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HM Courts & Tribunals Service

Residential Property

LEASEHOLD VALUATION TRIBUNAL (Eastern Region)

LANDLORD AND TENANT ACT 1985 Section 27A ("the Act")

	CAM/26UC/LSC/2012/0048 & 0049
Property:	**7 & 9 Hammer Lane, Hemel Hempstead, Hertfordshire HP2 4EU**
Applicant:	**Dacorum Borough Council**
Respondent:	**Mr A A Daniell and Mrs S Daniell (Flat 7)** **Miss H N Franoux (Flat 9)**
Attendances for Applicants:	**Miss Madeleine Green, Legal Executive** **Mr Graham Tookey** **Mr Steve Tarbox** **Mrs J Moseley all of Dacorum Borough Council**
Representatives for Respondents:	**Mr Daniell** **Miss Franoux**
Date of Directions Date of Hearing:	**24th July 2012**
Tribunal Members:	**Mr Andrew Dutton – chair** **Miss Marina Krisko BSc (Est Man) FRICS** **Mr Adarsh Kapur**
Date of Decision:	**7th August 2012**

DECISION

The Tribunal determines that the sums payable by both Respondents are as set out in the findings section of these reasons.

The Tribunal determines that the fees payable by the Council are not to be refunded by the Respondents.

REASONS

Background

1. On 18th April 2012 Dacorum Borough Council, the Applicants in this matter, applied to the Tribunal for a determination as to the liability to pay and the reasonableness of service charges in respect of Flat Nos 7 and 9 Hammer Lane, Hemel Hempstead. The leasehold owners of Flat 7 are Mr and Mrs Daniell and the owner of Flat 9 is Miss Franoux.

2. Directions were issued on 26th April and the two cases were heard together on 24th July. It is right to record that the issues raised by Mr and Mrs Daniell in their response to the application were adopted by Miss Franoux although she did not file any written confirmation to that effect. Prior to the Hearing we were provided with a number of bundles of documents. The first was a bundle containing the application by Mr and Mrs Daniell, their handwritten comments attached to the application, the directions order and a letter subsequently amending those directions in agreeing an extension of time. Insofar as Miss Franoux's case was concerned we also had a copy of her lease and notice of assignment together with copies of the service charge invoices that had been served and were the subject of these proceedings.

3. In relation to the issues raised by Mr and Mrs Daniell the local authority had produced witness statements from Miss Green, Mr Tookey and Mr Tarbox who all attended the Hearing, together with Mrs Moseley. Prior to the Hearing we inspected the subject premises.

Inspection

4. The property comprises a three storey block of 12 flats with large unfenced grassed area to the front and to the rear an area enclosed by a brick wall accessed by a wooden gate. The rear area gives access to two external but enclosed staircases serving the flats, as well as two drying areas. At the time of our inspection the grass had not been cut for some time and the front area appeared to be used by all and sundry as affording access to the neighbouring row of shops. We noted that there were a number of satellite dishes erected on the exterior of the property.

5. In the main the windows to the flats were UPVC and each flat appeared to have a small balcony/patio which overlooked this front grassed area. To

the rear the access stairs were enclosed and were clean and in good order although we noted that there were some peeling of paint to the ceilings on the first and third floors and that there was a cupboard door missing on the third floor where some works had been done by the local authority some while ago. We also noted that the door to the refuse shoot shows signs of flacking paintwork. There were two external drying areas and the one to the right we noted that there had been some repair brickwork carried out which appeared from inspection somewhat slapdash and below standard.

Hearing

6. Although Miss Franoux had not provided any form of written submission to the Tribunal she confirmed she adopted and stood by the comments made by Mr and Mrs Daniell in their handwritten annotations to the application made by the local authority. The local authority confirmed that they were prepared to deal with Miss Franoux's matter notwithstanding the lack of any written response by her and would accept that she adopted both Mr and Mrs Daniell's position.

7. We then considered the various concerns raised by Mr and Mrs Daniell and these started with issues in the year 2006/07. Two specific invoices were referred to one relating to the checking of guttering and the other to carrying out some refurbishment to the door entry system. It was Mr Daniell's argument that the job relating to the guttering was never done because scaffolding was not erected and that insofar as the door entry phone was concerned the problems were caused by a council tenant's heating outlet pipe which was blowing fumes directly onto the answerphone pad. After some discussions Mr Daniell accepted the costs for investigating the guttering as it seems this formed but part of a cost for the job the other part being for the carrying out of some sealing works following this investigation. Accordingly the sum claimed by the local authority was accepted.

8. Insofar as the door entry phone system was concerned, Miss Green in her witness statement told us that there had been two repairs carried out in 2003 and following a maintenance survey in 2006 further works were requested to the door entry system. She confirmed that contact with the contractors had led her to believe that whilst the boiler flue was not in an ideal location it had not affected the door entry system. We noted that on inspection in fact the flue had been repositioned. Mr Daniell confirmed that the door entry phone system was working satisfactorily and had been since the flue had been resited.

