FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00KF/LIS/2019/0020**
Property	**:**	**49 Crowborough Road, Southend on Sea, Essex SS26LW**
Applicant	**:**	**Ms MA Paul ("the applicant ")**
Representative	**:**	
Respondents	**:**	**Mr and Mrs Layzell ("the renspondents")**
Type of Application	**:**	**Determination of counterclaim.**
Tribunal Members	**:**	**Judge Shepherd** **Mr C Smith MRICS FAAV** **Mr C Gowman BscMCIEH MCMI**
Date of Decision	**:**	**30 September 2019**

DECISION

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1. The counterclaim has no value.

The Counterclaim

1. On 11th February 2019 Southend County Court transferred the Claim in E67YM32 for determination by the Tribunal as to the reasonableness of the service charges claimed by the Claimant. The County Court at that stage did not transfer the Counterclaim brought by the Defendant. A determination as to claim was made in a decision dated 30 May 2019. On 23rd July 2019 Southend County Court transferred the counterclaim for determination by the Tribunal. Hereafter the Defendant is referred to as the Applicant and the Claimants as the Respondents to the counterclaim.

2. The parties were invited to make further submissions on the Counterclaim. There was some delay as the Tribunal sought clearer photographs.

3. The Applicant's submissions were dated 7th August 2019. In her original counterclaim she sought to recover the cost of £1291.91 representing replacement windows and new gutters plus expenses incurred. In her submissions the claim had changed to £1091.91 which was 50% of the total costs incurred of £2183.82 for alleged losses for replacement windows, guttering and remedial work. She stated that the Respondents had failed to maintain the building and that this had caused damage to the windows, gutters and floor in the conservatory. She enclosed invoices from Kingfisher Home Improvements for £1488 and £648 from early 2016 which had apparently been paid. She also enclosed quotes from

Kingfisher for works of the same value. There was also an invoice from Thameside (again apparently paid) for works to repair the conservatory door.

4. The Applicant said the Respondent was liable for the loss incurred under Clauses 3(1), 3 (2), 4.(4)(a) and 4. (4)(b) of the lease namely:

> 3(1) as to a general obligation to keep the premises in good and substantial repair, decoration and condition.
>
> 3(2) as to decoration every five years
>
> 4. 4(a) and (b) as to repair, renewal of sewers drains etc

5. In fact clause 3 deals with tenant covenants and the obligations at 3 (1) and (2) are on the Applicant not the Respondents. Further the Tribunal considers that the most relevant clause in the lease is clause 4 (6) which states the following:

> *That subject (a) to the tenant… paying their proportionate share of the estimated cost (in advance) and (b) being informed of the necessity of work or repairs the Landlord will repair, redecorate and maintain the main structure of the building and foundations the roof gutters*

downpipes(including the outside of the window frames but not the glass therein) drains pipes wires and cables serving the building……

5. The Applicant said that she *advised Mr Layzell of the problem with the conservatory and also informed him of what was required to rectify this problem. This was notified to him prior to the work being undertaken.*

6. The Applicant attached correspondence between the parties none of which demonstrated prior notice being given of the works she carried out in 2016.

7. For their part the Respondents also made extensive submissions dated 12th August 2019. In summary they said that the conservatory where the works were carried out was not part of the building of which they were responsible to repair. The conservatory was an addition.

8. Whilst not altogether clear because there is no proper lease plan, the plan that was attached to the lease when the Applicant purchased included the

conservatory and it therefore has to be assumed that this was part of the demise and therefore part of the building.

9. More significantly the Respondents claim the Applicant carried out the works to the conservatory of her own volition without any reference to them. The Applicant was now seeking to claim for these works retrospectively. On a balance of probabilities the Tribunal considers that this is a likely explanation. Clause 4(6) of the lease required written notice and prior payment before the Respondents were required to carry out work. Neither had apparently taken place. Further it is a trite common law position that before a tenant can carry out works in default and seek the costs of those works he must give the landlord proper notice first: *Lee Parker v Izzet* [1971] 1 W.L.R. 1688. It doesn't appear that any such notice was given here. The Tribunal accepts the Respondents' account that the Applicant carried out the works for which she is now seeking to claim completely of her own volition and without reference to them. Accordingly no sum is due on the Counterclaim.

10. For the sake of completeness the Tribunal also notes that the parties are at odds as to insurance liabilities under the lease. The Tribunal considers that the Freeholder is responsible for insuring the building (see clause 4(2)) but has the

right to recover a contribution towards this cost from the leaseholder (Para 2of the Third Schedule).

Jim Shepherd Date 26 September 2019