RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/29UN/LSC/2009/0104**
Property:	**Flat 8** **St. Mildreds Court** **16 St. Mildreds Road** **Ramsgate** **Kent** **CT11 0EQ**
Applicant:	**Superior Properties UK Limited**
Respondent:	**Mr. R.E. Carroll**
Date of Consideration:	**26th October 2009**
Member of the Tribunal:	**Mr. R. Norman**
Date decision issued:	

RE: FLAT 8, ST. MILDREDS COURT, 16 ST. MILDREDS ROAD, RAMSGATE, KENT, CT11 0EQ

Decision

1. Subject to compliance with Section 47 of the Landlord and Tenant Act 1987 and Section 21B of the Landlord and Tenant Act 1985, of the sum of £81.36 being the balance of service charges claimed by Superior Properties UK Limited ("the Applicant") from Mr. R.E Carroll ("the Respondent") only £14.18 is payable by the Respondent.

Reasons for the Decision

2. The Applicant is the landlord of Flat 7, St. Mildreds Court, 16 St. Mildreds Road, Ramsgate, Kent, CT11 0EQ ("the subject property") and the Respondent is the lessee of the subject property.

3. On 16th February 2009 the Applicant issued proceedings in the County Court (Claim No. 9NP00543) against the Respondent claiming £644.12 in respect of service charges pursuant to a statement dated 30th December 2008 together with interest and costs.

4. On 24th July 2009 it was noted that the Respondent had paid to the Applicant the sum of £562.76 leaving a balance of £81.36 (excluding interest and costs) and it was ordered that this claim be transferred to the Leasehold Valuation Tribunal to determine the issue of whether the balance of service charges are payable by the Respondent who alleges that the said sum should not be paid as it represents work that should have been carried out by the original building contractor. The Court will further consider the issue of costs and interest following that determination.

5. On 13th August 2009 directions were issued and with those directions the Tribunal gave notice to the parties under Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004, that the Tribunal intended to proceed to determine the matter on the basis only of written representations and without an oral hearing. The parties were given the opportunity to object to that procedure by writing to the Tribunal no later than 28 days from the 13th August 2009. No written objection has been received and the matter is being deal with on the basis only of written representations and without an oral hearing.

6. A statement of case dated 14th September 2009 together with attached documents has been received from the solicitors representing the Applicant and a statement in reply dated 7th October 2009 and signed by the Respondent has been received from solicitors representing the Respondent. These have been considered.

7. There is no dispute that under the terms of the lease the Respondent is liable to pay 12% of "The Landlord's Expenses" as defined in the lease.

8. The Respondent has accepted that the majority of the items charged for are payable by him and indeed he has paid for them.

9. The items which remain in dispute are the following:

RMB Electrical Lamps	£118.15
RMB Electrical Switches/Timer etc.	£324.43
Square Shell Works to entrance	£ 60.00
Viking Door Closer/Door Work	£175.50
Total	£678.08
12%	£ 81.36

10. In his defence to the County Court Claim the Respondent stated that the subject property was constructed in 2007 and that those items are not the liability of the lessees as the work was carried out to rectify defects in the building. He also referred to a letter dated 15th January 2009 written by his solicitors to the solicitors representing the Applicant. In that letter it was stated that it would appear that the disputed work was carried out to rectify defects in the building and was no doubt covered by the original Contractors' Guarantees or that the Applicant may have a claim against the original Contractors under the Supply of Goods and Services Act if the original work was defective. The letter asked for comments on this with copy

invoices for the works listed. The Respondent stated that there had been no reply to that letter.

11. In the statement of case, the solicitors representing the Applicant make it clear that they understand the Respondent's position to be that these works were carried out to rectify inherent defects in the building and should not therefore form part of the service charge. In response to that, the Applicant's solicitors refer to a letter dated 12th February 2009 which they wrote to the Respondent's solicitors in which they state that they are instructed by the Applicant that the works carried out during the year were minor works relating to lights, bulbs, lamps, switches, repair to broken decking and in fact normal damages one would find in a block after a 12 month period and that any defects in the building had been repaired by the Applicant at considerable expense. There is no mention of any copy invoices being supplied with that letter. The statement of case goes on to say that the amounts in dispute relate to minor works which are not inherent defects and are properly recoverable as Landlord's Expenses under the lease. The Applicant's solicitors have provided a copy of that letter and copies of invoices for various items including those disputed. The copy invoices briefly indicate the work done and the charge made but provide no evidence as to whether the work was carried out to remedy a defect which should have been paid for by the original contractors. Such information would not be expected. No doubt the detail on the invoices was sufficient for the purposes of the contractors and there has been no suggestion that the work was not done or that the charge made was excessive. However, the invoice for £118.15 I find does provide sufficient evidence to indicate that the work was the replacement of lamps and part of general maintenance and repair and 12% of that sum is payable by the Respondent.

