FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HH/LIS/2021/0049
Property	:	Ronceval, Higher Erith Road, Torquay, Devon, TQ1 2NH
Applicant	:	Codesurf Ltd (landlord)
Representative	:	Mr Thomas Burford of Blenheims Estate & Asset Management Ltd (Managing Agents)
Respondents	:	Mr James Harris and others (tenants)
Representative	:	In person
Type of Application	:	Landlord and Tenant Act 1985 s.27A (service charges)
Tribunal Members	:	Judge Mark Loveday Mr Bruce Bourne MRICS Mr Peter Gammon MBE
Date and venue of hearing	:	28 April 2022, Remote hearing (CVP)
Date of Decision	:	7 June 2022

DETERMINATION

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Introduction

1. This is an application for a determination of liability to pay service charges under s.27A Landlord and Tenant Act 1985 ("the 1985 Act").

2. The Applicant is the freehold owner of Ronceval, Higher Erith Road, Torquay, Devon, TQ1 2NH. The application dated 12 January 2022 seeks determinations in respect of two items:
    a. Liability of the lessees to contribute towards the relevant costs of major works undertaken during the 2020/21 service charge year. This cost essentially involved damp proofing and related works to Flat 2. The total cost of this work amounts to £24,912.
    b. An itemised claim by the lessee of Flat 2 (Ms Hitching) for payment of various costs relating to those works. The claims amount to £22,632.03.

3. The present application follows an order by the Tribunal dated 18 March 2021 under s.20ZA of the 1985 Act. The previous Tribunal dispensed with the requirements of Pt.2 of Sch.4 to the Service Charges (Consultation Requirements (England) Regs 2013. That order did not of course determine whether the relevant costs of the works were payable and/or reasonable under s.19 of the 1985 Act.

4. The application originally listed all 21 lessees as Respondents. Some eight lessees objected to the application, and one (Ms Kelly Hitching) supported it. A case management hearing was held, and Directions were given on 17 January 2022. Following this, the eight Respondents who objected to the application were treated as "objecting lessees".

5. On 11 March 2022, one of the objecting lessees, Mr James Harris (Flat 6), applied for an order under s.20C of the 1985 Act.

6. A hearing took place on 28 April 2022 by way of a remote video hearing. The Applicant was represented by Mr Thomas Burford of its managing agent Blenheims Estate & Management Ltd. Several of the objecting lessees attended of whom the following addressed the Tribunal:
    a. Mr James Harris (Flat 6).
    b. Mrs Carolyn Ballard (Flat 18).
    c. Ms Amanda Moss (Flat 20).

    Ms Hitching was also represented by her father with the permission of the Tribunal under Rule 14(5) of the Tribunal Procedure (First-tier Tribunal) Rules 2013.

The facts

7. Ronceval is a period house on a steeply sloping site in the Wellswood area of Torquay. The house was extended and converted into 20 flats and a separate cottage in or around 1988. Flat 2 is located on the lower ground floor, and comprises a living room/kitchen, bedroom and bathroom/WC. The sloping site means the living room/kitchen of Flat 2 at the rear of the property features a large bay window facing northeast across the valley beyond. But the

bedroom and bathroom/WC at the front (southwest) of the building are below floor level and have minimal natural lighting through lightwells etc.

8. The factual background is largely set out in the Applicant's Statement of Case dated 14 February 2022.

9. The Applicant acquired the freehold in March 2000. The previous lessee of Flat 2 reported damp and Dampco Ltd carried out damp proofing works in or around March 2016. Ms Hitching acquired her flat in 2018. She reported damp in her bedroom by an email to the managing agents dated 11 July 2020. The agents arranged an inspection by Mr Tony German MRICS of Croft Surveyors on 17 July 2020. The surveyor recommended in writing that in order to confirm the cause of the damp, sections of wall plasterboard would need to be removed. It was also recommended that a section of the floor slab should be cut out to ascertain whether the floor had been provided with a damp proof membrane. Local building contractors were instructed and attended site to expose areas of the floor and wall. Mr German revisited the property and his further report dated 16 September 2020 was provided to the Tribunal.

