

9156



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

Case Reference : LON/OOAM/LSC/2013/O285

Property : Flats 37-48, 15 Hoxton Square,
London N1 6NT

Applicant : The leaseholders of the subject flats
as listed in the application

Representative : Mr Marcus Jemmotte
(representing Mrs Jemmotte of Flat
42)
Mr Ben Woodcock (Flat 48)

Respondent : Notting Hill Home Ownership
Limited

Representative : Mr Nicholas Grundy of Counsel

Type of Application : Liability to pay service charges

Tribunal Members : Ms N Hawkes
Miss M Krisko FRICS
Mr P Clabburn

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 31.7.13

DECISION

Decisions of the tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision in order that the parties can calculate the final sum payable by each of the Applicants in respect of the service charge years 2009 to 2012. It does so because the percentages of the Estate Costs and the Building Costs which are payable by each of the Applicants were unavailable at the hearing. Both parties agreed that neither the apportionment of the service charge between the Applicants nor the manner in which the surplus had been carried forward were in issue.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Tribunal determines that the Respondent shall pay the Applicants the sum of £500 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2009 to 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants were represented by Mr Marcus Jemmotte of flat 42 and Mr Ben Woodcock of flat 48 at the hearing and the Respondent was represented by Mr Nicholas Grundy of Counsel.
4. The Tribunal members received a further bundle prepared by the Respondent containing invoices on the morning of the hearing and the Applicants informed the Tribunal they had first received the same bundle the evening prior to the hearing and that they had had insufficient time in which to properly consider the invoices.
5. The Tribunal gave the Applicants additional time to read the invoice bundle during the course of the hearing and the Applicants subsequently confirmed that they had had enough time to consider the invoices and that they were in a position to proceed.

6. During the first day of the hearing, the Respondent arranged for copies of the relevant service charge demands to be brought to the Tribunal by taxi. Copies were to be given to the Applicants at the end of day one but the Tribunal did not receive copies of the service charge demands until the following morning.

The background

7. The estate at 14-15 Hoxton Square, London N1 6NT ("Hoxton Square") comprises land in respect of which the Respondent is the freehold owner and land in respect of which the freehold is owned by St George Land Limited ("St George"). The Respondent acquired its land in 2002 pursuant to a transfer between St George and the Respondent. By the TP1, the Respondent agreed to pay maintenance expenses relating to its land at Hoxton Square but there is no express provision to the effect that the Respondent is entitled to receive copies of all relevant invoices.
8. The property which is the subject of this application is a block of twelve purpose built, shared ownership flats comprising eight two bedroom flats and four one bedroom flats ("the Applicant's block"). There is also a block of 36 privately owned units at 14-15 Hoxton Square ("the St George block") and the landlord in respect of these units is St George.
9. Photographs of the building were provided by the Applicants. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
10. The Applicants hold long leases of flats within their block which require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the leases will be referred to below, where appropriate. The parties confirmed that the material provisions of the leases which are referred to below are in the same form in each of the Applicants' leases, save that the Leaseholder's Proportions vary.

The issues

11. The parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the service charge years 2009 to 2013.
 - (ii) The Applicants' application for an order pursuant to section 20C of the 1985 Act.

- (iii) The Applicants' application for a refund of the fees that they have paid in respect of the application.
12. The Tribunal notes that the Respondent has agreed to provide individual accounts to each of the Applicants showing how each separate year end surplus, if any, has been dealt with. Having heard evidence and submissions from the parties and having considered all of the documents referred to, the Tribunal has made determinations on the various issues as follows.