9. In respect of this year, 2006/7 apart from major works to which we will return, there was also a charge made in respect of the installation of communal digital satellite TV. Although Mr Daniell did not raise this as an issued in his application, he did question the costs of same at the Hearing. We were told by the Applicants that there had been no communal system before and that they had installed the system to enable an upgrade to take the digital signal. It was accepted that prior to this each individual

appeared to have made their own arrangements for the reception of television signals. It was put the local authority that the lease made no provision for improvements and that as there had not been a system in place prior to the installation in 2006/07 this must clearly have been an improvement. There was no submission made by the local authority on that point.

10. The next issue arising from this year related to the question of major works which were essentially internal decorations to the common parts and external decorations. The sum now said to be due is £493.59 per leaseholder. Mr Tookey gave evidence as to the works and that is set out in his witness statement which we do not need to repeat. Mr Daniell was concerned that the costs of the works were excessive, that the workmanship was "terrible", that windows had been painted either locked open or shut and the job had generally not been carried out to an acceptable standard. He was not able to say what the cost would be but he thought that the works had been undertaken in no more than two days. He was particularly concerned as to the scaffolding costs which were applicable only to works to the stairwells. In response to this Mr Tookey said that there had been scaffolding erected for the stairwells but other external decorating works had been dealt with by way of alternative systems. It was also said that the Council would be asking the contractor to come back to make good, even after this length of time.

11. In the year 2007/08 and on-going there was a general complaint regarding the gardening and the cleaning. It was said that neither the gardening nor the cleaning were done often enough and not to an acceptable standard, although both Miss Franoux and Mr Daniell accepted that the current cleaning arrangements were perfectly satisfactory. There was also a complaint made in the year 2008/09 with regard to the costs of lighting, in particular Mr Daniell could not understand the cost associated with replacing light bulbs. The position appears to be that there are two charges made, one for the electricity which is dealt with by way of meters and for which Mr Daniell had no complaint and the other was a standing maintenance charge. Again it seems that Mr Daniell had no complaint in respect of these half yearly payments but it was the one off payments which caused him some concern and in particular charges made in the year April 2010 to March 2011 which related to the repairs to lighting in the communal area.

12. We heard from Mr Tarbox on the question of cleaning. He told us that cleaning was carried out once a week and produced a document that evidenced the signing on and signing off of the cleaners which was by way of electronic recordings. He told us that there was an inspection once a year and also a random inspection some time during the year as he attempted to get round 10% of each of the estates per month. Mr Daniell's complaint was that the cleaning was not up to standard and he had made a general retention reflecting both his dissatisfaction at the cleaning and the gardening on a pro-rata basis each time a demand was made.

13. So far as gardening was concerned we were told that there had been attendances in April, May and July of 2012 and a further visit scheduled in August. The total cost appeared to be around £65 per visit. During the course of dealing with this matter the council confirmed that they would review the grass cutting charges in respect of the area of land to the front of the property which whilst appearing to be capable of use by the leaseholders under the terms of their lease, was also on inspection being used by anybody who wished to cross the grassed area to get to or from the parade of shops. The council accepted that this was an area that should form part of the normal highways and/or amenity cutting programme rather than be charged to the tenants of this building. At the time of our inspection the grass appeared not to have been cut for some time and there is really quite limited grass cutting required if the front area is removed from the specification.

14. It was also explained to us by Mr Moseley the basis upon which the local authority charge for service charges. It appears that half yearly accounts are rendered to the tenants based on the actual charges incurred in the previous 12 month period. At the end of the year, which is March, sometime towards August/September a further demand is sent out to collect items of a one off nature which for example in this case included the lighting repairs and the works to the door entry phone referred to previously. There are also two further items of expenditure which were collected in this manner to which we will return in a moment. It does seem, however, that the local authority is not following the provisions of the lease with regard to the requirements of accounting purposes. Matters are not helped because on inspection of the two leases which were provided to us, one for Mr and Mrs Daniell and one for Miss Franoux, it became clear that the definition of the building in one was not the same as the other. In Mr and Mrs Daniell's lease the definition of the building included all the flats in the block, that is to say 12, whereas Miss Franoux's lease included only six flats within the definition of building. This is a potential recipe for problems although it was difficult to say whether there had been any impact on the Respondents in this case as it seemed that most of the expenses were divided on a one twelfth basis having been incurred on a total block basis.

15. We then turned to two final issues, one is relating to repair works to a cupboard at the top floor of the communal stairway. It seems that this first came about as a result of some misunderstanding as to a leak. It appears, however, that this merely related to a leaking communal tap which has been repaired but the door to the cupboard has still been left off its hinges. It was agreed by Mr Daniell that the charge of £55.94 which would be divided as appropriate would be a reasonable charge if the door were put back. The council confirmed that they would ensure that it was, at no extra cost to the leaseholders.