12. The Respondent in his statement of case reiterates his contention that the property was built in 2007 and therefore the building together with fixtures and fittings should after only two years still be in good condition. He refers to the letter dated 15th January 2009 written by his solicitors and the letter dated 12th February 2009 attached to the Applicant's statement of case. The Respondent states that he had not seen the letter dated 12th February 2009 until it was produced with that statement of case.

13. The Respondent in his statement of case provides further information as follows:

> "13. The new door closer was already fitted when I moved into the property; however the spring device which causes the door to automatically close was not working. This was repaired in March 2008. I submit that the applicant should not include this within the service charge account since it represents a defect with the original fitting. Therefore I submit that the applicant should pursue the original contractor for either the ill fitting of the device or for fitting a device he knew was defective.
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> 14. The broken decking too should be removed from the account since again it represents defective work. Upon taking occupation of the property the decking was already there. The decking was laid uneven, causing the area to become slippery and therefore posing a safety hazard. Should the decking

have been laid to a satisfactory standard I believe these works would not have been carried out.

15. Finally the new switch, timer and lamps, were required to be replaced due to the fact that the electrical wiring would frequently fuse/cut out. On each occasion where this happened, the applicant would have the matter dealt with, but again the electric would fuse some days later. The electrical wiring was defective; if it had been carried out competently these works would not have been required."

14. It was clear from an early stage (the letter dated 15th January 2009) that the Respondent was questioning the items set out in the document headed "WORKS" and the basis on which he was questioning them. He was also asking for copies of the invoices. The Applicant's solicitors state that a reply dated 12th February 2009 was sent but the Respondent states that he did not receive it. In any event that letter set out a brief answer about the matter and no invoices were produced.

15. Proceedings were commenced and at some stage the Respondent must have accepted liability for two of the items on the list as he has paid for them and other items and only four items remain disputed.

16. By the date of the transfer to the Leasehold Valuation Tribunal the Applicant's solicitors were aware of the extent of the dispute and the basis on which the items were disputed. Directions were given on 13th August 2009 which required the Applicant to send copies of all correspondence, witness statements, experts reports and other documents on which the Applicant sought to rely in support of the application and to supply a formal statement of case.

17. The only point in issue is whether the charges for the disputed items should have been included in the service charges or claimed against the original contractors.

18. The Applicant has pursued this claim on the basis that the items in dispute are in respect of the usual repairs and maintenance which would be expected and are not charges incurred to correct defects in the building. However, little evidence has been produced by the Applicant to support that claim. All that has been produced on behalf of the Applicant as justification for including the items in the service charge is the following:
(a) The reference in the statement of case to the Applicant's solicitors letter dated 12th February 2009 in which they state that they are instructed by the Applicant that the works carried out during the year were minor works relating to lights, bulbs, lamps, switches, repair to broken decking and in fact normal damages one would find in a block after a 12 month period and that any defects in the building have been repaired by the Applicant at considerable expense. There is no mention of any copy invoices being supplied with that letter.
(b) The mention in the statement of case that the amounts in dispute relate to minor works which are not inherent defects and are properly recoverable as Landlord's Expenses under the lease.
(c) Copies of invoices for various items, including those disputed, which (except as to the invoice for £118.15) provide insufficient evidence as to whether or not the work

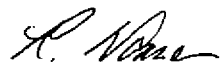
was carried out to remedy a defect which should have been paid for by the original contractors.

19. I am concerned that it is for the Applicant to prove its case on a balance of probabilities. All the disputed items could be part of general maintenance and repair and it could be that they were properly included in the service charge and payable by the Respondent but they have clearly been questioned by the Respondent and all that there is upon which a decision could be made that they are all payable is contained in paragraph 18 above. I find that it is insufficient. Had there been a statement by someone who was responsible for the management of the subject property explaining why these items should be charged to the service charge then the position could have been different.

20. I find that in respect of the disputed items the only item in respect of which there is sufficient evidence that on a balance of probabilities it should be included in the service charge is the invoice for £118.15 and 12% of that sum is £14.18.

21. Section 47 of the Landlord and Tenant Act 1987 requires that where a written demand is given to a tenant the demand must contain the name and address of the landlord. It may be that such demands did comply with that Section but the copy statement and service charge account supplied by the Applicant do not contain the address of the landlord. Where a demand is made which does not contain the name and address of the landlord then the demand is treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant. On the basis of the evidence provided by the Applicant I am not satisfied that there was compliance with Section 47 and therefore I am not satisfied that at the present time the service charge is due.

22. Section 21B (1) of the Landlord and Tenant Act 1985 provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Section 21B (2) provides that the Secretary of State may make regulations prescribing requirements as to the form and content of such summaries. The Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007 set out the form and content of such summaries. The Applicant enclosed with the statement of case a service charge summary sheet provided to the Respondent by the Applicant. Presumably that accompanied the demand for service charges although that is not specifically stated. The summary does not follow exactly the prescribed form and content set out in the Regulations. Section 21B (3) provides that a tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand. On the basis of the evidence provided by the Applicant I am not satisfied that there was compliance with Section 21B and therefore the Respondent is entitled to withhold payment.



R. Norman
Chairman