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HM COURTS & TRIBUNALS SERVICE

MIDLAND LEASEHOLD VALUATION TRIBUNAL

DECISION

**LANDLORD AND TENANT ACT 1985
SECTION 20(C) AND SECTION 27A (3)**

Applicants	Nigel Dunlop Emily Hughes
Respondent	Mercian Housing Association Limited
Property	Flat 11 Rosco House 7 Wood End Road Erdington Birmingham B24 8AA
Date of application	17 October 2011
Members of the Committee	V Ward BSc Hons FRICS D Salter LLB Hons
Date of determination	27 January 2012

Application

- 1 On 17 October 2011 the Applicants Nigel Dunlop and Emily Hughes applied to the Leasehold Valuation Tribunal ("the Tribunal") under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay and for reasonableness of a service charge levied in respect of the years 2009, 2010 and 2011 by the Respondent, Mercian Housing Association Limited in respect of Flat 11 Rosco House 7 Wood End Road Erdington Birmingham B24 8AA ("the Property"). The Application also requested an order under Section 20C of the Act.
- 2 By directions issued by a Procedural Chairman on 7 November 2011 the Tribunal directed that the application be dealt with on the basis of written representations without an oral hearing unless either or both parties requested the same. No such request was made. Written representations had been received from both parties and these were copied to either side.

Inspection

- 3 The Tribunal inspected the property on 27 January 2012 and found it comprised a residential flat with the following accommodation:

Hall, Living area incorporating Kitchen, Master Bedroom with ensuite, Bedroom, Bathroom

The property forms part of a modern development which the Tribunal is advised comprises 36 residential units in total, arranged in three blocks of 12. The subject property is located on the second floor.

- 4 Present at the inspection were the Applicants and Pravina Ladwa (Property Manager) and Neville Parboo (Surveyor) for the Respondents.

Background

- 5 The Applicants are the registered leasehold proprietors of the Property and hold the residue of a 99 year term from 1 January 2006 granted by a Lease ("the Lease") dated 22 June 2007 made between Mercian Housing Association Limited as Lessor and Nigel Dunlop and Emily Hughes as Lessees.
- 6 The Respondent is the freeholder under the Lease and is responsible for and performs the management activities in respect of the development.
- 7 The Applicants dispute the liability to pay and the reasonableness of the service charge with respect particularly to the grounds and communal areas not being maintained properly for the years 2009, 2010 and 2011.
- 8 In their statement of case, the Applicants contend, in particular, that the gardens were neglected, the grass was not cut and bushes left untrimmed. Further, the gardening contractor had allegedly cracked paving slabs, damaged light posts and churned the grass up. A defective downpipe had been reported and not repaired.
- 9 The Applicants also complain that defects and faults reported to the Respondents were not dealt with in a timely fashion and sometimes not attended to for many months.
- 10 In their statement, the Respondents provided details of the charges for the years in question as reproduced below:

Year	Gardening/Grounds Maintenance	Day to Day Repairs	Cleaning	Window Cleaning
2008/9	£1203.65	£842.73	£571.04	£280.86
2009/10	£1256.10	£318.63	£590.37	£287.46
2010/11	£1283.25	£401.89	£603.20	£290.74

- 11 In relation to these figures, the Respondents specifically added that for 2010/11 the monthly charge per leaseholder for these items was; £8.91 for gardening, £2.79 for repairs, £4.19 for cleaning and £2.02 for window cleaning. They further confirmed details of their contractor appointment process and repair handling procedure.
- 12 In respect of the provision of gardening services, the gardening contractor was appointed on a 5 year contract from July 2006. The Respondents concede that the performance of that contractor had dipped following notice of the end of the contract and accordingly they would be deducting monies which would result in savings in future service charges. A new gardening contractor has been now been appointed.
- 13 In their summary, the Respondents accept that the services provided have not always been provided to the high standard they expect.

THE LAW

- 14 The Act provides:

19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

- (a) only to the extent that they are reasonably incurred, and where they are incurred on the provisions of services or the carrying out of works,
- (b) only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

- 15 **27A Liability to pay service charges: Jurisdiction**

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs, and if it would, as to –

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,

- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to this Application.

16 20C Limitation of service charges: costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before....a leasehold valuation tribunal....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or person specified in the application.

DETERMINATION

- 17 Having considered the provisions of the Lease, the Tribunal notes that the obligation for the tenant to pay a service charge is contained within Clause 6 – Tenant’s Duties. The definitions within the Lease confirm that the service cost is the net cost of complying with the Landlord’s duties contained within clause 6. The service charge is defined as a proportionate part of the service cost. The Landlord’s duties are set out in clauses 7 and 8.
- 18 Upon the Tribunal’s inspection of the development, it was found that many of the defects identified by the Applicants had been remedied, in particular, the cracked slabs had been replaced and the light post repaired. In respect of the gardens and grounds the Tribunal were of the opinion that they were in reasonable order for the time of year. However the gully/downpipe did not appear to have been repaired.
- 19 It was clear from the information provided in their statement, that, until recently, a source of annoyance and irritation to the Applicants was the delay in repairs or complaints being dealt with. Due to an organisational change in Mercian Housing and a change in contractors, service levels had now improved and this was acknowledged by the Applicants.
- 20 From the statements made by the parties it is clear that some of the services provided, specifically, the gardens and grounds maintenance and day-to-day maintenance items were not in the relevant periods dealt with in a reasonable manner.

- 21 The Respondents have a duty to maintain facilities to a reasonable standard and reported defects should be dealt with in a timely fashion.
- 22 Accordingly, the Tribunal considers that deductions of 50% against the costs of gardening/grounds maintenance and 25% against the costs of day-to-day repairs for the years in question is appropriate. This is outlined in the attached schedule.

SUMMARY OF DECISION

- 23 In respect of the Section 27 A Application the Tribunal accordingly finds that:
- a) For year 2008/9, the Applicants are allowed £67.71 against their service charge account;
 - b) For year 2009/10, the Applicants are allowed £58.98 against their service charge account;
 - c) For year 2010/11, the Applicants are allowed £61.84 against their service charge account.

24 Section 20 C Application

As regards the Application under section 20C the Tribunal notes that neither party provided any evidence or made any further submissions on this point as required by the Directions and concludes that it is therefore not appropriate to make an order.



V WARD BSc Hons FRICS

DATE 27 FEB 2012

Flat 11 Rosco House 7 Wood End Road Erdington Birmingham B24 8AA

Year	Gardening/Grounds Maintenance			Day to Day Repairs			Total Allowance
	Total Block Cost	Per Leaseholder	50% Allowance	Total Block Cost	Per Leaseholder	25% Allowance	
2008/9	£ 1,203.65	£ 100.30	£ 50.15	£ 842.73	£ 70.23	£ 17.56	£ 67.71
2009/10	£ 1,256.10	£ 104.68	£ 52.34	£ 318.63	£ 26.55	£ 6.64	£ 58.98
2010/11	£ 1,283.25	£ 106.94	£ 53.47	£ 401.89	£ 33.49	£ 8.37	£ 61.84