10. For the purposes of this decision, it is important to record the findings of Mr German's two reports. To summarise the first report:
    a. The property is provided with fully rendered solid masonry walls under a pitched mansard style roof.
    b. The floor of Flat 2 is formed in a solid ground bearing floor slab.
    c. The part of the property suffering from dampness (in 2020) was the bedroom area. In particular, there was a "tide mark" running along the internal partition from the external car park wall to the door. Furniture had been damaged by damp.
    d. Some damp-proofing works had been undertaken in the flat before the lessee acquired it, although this tanking was only carried out to an isolated area.
    e. The damp "may be caused" by a "defective external gully pot, or due to the incorrect lapping between any floor damp-proof membranes and the wall tanking, or due to water now breaching around the initial tanking section which was only installed in isolated areas."

    To summarise the second report:
    f. The internal wall finish in the bedroom was plasterboard, being fixed onto timber battens.
    g. Behind the battens along the flank wall was a blue proprietary tanking membrane. Mr German considered the tanking membrane was "seemingly effective".
    h. The tanking membrane does, however, terminate at the corner junction between the front wall and the party wall, and it is in this area where the water was penetrating through, causing dampness on the floor and the lower-level walls of the bedroom.
    i. Minimal damp protection was provided in this remaining area along the front wall by a bituminous based liquid coating. This had been applied directly to the masonry wall.
    j. Mr German considered the cause of the dampness in the bedroom related to water penetrating in from the outside.

k. He recommended that the tanking membrane should be taken in back across the party wall of the flat, with the membranes being adequately lapped and continual.
l. He also believed it was sensible for the bedroom floor to be incorporated with the damp proofing works, either by laying tanking membranes crossed the floor, or installing a liquid damp proof membrane.
m. The extra damp proofing works would necessitate the removal of the dry lining and removal of floor coverings. The bedroom would essentially be uninhabitable during the works.

11. Mr German followed this with an email report dated 22 October 2020, which included an important detail. Where the tanking membrane had been provided, it ran down to a base drain embedded in the floor between the plasterboard and plastic membrane. But in this case the channel was defective, in that it did not feed into any sump or drain. This meant water collecting in the void simply penetrated into the floor slab at each end of the drainage channel. The channel did not therefore appear to have been installed correctly. The solution would be to provide a proper drainage sump.

12. The works that are central to this application were carried out as a result of the above reports. The Applicant's agents obtained quotations from Brixham Damp Proofing (dated 6 November 2020) and Dampco (23 December 2020). The agents served Notices of Intention (29 December 2020) and a Statements of Estimates (5 December 2021) under s.20 of the 1985 Act. As explained, the Applicant applied to the Tribunal for dispensation under s.20ZA of the 1985 Act, and the application was granted on 18 March 2021.

13. For present purposes, the Applicant informed the Tribunal that the costs of the works had been included in the service charge accounts for 2020/21 and that they had formed part of service charge demands. The claims intimated by the lessee of Flat 2 had not as yet been included in any service charges, and the Applicant sought guidance on whether such costs could properly form part of the service charges under s.27A(2) of the 1985 Act.

14. Although Mr German did not attend the Tribunal to give evidence, the factual findings set out in the three reports, and his opinion evidence of the causes of damp in 2020 were not challenged in these proceedings. The Tribunal therefore accepts both the factual evidence of Mr German and his opinion of the cause of the damp. In addition, there is a very helpful coloured drawing (no.Q8274iv-0001) prepared by Dampco which shows the pre-2020 tanking system, the 2020 extension of that system and the new drainage arrangements and pump for the base drain. The Tribunal finds that the defective base drain and coating dated back to the conversion of the house in c.1988. Dampco's 2015 works were a partial tanking scheme which did not extend to the whole of the bedroom. The works which are the subject of this application were essentially to extend the 2015 tanking system to the whole of the bedroom, to install a new sump from the base drain beneath the bedroom and bathroom floor into the existing drain beneath the bathroom floor, to install a pump to operate that sump and to lap/seal all elements of the floor and tanking system to avoid gaps.

