



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CAM/00KF/LSC/2019/0009**

**Property** : **49 Crowborough Road, Southend  
on Sea, Essex SS26LW**

**Applicant** : **Mr and Mrs Layzell (“the  
Landlords”)**

**Representative** :

**Respondents** : **Ms M A Paul (“the tenant”)**

**Type of Application** : **Determination of liability to pay  
and reasonableness of service  
charges Landlord and Tenant Act  
1985,s27A.**

**Tribunal Members** : **Judge Shepherd  
Mr C Smith MRICS FAAV  
Mr C Gowman BscMCIEH MCMi**

**Date of Decision** : **May 2019**

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**DECISION**

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1. The decoration charge of £820 is reasonable and payable.
2. The cost of the S.20 notice is recoverable and reasonable - £360

3. The court costs of £300 are not recoverable in the Tribunal.
  
4. The expenses of £200 claimed are not recoverable as they are not evidenced.
  
5. The Tribunal gives dispensation pursuant to LTA 1985, s 20ZA.

### **The Claim**

1. The claim was transferred from the County Court. The Claim was brought by the landlords seeking recovery of costs incurred including decoration of the front and flank walls of 49 Crowborough Road ("The premises"). The tenant defended the claim in the County Court saying that she was not liable for redecoration costs due to the state of the premises on purchase. She said that this exemption formed part of her purchase agreement. She also alleged that Mr Layzell had fraudulently claimed during the sales process that all the windows were double glazed when two were not. Finally she said that the decorating costs were excessive as only casual labourers were used. In the event only the last submission was pursued in front of the Tribunal. The Tenant had also made a counterclaim which was not before the Tribunal.

### **The lease**

2. The lease of the premises commenced on 24 June 2003 for a term of 99 years. The term ends on 23rd June 2102. The tenant purchased the lease from Christopher Dawson in 2015. The relevant lease terms are as follows:

2.1. Clause 2 (d) ii under which the lessee is to *pay on demand all proper costs and expenses ( including solicitor's costs and surveyor's fees) incurred by the landlord for the purpose of or incidental to the preparation and service of any notice or schedule...*

2.2 Clause 2 (k) where the lessee is to *contribute and pay on demand as additional rent one half of the costs expenses outgoings and other matters mentioned in the Third Schedule hereto.*

2.3 Clause 4 (6) under which the lessor is responsible for redecorating and maintaining the *main structure of the building...including without prejudice to the generality of the foregoing doing all painting required to the exterior walls....as often as shall reasonably be required or necessary in the reasonable opinion of the landlord.*

2.4 The Third Schedule which includes the expense of maintaining repairing renewing and redecorating as necessary and appropriate the matters referred to in Clause 4(6) above.

### **Background to the claim**

3. On 30th January 2017 the landlords wrote to the tenant notifying her that she was required to make a contribution to the cost of redecoration of the front and side of the premises with the back of the premises to be redecorated the following year. On 7th February 2017 the tenant refused to pay the contribution.

4. On 24th March 2017 the landlord through Sorrell served a s.20 notice indicating that works including repair and redecoration of the building were to be carried out. The tenant was invited to make written observations and propose a contractor from whom to obtain an estimate. In fact the landlords had already obtained estimates from Creighton Interiors (£3250) and Woodgrange Property Services (£3950). Thereafter they also obtained a quote from Dove Decorating (£2950). On 28th March 2017 the tenant wrote to Sorrell and amongst other things said she would not be obtaining estimates. There followed numerous correspondence between the parties in which the tenant maintained her position that she would not contribute towards the decorating works.

5. The decorating works were carried out in September 2018. None of the firms that had quoted were used. Instead two decorators from the nearby Bellway Estate were used and they carried out the work without scaffolding at a total cost of £1640.

6. On 9th October 2018 the landlords wrote to the tenant seeking her share of the works, namely £820. In a reply dated 12th October 2018 the tenant refused to pay this sum. Following further correspondence of a similar nature the claim was brought by the landlord. The case was stayed in the County Court following the filing of the defence and counterclaim and transferred to the Tribunal on 11th February 2019 *to determine the reasonableness or otherwise of the charges levied by the freeholder for redecoration of the property.*

7. In her response to the claim on 11th March 2019 the tenant said *inter alia* that she had not been served with written estimates before the work was carried out; that the decision to serve the s.20 notice was the landlords' choice; that there was no evidence to satisfy the Tribunal with regard to the costs and expenses claimed and finally that the decorating work was not done by a professional plastering company but by casual labourers, the paint had been applied to flaking plaster

and there were no supporting documents to support the cost of £820. These were the thrust of the tenant's submissions in the Tribunal hearing. She abandoned any reliance on earlier arguments about what she had been promised at the purchase.

### **The Inspection**

7.1 The property was inspected by the tribunal with Mrs Layzell (the landlord) and Mr McLean on representing Ms M A Paul (the tenant). The inspection related to the external area of the property only and in particular to those areas which had been redecorated being the front elevation and side (flank) wall. The tribunal did inspect the rear of the property which had been undecorated and the plaster being in a particularly poor condition and likely in need of re-rendering in the very short term.

7.2 The property is a semi-detached late Victorian house converted into two flats located in a relatively central location in Southend-on-Sea within half a mile of the nearest train station and one mile of Southend Central Station and within walking distance of local facilities and amenities.

7.2 The property is of traditional solid brick construction with part rendered elevations, particularly the flank wall which the lower (ground floor) area has recently been re-rendered (smooth finish). The majority of windows and doors appear to be uPVC replacement units with soffits and bargeboard where appropriate of the original timber type. It was clear from the inspection that the front elevation of the flank wall had recently been redecorated. The rear of the property is in a poor condition with the render in particularly poor condition, evidently having not been decorated, or repaired where damage has occurred, in recent years.

### **The decision**

8. The Tribunal considers that the work carried out by the landlords was carried out to a satisfactory standard and that the costs incurred are reasonable and recoverable under the lease via the lease terms quoted above. In fact the cost of the decorating works was below that which was forecast by the contractors who quoted for the work.

9. The Tribunal also considers that the cost of service of the s.20 notice by the landlords is recoverable under clause 2 (d) ii of the lease. The landlords were forced to take this action because the tenant had refused to pay her contribution. The sum claimed is a reasonable sum.

10. The court costs claimed by the landlords relate to the proceedings in the County Court therefore any claim for these costs must be made to the County Court itself. The sums claimed for expenses by the Landlords were inadequately evidenced and therefore the Tribunal is not willing to allow them.

11. Finally the Tribunal is willing to give the landlords dispensation from their failure to comply with the consultation requirements under the Landlord and Tenant Act 1985. It is alleged by Ms Paul, that the landlords failed to send the estimates they obtained to the tenant. It is right to say however that the Tribunal did not have all of the correspondence between Sorrell and the tenant so the position is not entirely clear. The tenant was not prejudiced by any failure on the part of the landlord. She had been invited to obtain her own estimates but decided not to do so. In any event the actual cost of the works carried out was considerably less than any of the estimates obtained so the benefit of obtaining the estimates was limited.

Jim Shepherd

Date May 2019