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**HM COURTS & TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

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

Case Number:	CHI/45UF/LIS/2012/0052
Property:	Flat 33 Medway court Birches Road Horsham West Sussex RH12 4NL
Applicant:	Saxon Weald Homes Limited
Respondent:	Mrs. H Deibel
Date of Inspection:	6th September 2012
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr A Mackay FRICS (Surveyor Member)
Date of the Tribunal's Decision:	27th September 2012

THE APPLICATION.

1. This was an application pursuant to S.27A of the 1985 Act for a determination of the liability of the Respondent to pay a share of the cost of cyclical painting carried out to the property in 2009. The amount in dispute was £866.17.

THE DECISION.

2. The Tribunal determines that the amount demanded of £866.17 is properly recoverable, is reasonable in amount and is payable forthwith.

JURISDICTION.

3. The Tribunal has power under S.27A of the 1985 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 service charge is payable.
4. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE.

5. The Tribunal was provided with a copy of the lease relating to the subject property. Mrs. Diebel does not contend that the service charge expenditure is not contractually recoverable as relevant service charge expenditure under the terms of her lease 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. For the record the covenant to redecorate is in Clause 3(8). The demise of the flat includes the store. (See First Schedule of the lease.) The covenant to repair the store is Clause 3(5) and the Applicant's entitlement to charge a fee in connection with the works is contained within the Fourth and Fifth Schedules.

INSPECTION.

6. The Tribunal inspected the property on the morning of Thursday 6th September 2012 prior to its determination in the presence of the parties' representatives. The subject property comprises a self contained purpose built flat within the property known as Medway Court, which is arranged as two not dissimilar detached blocks of flats arranged on ground and two upper floors. The roofs are pitched and covered with interlocking concrete tiles and the walls are of load bearing cavity brickwork. There are relieving panels of cement render and painted on the front elevations. There are plastic windows and pvc gutters and downpipes. Within the curtilage of the property there is a series of small brick built storage sheds. The ceilings and walls to the public ways are plastered and emulsion painted. There are painted metal railings to the staircases.

7. The Tribunal inspected both the exterior of the property, the sheds and the interior of the common hall and staircases which were considered to be in fair decorative order, notwithstanding the fact that the works in question had been carried out some four years previously.

BACKGROUND AND PRELIMINARY MATTERS.

8. The application received by the Tribunal on the 4th May 2012 requested the Tribunal to determine the reasonableness of the cyclical painting charge levied by the Applicant in 2008 and the liability of the Respondent to pay the charge based on the supporting documents supplied to her.
9. The Tribunal gave directions for the case following which statements of case, with supporting documentation, were filed by the Applicant and then by the Respondent. The directions provided for the determination to be made on the papers alone without a hearing unless either of the parties objected. No objections were received and accordingly the Tribunal made its determination on the papers submitted by the parties.
10. The Applicant had set out its position on the issue in their statement of case and had submitted a comprehensive bundle containing their evidence. The Respondent replied with a brief statement, with supporting documentation.

THE FACTS

11. The facts of the matter as far as can be ascertained from the papers are that in January 2008 the Applicant issued leaseholders with a notice of intention to undertake qualifying works which in general terms consisted of internal communal way decorations, and external decorations and also some minor pre-painting repairs. As the cost of these works would exceed the statutory threshold for consultation, namely £250 per flat, the Applicant embarked on the statutory consultation process. In May 2008 the Applicant informed the leaseholders that they had obtained tenders in respect of the work to be carried out and they had selected five contractors from which to make the final choice of contractor. The Applicant informed the leaseholders of the various contractors' prices and invited them to make written observations with the consultation period ending in June 2008.
12. In September 2008 these works were completed and the Respondent's share of the cost was calculated to amount to £866.17 and a service charge demand was raised to collect this sum.
13. In September 2009 the Respondent wrote to the Applicant raising a number of concerns in relation to the invoice and requesting clarification. Further correspondence ensued with the result that the Applicant treated the outstanding issues as a formal complaint and their complaint procedure was invoked.
14. By November 2009 some of the outstanding issues had been resolved with the Respondent receiving credit notes for some of the disputed items but no resolution was forthcoming over the costs of the painting contract.
15. The Tribunal's bundle contains numerous letters and documents in which the Applicant sought to explain how the painting charges had been calculated and

apportioned to the Respondent but the Respondent was not satisfied with the explanations given and refused to make payment. Correspondence continued throughout 2010 with the Respondent steadfastly maintaining her opposition notwithstanding the flow of information and explanatory letters from the Applicant.

16. In 2011 the Respondent's complaint was taken up by her son who was also not satisfied that there was adequate documentary evidence to establish the accuracy of the service charge invoice. By this stage it was clear that the Respondent did not have a quarrel with the standard of the works and her challenge was confined to the narrow issue of the inadequacy of the documentation to support the charge made. In April 2011 it became clear that agreement would not be reached and the Respondent's son suggested that the Applicant refer the matter to the Tribunal which it did in May of this year.

THE TRIBUNAL'S CONSIDERATIONS.

17. The Tribunal carefully weighed the evidence submitted by the parties. It could find no fault with the consultation process conducted by the Applicant. They had prepared a specification and invited tenders from five contractors and at the end of the consultation process they had accepted the lowest tender. The work was completed in September 2008 and at the inspection Mr Deibel confirmed that he had no issue with the standard of the workmanship and that his mother's issue was of quantum and quantum alone. The Respondent's case is that of the seven items on the challenged service charge the Applicant has reduced four by over 50%. In the light of this overcharging she feels that she is entitled to an invoice to support the charge for cyclical painting. She appears to maintain that the supporting documentation provided is unsatisfactory.
18. The Tribunal rejects this argument and is entirely satisfied that the documentary evidence provided by the Applicant is adequate and that the Respondent is not justified in withholding payment. The amount demanded by the Applicant is £866.17. This is calculated as follows:
 - Painting costs in the overall tender price from Colour Decorating Limited in the sum of £109,418 exclusive of VAT at the then prevailing rate of 15%.
 - At Page 51 of the bundle there is the contractor's priced specification for Flats 19-36 which totals £12,112. From that has been deducted the PC sum for repairs to an amount of £700, giving an adjusted sum of £11,412
 - The appropriate share for Flat 33 in accordance with the lease is 6% calculated as 3/50th's of the total number of habitable rooms. 6% of £11,412 is £684.72
 - The Applicant's own fees of 10% - £68.47 - is added which amounts to £753.19.
 - VAT at 15% of £753.19 amounting to £112.97 has been added making a grand total of £866.17 - the amount claimed.
19. The cost of the repairs to the sheds has been accounted separately at £8.50 per flat.

20. The Tribunal had no difficulty in following the documentation provided and is entirely satisfied that the apportionment of the overall painting tender price to Medway Court is correct and fair. The Tribunal similarly had no difficulty in verifying that the apportionment of the block price to the Respondent has been correctly calculated in accordance with the service charge provisions of the Respondent's lease.

CONCLUSION.

21. For the reasons stated above the Tribunal determines that the cyclical painting charge of £866.17 is contractually recoverable and reasonable in amount and is payable by the Respondent forthwith.

Chairman _____
R.T.A.Wilson LLB solicitor

Dated 27th September 2012