The Lease

15. The lease of Flat 2 dated 17 March 1989 is included in the bundle, and it is common ground that it is in materially similar form to the leases of the other flats and the cottage ("the Lease").

16. The Lease includes the following material definitions provisions:
    a. "THE DEMISED PREMISES" are defined as "the Flat and Carspace"
    b. "THE FLAT" is defined as "The Lower Ground Floor Flat edged red on the plan numbered Plan No.2 annexed hereto and thereon numbered 2 to include all the windows window frames and fittings thereof the floor finish (but not the structure upon which it is laid) the ceilings (but not the structure thereof) plaster coverings to walls abutting on the exterior of or any other parts of Ronceval and the Lessees share of the party walls as defined in Clause 7(1) the main services so far as the same lie wholly within the Flat and serve the Flat only but excluding the main members and/or joists and external wall separating the Flat from any other parts of Ronceval or any main drains leading thereto or there-from or any foundations beneath the Flat"
    c. "THE BUILDINGS" are defined as "the whole of the buildings erected on the site of Ronceval including the foundations roof main walls main members joists vehicular and pedestrian access ways Visitor Parking Area mains services pipes wires conduits another conducting media (so far as the same are not wholly within the Flat and serving the Flat only) the boundary walls to Ronceval and all other parts of Ronceval not in-cluded or intended to be included in this demise or the demise of any other Flat but excluding the cottage"

17. The lessee's covenants include the following obligation at clause 2(xix):

    "(xix) In accordance with the covenants on the part of the Lessee herein contained to repair and maintain renew uphold and keep the Demised Premises (other than those parts which the Lessor is liable under Clause 3 hereof) as to afford all necessary support shelter and protection to the parts of the Building other than the Demised Premises ..."

18. The principal service charge is at clause 2(xx). This provides a conventional interim and balancing service charge structure requiring payment of contribu-tions to the landlord's relevant costs. The Lease describes the relevant costs as "management expenses", and these are in turn defined by reference to "the outgoings and matters mentioned in Clause 3 hereof". In respect of Flat 2, the Landlord applies an apportionment of 1/19 of the management expenses to assess the relevant service charges.

19. Clause 3 sets out the main landlord covenants and obligations. These include the following:

    "(2) To keep the Buildings in good and substantial repair and condition and where necessary to renew the same
    (3) As often as the same shall require but in any event not more than once in every fourth year of the term hereby granted to paint in a good and workmanlike manner with appropriate colours twice over with good

quality paint or stain all the outside wooden ironwork of the Buildings including the railings of any Balcony previously or usually painted or stained and in like manner to paint all the interior of the pedestrian accessways previously or usually painted in every seventh year of the said term and at like times to paper varnish colour and emulsion such interior of the accessways previously or usually papered varnished coloured and emulsioned.

...

(6) If he so requires to employ a firm of Managing Agents to manage Ronceval and to discharge all proper and reasonable fees, charges and expenses payable to such agents in connection therewith including the cost of computing and collecting the maintenance charges and auditors fees in respect thereof ..."

