has quoted specialist advice received by her, and that same specialist has seemingly fixed the problem very quickly.

59. Whilst the tribunal accepts that, generally speaking, leaseholders who want works to be carried out cannot routinely choose to carry out the works themselves and then invoice the landlord, on the facts of this case the tribunal considers that the Respondent acted reasonably and proportionately. She was entitled to be concerned about the damp, which could reasonably be assumed to have affected her quality of life. The problem was ongoing for a considerable period of time. The evidence suggests that the landlord did not address the matter effectively and that when works were eventually carried out they were carried out in a sub-standard manner. The cost of the remedial works organised by the Respondent does not seem to the tribunal to be unreasonable.

In the circumstances, it seems to the tribunal that the Respondent should only have to pay for her 25% share of the remedial works. She should also not be obliged to pay her 25% share of the £1,050 spent on the sub-standard works. Therefore, the Respondent's 25% share of the original £1,050 is not payable, and in addition 75% of the amount spent by the Respondent on remedial damp-proofing works, namely 75% of £1,299 + VAT, should be reimbursed to her by way of set-off against her service charge liabilities.

Cost Applications

60. The Respondent applied for an order under section 20 of the 1985 Act that the Applicant should not be entitled to add its costs incurred in connection with these proceedings to the service charge. The Applicant has succeeded on a number of issues, especially if one also takes into account those items which have not been paid by the Respondent but which have not been challenged by her in the course of these proceedings. The Applicant has also acted reasonably and pragmatically in compromising on certain other issues. In the circumstances, the tribunal declines to make a section 20C order. Therefore the Applicant can add its reasonable costs incurred in connection with these proceedings to the extent (if at all) that the Lease allows for these costs to be recovered.

61. The Applicant made an application for reimbursement by the Respondent of the application and hearing fees. Whilst it is for the county court to decide the position in relation to the county court fee, in relation to the balance of the application fee and the tribunal hearing fee, the tribunal does not consider that these should be reimbursed by the Respondent. Whilst the Applicant has been successful on certain issues, it has not been successful on others and it has conceded certain other points. The Respondent has also acted reasonably in conceding certain points herself. Accordingly, the tribunal declines to order the reimbursement by the Respondent of the application and hearing fees paid by the Applicant.

62. There were no other cost applications.

Name: Judge P Korn **Date:** 27th January 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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, improvements 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.

Section 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 provisions 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.

Section 27A

(1) An application may be made to the appropriate 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.

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

(3) An application may also be made to the appropriate 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 admitted any matter by reason only of having made any payment.