16. The next matter we were asked to consider and the final area of contention related to works carried out to the brick wall to the communal drying area to the right of the property. Inspection had revealed that this was in a poor state and the charge of £975 appeared to be accepted by all concerned as

being too high. It was not clear whether the wall was in fact the responsibility of the local authority which it seems had not been a matter of investigation.

17. At the conclusion of the Hearing the council confirmed that they would not be seeking costs but would be seeking a refund of the fees paid to the Tribunal.

The Law

18. The law appropriate to this case is set out on the attached annex.

Findings

19. We make the following comments to explain our findings as to the sums allowed or disallowed.

20. Insofar as the invoice 792408 is concerned, this was in effect accepted by Mr Daniell as being due and owing. It related to an inspection of guttering which was then followed by works carried out. He accepted that the charge was reasonable. **The sum of £44.56 is allowed** and should be allocated in accordance with the parties leases, which is the position for all monies found due. It seems to us that the fair way would be to divide all costs amongst the 12 flats but it is not possible to say if they have been apportioned on that basis to date. A variation of the leases to bring them all into line might be considered.

21. Insofar as invoice 765630 is concerned which related to works to the door entry system, we are prepared to allow the sum of £107 as claimed. No real evidence was produced to us that indicated that the position of the flue had affected the working of the door entry system. The position of the flue seemed to us to be inappropriate discharging as it did near to a doorway with the potential for fumes to be gathered into the common parts. However, that has now been put right. We were satisfied from the answers given by the council that these works were carried out following an inspection and it appears that the door entry system is working satisfactorily. **The sum of £107.00 is allowed subject to correct allocation**

22. Turning to the question of the communal TV. Although this was not initially challenged by Mr Daniell he did raise this at the Hearing and the question is whether or not it is recoverable in that the lease appears to make no provision for improvements. We were told at the Hearing that there had been no communal system and that this had been put in following the switch over from analogue to digital. We suspect, although it may be nothing more than that, that this was really designed to assist the council tenants living in the property. The lease refers to the provision of a communal system and the need to use it but it seems until now each individual leaseholder has made such arrangements as they wished to enable them to receive a television picture. In those circumstances we

must find that this is an improvement and is not recoverable under the terms of the tenant's lease. **We therefore disallow the costs associated with this matter which is the sum of £112.34.**

23. Insofar as the decorating works are concerned, it seems to us that the sum of £493.59 which is the final sum due from the leaseholders is reasonable. We have considered the specifications and at inspection whilst there was some evidence of bubbling and flacking in a couple of areas, generally the standards of decoration appeared to be reasonable and it was difficult after this length of time (more than five years) to say that the work was not of a proper standard. In those circumstances utilising our knowledge and experience we conclude that the **sum of £493.59 is recoverable**.

24. Insofar as the cleaning is concerned, it is a common complaint made by residents is not carried out satisfactorily. It is very difficult to deal with the matter. The council produced evidence of attendances by the cleaners on a weekly basis and certainly at the time we inspected, the property was clean and tidy. The sums claimed are not great and **we therefore find are reasonable and should be paid in full for each year.**

25. So far as the gardening is concerned, it does seem to us that certainly from our inspection that this was not being done on a regular basis. It appears that it is the local authority's own team that carries this out, presumably on a rota and can fit this in whenever possible. We accept that at the moment the weather has not been kind and that may have impacted on the present standard. However, Mr Daniell and Miss Franoux were adamant that the gardening was not done on a regular basis and also they were paying a substantial sum for the cutting of the grass to the front which appeared to be used by all the inhabitants of the area. Taking those matters in the round and given that the council has agreed they will review the charges for gardening to remove the costs of cutting the front grass as a charge for the leaseholders, **we conclude that it would be appropriate to allow half the gardening costs for the years in question.**

26. We can see nothing wrong with the charges made in respect of the lighting either the electricity provided or the service provided. Accordingly in additional to the half yearly payments **the sums two of £26.56 are allowed.** Insofar as the works to the cupboard are concerned, again we are satisfied that is reasonable provided the door is replaced as the council has said they will do and **accordingly the sum of £55.94 is due and owing**.

27. The only other matter to deal with is the question of the costs for the wall. **We find that nothing is payable in respect of this item of work**. The work is very poor, there is cement extruding to the other side, there are still cracks apparent in the wall itself and the standard is shoddy and if done privately we suspect would have resulted in the client refusing to pay. Accordingly we make no allowance for this. We should, however, say that if the council arranges to have the work done again on a properly costed and charged basis, then it would be payable by the leaseholders we

understand equally between all 12. We should mention, however, that the liability for the council to carry out the repair is potentially still in doubt as it does not seem that any attempts were made to establish ownership of the wall.

28. In view of our findings in respect of various matters we conclude it would be inappropriate to order the Respondents to make reimbursement of the fees to the Council.

Chairman: _____

A A Dutton

Date:
7th August 2012

The Relevant Law

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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
   (b) where they are incurred on the provisions of services or the carrying out of works, 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 or subsequent charges or otherwise.

Section 27A

(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 would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be 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 to have agreed or admitted any matter by reason only of having made any payment.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).