The Applicant's case

20. The Schedule attached to the Application itemises the relevant costs of the major works as follows:

24.07.20	Croft Surveyors	Inspection of Flat 2	£300
07.09.20	TJ Smith	Removal of plasterboard	£336
12.01.21	Blenheims	Section 20 fee	£1,200
29.03.21	Blenheims	FTT Admin Fee	£1,764
17.05.21	Dampco	Structural Water Proofing	£13,800
18.05.21	TJ Smith	Chimney Ventilation	£384
28.06.21	Gould & Co Survyrs	Overseeing works	£1,335
29.07.21	Dampco	Structural Water Proofing	£1,170
17.08.21	Gould & Co Survyrs	Overseeing works	£649
17.08.21	Gould & Co Survyrs	Additional waterproofing	£2,340
17.08.21	Gould & Co Survyrs	Hatch for access	£60
17.08.21	Gould & Co Survyrs	Additional electrical	£144
23.08.21	Mark Wilson	Redecoration Flat 2	£1,430

21. Mr Burford referred to the application to dispense, to clauses 3(2), 3(3) and 3(6) of the Lease and to Mr German's reports. He contended that the main repair costs fell within the Applicant's obligation to repair at clause 3(2) of the Lease. He further referred to the invoices for each of the above costs. Mr Burford gave a detailed and very helpful explanation for each item of cost, although it is unnecessary to set these explanations out in full in this decision.

22. Mr Burford then referred to the claims made by the lessee of Flat 2, which are set out in a further "Schedule of Costs to be Recovered" attached to the Application:

Accommodation - Double Room in Gestridge Cottage 18.10.20-15.05.21	£11,760
Accommodation - Contribution of Rent to Parents 15.05.21-01.09.21	£700.00
Loss of belongings (as confirmed by loss adjuster at Admiral insurance)	£3,084
Carpet & Fitter	£988.03

Loss of Enjoyment/stress/time spent resolving/ left in unsuitable living conditions 22.07.20-17.10.20 - as detailed in complaint	£2,550
Loss of Enjoyment/stress/time spent resolving - 18.10.20-03.09.21 - as detailed in complaint	£3,500
Damaged light fitting in bedroom following works	£50

23. As far as the accommodation costs are concerned. Ms Hitching moved out of Flat 2 before the works commenced on 30.09.21. The Applicant did not consider it was necessary for her to move out quite so early and it did not therefore fully agree with some items in the schedule. Ms Hitching made a formal complaint in February 2021 to Blenheims about this and other matters, and the agent gave a response (15.03.21) which gives details of the issue about alternative accommodation.

24. Mr Burford's initial position was that the Applicant was not asserting that any of the items listed in the second schedule were recoverable by way of service charges under the Lease. They had not (as yet) been added to the charges or claimed from lessees – although a s.20 consultation had taken place. However, on being pressed, he was prepared to argue that the Carpet & Fitter (£988.03) and light fitting (£50) fell within clause 3(2).

25. In closing, Mr Burford explained that the damp works began on 04.05.21 and were completed on 19.05.21, but that the redecoration was not completed until July 2021. As to the necessity of the works, he referred to the various reports, which recommended them. The Lease was silent about paying accommodation costs or compensation to a leaseholder. The surveyors and other professionals were covered by the cost of the works. Similarly, the s.20 consultation costs were recoverable under clause 3(6) of the Lease.

The Objecting Lessees' case

26. Mr Harris (Flat 6) took the lead in submissions for the objectors. The objectors' case was that (1) the works were wholly within Flat 2, and the costs should not therefore fall on the lessees as a group, and (2) the items in the second schedule such as damages and accommodation costs were also not recoverable under the Lease.

27. He also argued that some of the relevant costs were not reasonably incurred under s.19 of the 1985 Act. Had an individual been paying for the works set out in the first schedule, they would not have incurred all those costs. For example, the defective damp sump would not have been remedied by digging up the floor of two rooms, installing a new connection to the bathroom drainage, and providing an electric pump to pump up any water from the cavity. That was an improvement. Moreover, the damp was essentially caused by inadequate original ventilation to Flat 2. The Tribunal was invited to consider the reports from Mr German to explain the issue. The cost of the repeated surveyors was also not reasonably incurred.

28. As to the second schedule, these items were all the responsibility of the lessee of Flat 2, apart from the light fitting. Replacing the carpet was unnecessary

since it could have been put aside by the damp contractors and re-laid. The belongings were not damaged/destroyed by the works – if anything they were damaged by the damp. The only item which was damaged by the works was the light fitting (£50).

29. Ms Moss (Flat 20) supported Mr Harris. She referred to the pump, which she considered an "unsuitable" solution. Lack of ventilation was one of the reasons for damp in Flat 2. She accepted the objectors had not produced any comparable quotations for the work.

30. Mrs Ballard (Flat 18) pointed out that Ms Hitching's claim was directed at Blenheims, not at the leaseholders of the other flats.

Ms Hitching

31. Mr Hitching explained that during the initial part of the Covid-19 pandemic, cupboards started to swell in Flat 2. The carpet became saturated. Mr Hitching detailed the works which were carried out, which were extremely intrusive. He stressed that it was Blenheims who insisted on carrying out the works. In relation to the pump, his daughter was left paying for the cost of maintenance. Mr Hitching questioned the need for it.

32. Mr Hitching submitted that the works in the first schedule were all within clause 3(2) of the Lease. In respect of the second schedule, the carpet was also covered by clause 3(2), since it had been water damaged. But he suggested the £50 cost of the light should not be added to the service charge, since this was down to the contractor which damaged the light. Apart from the carpet, his daughter had never asked for her claims to be added to the service charges. They were claims against Blenheims – and Mr Hitching gave a detailed explanation of the history of the claims.

The Tribunal's decision

Damp proofing works, etc.: Payable under the Lease?

33. The main argument by the objecting lessees is that the cost of the works is down to the lessee of Flat 2, not the landlord. The cost cannot (in their submission) therefore be passed onto the lessees as part of the service charge under clause 2(xx) of the Lease.

34. This is an issue of interpretation. The general principles were succinctly summarised by Lord Neuberger in Arnold v Britton [2015] EWSC 36; [2015] A.C. 1619 at [15]:

    > "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause

3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of

(i) the natural and ordinary meaning of the clause,
(ii) any other relevant provisions of the lease,
(iii) the overall purpose of the clause and the lease,
(iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and
(v) commercial common sense, but
(vi) disregarding subjective evidence of any party's intentions.

35. Arnold v Britton was a case which involved service charges, and Lord Neuberger (with whom Lords Sumption and Hughes agreed) said this at [23]:

> "… [R]eference was made in argument to service charge clauses being construed 'restrictively'. I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation. Even if (which it is unnecessary to decide) a landlord may have simpler remedies than a tenant to enforce service charge provisions, that is not relevant to the issue of how one interprets the contractual machinery for assessing the tenant's contribution. The origin of the adverb was in a judgment of Rix LJ in McHale v Earl Cadogan [2010] HLR 412, para 17. What he was saying, quite correctly, was that the court should not 'bring within the general words of a service charge clause anything which does not clearly belong there'."

Accordingly, service charge provisions are not subject to any special rule of interpretation, but the court should not "bring within the general words of a service charge clause anything which does not clearly belong there". These words of qualification were stressed by the Court of Appeal in the recent case of Kensquare Ltd v Boakye [2021] EWCA Civ 1725, although the precise scope of the qualification is open to some debate.

36. It is perhaps most useful to begin with the cost of the works themselves, rather than preliminary investigatory work, supervision etc. The main works were essentially the bills from Dampco for "Structural Water Proofing" (£13,800 and £1,170). As explained above, these essentially involved works behind the dry lining to the bedroom and within the concrete floor screed.

37. The obligation to pay service charges in clause 2(xx) includes an obligation to contribute to the costs in clause 3, which in turn include the landlord's repairing obligation in clause 3(2). The Tribunal does not consider any material assistance is given by clause 3(3), which is an obligation to decorate.

38. Repairing obligations are subject to the familiar five stage analysis in Dowding v Reynolds (7th Ed) at paras 6-04 to 6-08. The point argued by the parties in this case is relevance to the first stage of the analysis, namely the identification of the physical premises which the party giving the covenant has bound itself to repair. However, pausing there, if the Tribunal had been asked to address the remaining four stages of the analysis, it would have been satisfied the "Structural Water Proofing" carried out by Dampco met those additional requirements for works of "repair".

39. Returning to clause 3(2), the obligation "to keep the Buildings in good and substantial repair" etc. refers back to the definition of "the Buildings" in the Lease. "The Buildings" are defined in the widest possible terms, and identify several specific parts, but they are subject to an important proviso, namely "so far as the same are not wholly within the Flat and serving the Flat only".

40. But for the proviso, the Dampco works deal with parts of the physical premises which the landlord is bound to repair. In effect, the issue therefore comes down to whether the proviso applies. In other words, are the repairs carried out by Dampco "wholly within the Flat and serving the Flat only"? It is at least arguable that the works are to parts of the Buildings which serve "the Flat only". But there is still a requirement for the works to be "within the Flat". This slightly convoluted path shows the parties were correct in framing the legal question in the way they have. In other words, were the Dampco repairs, works to "the Flat" as defined by the Lease?

41. The definition of "the Flat" given in the Lease is a non-inclusive one. In a vertical plane, the Flat includes the "floor finish" and "the ceilings" but excludes the floor "structure" on which the finish is laid, the ceiling "structure" and the "main members and/or joists". Further assistance is given by the definition of "the Buildings" in the Lease, which makes it plain that any "foundations" and "roof" are not part of the demise of the Flat. The Tribunal considers the word "finish" is crucial here. It is not apt to describe a concrete floor screed, or joists supporting any floorboards – or arguably even any floorboards themselves. A "finish" means literally the final treatment or coating. That informs the meaning of "the ceilings" in the Lease as well. The "ceilings" plainly exclude any "joists" supporting the floor of the flat above. At best, the "ceilings" include any plaster panel fixed to the underside of the joists, although there may be arguments that the even ceiling panels are excluded from "the Flat" as defined by the Lease.

42. In a horizontal plane, the lease plan is not especially helpful, with the markings of insufficient scale to be of much assistance. More significantly, "the Flat" includes the "plaster coverings to walls abutting on the exterior of or any other parts of Ronceval and the Lessees share of the party walls as defined in Clause 7(1)". These words "plaster coverings" are very significant, since if the demise included the masonry of the exterior or party walls, it would be wholly unnecessary to expressly include the plaster coverings of those walls in the same definition. It follows that it is only the plaster coverings of the external or party walls which are included in the demise of the Flat.

43. The above is consistent with what appear to be the construction features of Flat 2 when the Lease was granted. The Flat was created in what was originally a basement. Given its position partly below ground, the developer would have had to make the basement area habitable by damp proofing. It did this by providing impermeable water barriers and a base drain, and then a plasterboard dry lining separated from the walls by a cavity. The division of repairing responsibilities in the Lease would have been obvious and sensible at the time the Lease was granted. It is also consistent with responsibilities for the ceilings (see above).

44. It follows from the above that in this particular Lease, the Dampco works in 2020 were to remedy defects outside the "plaster coverings" of the walls and beneath the "floor finish" of Flat 2. It follows that the works fell within the Landlord's repairing obligation at clause 3(2) of the Lease, and not within the tenant's obligations at clause 2(xix). The costs of the 2020 works therefore falls within clause 3 of the Lease and they may be included in the service charges.

45. As to the other elements of the first schedule, it is trite law that an obligation to repair includes an obligation to make good any consequential loss occasioned by the works, and in particular redecoration. Similarly, investigative and supervision costs are properly recoverable as ancillary to the cost of repairs.

46. The s.20 application fees of the managing agents fall within the "proper and reasonable fees" of the managing agents in clause 3(6).

47. Finally, there is a suggestion that some elements of the second schedule may also fall within clause 3(6). Mr Hitching readily conceded that the carpet (£988.03) was damaged by the damp. Any claim for the carpet by Ms Hitching would lie in damages for disrepair: see below. The other element is the minor item of a light allegedly damaged by the contractors (£50). Again, this is dealt with below.

Damp proofing works, etc.: s.19 Reasonableness

48. The Tribunal has a great deal of experience of arguments under s.19 of the 1985 Act. It was argued that some of the costs incurred by the Applicant in undertaking the works were not reasonably incurred. Suffice it to say that no independent evidence was provided to support the suggestion that elements of the work (such as the pump) were unnecessary. No criticism was made about the charges made by the contractors and/or professionals. There was no suggestion the works were not of a reasonable standard. There was simply no substance to the s.19 argument. The Applicant acted on the basis of professional advice, and the costs are not obviously excessive. The two-stage test in LB Hounslow v Waaler [2017] EWCA Civ 45 is met.

Ms Hitching's claim

49. This is a slightly odd dispute. Mr Hitchings said his daughter was not asking to add her claims against Blenheims to the service charge. The objecting lessees were also against doing so. The Applicant's managing agent was no more than neutral on the point. Be that as it may, the Tribunal decides the issue, since it was raised in argument. It is possible the Applicant may discharge the costs in the second schedule, and that the decision may therefore be of some use in the event it did so and then sought to recover the costs through the service charges.

50. The Tribunal is satisfied that the costs in the second schedule do not generally fall within clause 3(2), or indeed any other provision of clause 3 of the Lease. Compensation paid to a lessee for the cost of alternative accommodation

and/or compensation for damp damaged chattels and/or compensation for inconvenience, anxiety and loss of amenity are not “repair” costs. These are all damages for breach of covenant and/or tort. Special and general damages for landlord disrepair have been the subject of numerous decisions of the courts, such as Mansing Moorjani v Durban Estates Ltd [2015] EWCA Civ 1252. There is nothing at all in this Lease which allows the Applicant to add damages for its own breach of covenant to the maintenance costs. Even if it could, it is hard to see how it could be reasonable under s.19 of the 1985 Act for a landlord, who is in breach of covenant, to pass on those costs to the lessees.

51. The only possibly different item in the schedule is compensation for the lamp damaged by contractors (£50). These are not damages for disrepair, but they are nevertheless damages. Again, there is nothing in the Lease which permits the Applicant to add these to the service charges payable by the lessees at Ronceval. And it would not be reasonable under s.19 for a landlord to incur such costs. If the contractors have damaged something, it is perhaps obvious that a claim should be made to the contractors, not the lessees.

52. It follows that none of the costs in the second schedule may be added to the service charges. That does not mean the Tribunal finds Ms Hitching can or cannot recover her claims from the Applicant. It merely means that if the Applicant did pay anything to Ms Hitching, it cannot pass those costs onto the lessees as a whole.

Section 20C

53. The Tribunal was not addressed about s.20C of the 1985 Act at the hearing. In the light of this, it simply directs that if Mr Harris wishes to pursue the s.20C application, he should submit brief written submissions in writing by 4.00pm on 24 June 2022 and send a copy to the Applicant. The Respondent may respond to this in writing by 4.00pm on 8 July 2022. The Tribunal will determine the s.20C application on the papers.

Conclusions

54. The relevant costs of damp proofing and related items set out in the first schedule to the application (£24,912) are payable as part of the service charges.

55. No part of Ms Hitching’s claims set out in the second schedule to the application (£22,632.03) are payable as part of the service charges.

56. Directions are given above for Mr Harris’s s.20C application to be dealt with on the papers without a further hearing.

Judge Mark Loveday
7 June 2022

Amended under Rule 50 (to correct name of Applicant’s representative)
20 June 2022

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.