The service charge year to 31st March 2009

13. The Leaseholder's proportion is a percentage of the Estate Costs and the Building Costs payable by each of the Applicants which is set out in the particulars of each lease and which varies from lease to lease. The Estate Costs and the Building Costs are described in the Ninth Schedule to the leases.
14. By clause 3 of the shared ownership leases, the Applicants covenanted to pay the "Leaseholder's Proportion" in accordance with clause 7 of the leases. Clause 7 provides for the payment in advance of half of the Leaseholder's Proportion of the estimated maintenance expenses for the year in question on the 1st January and 1st July of each year and for a balancing payment to be made by the leaseholder or credited against the future payments due from the leaseholder once the actual figures have been ascertained.
15. From July 2008 to date, Montalt Management ("Montalt") has managed the St George block and the common areas shared by the both the occupants of the St George block and the Applicant's block. Prior to July 2008, this function was carried out by Gross Fine Management ("Gross Fine") but Gross Fine did not render any invoices for carrying out its management functions at Hoxton Square and therefore figures were not placed on the Respondent's end of year accounts. Since July 2008, the Respondent has received estate management invoices from Montalt.
16. Although the service charge year follows the calendar year, due to an administrative error, the Applicants were initially served with service charge estimates in April. The position was changed in 2009 in which the accounts show the year to 31st March 2009 and then the period from April to December 2009 only. From 2010 onwards, the accounts for the service charge year follow the calendar year, in accordance with the provisions of the lease.
17. The Tribunal heard oral evidence from Ms Carly Ward, a Leasehold Manager employed by the Respondent. Ms Ward became the Property Management Officer at Hoxton Square in July 2012 and she is now the

Leasehold Manager for that estate. Since May 2013, Sandra Simpson has been the Property Management Officer. The Tribunal also heard oral evidence from Mr Jemmotte and Mr Woodcock.

18. The parties agreed that the matters in dispute in the service charge year ending 31.3.09 are limited to the management fee; the entry phone costs; the day to day repairs; and the Estates Costs (described as managing agents' costs in the accounts). In the Service Charge year ending 31st March 2009, the Applicants challenged the Estate Costs relating to electricity, mechanical plant, entry phone, and estate management fees. No specific grounds of challenge were raised in respect of the other items.

The Management Fee

19. A management fee in the sum of £130 per flat has been charged by the Respondent for managing the Applicant's block. Montalt also charged a management fee in respect of their management of the relevant parts of the estate at Hoxton Square.
20. The Applicants do not dispute that a management fee is payable or that £130 per unit would be a reasonable management charge if a reasonable standard of service had been provided. However, they state £130 is not a reasonable charge for the service which they have actually received.
21. In particular, the Applicants state that the Respondent failed to provide them with supporting invoices for the Estate Costs prior to the day before the hearing notwithstanding numerous requests which they made to inspect the invoices throughout the relevant period. They also state the Respondent failed to check the fairness of Montalt's Estate Costs and that it failed to satisfy itself that the costs claimed had actually been incurred. They state that no detailed explanation was given for the change in the service charge year and that it is unclear how this has affected the Estate Costs calculation.
22. The Respondent states that although it has no right to obtain the invoices relating to the Estate Costs from Montalt, there had been repeated attempts to obtain the invoices. Ms Ward gave evidence that many of these attempts related to a period before her involvement and so she could not give direct evidence. Ms Ward stated at Paragraph 9 of her additional witness statement dated 17.7.13 (which was made available to the panel on the day of the hearing) that she had tried to obtain copies of the invoices from Montalt specifically for use in this case since the beginning of June 2013. At Paragraph 20 of this statement she explains that she managed to obtain copies of the invoices when she visited Montalt's offices on 15.7.13.

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23. The Tribunal notes that the Respondent chose to enter into an agreement whereby it has no express right to obtain copies of Montalt's invoices notwithstanding the fact that its leaseholders are entitled to inspect invoices in respect of the services which make up their service charge. The Tribunal also notes that the Respondent ultimately managed to obtain copies of the relevant invoices in the run up to the hearing.
24. The Tribunal finds as a fact that it is likely that the Respondent would have been able to obtain the requested copies of the invoices much earlier if it had acted with due care and skill and that, in all the circumstances, the management fee of £130 per unit is not a reasonable charge given the deficiencies in the service which was provided.
25. However, the Tribunal also recognises that the base fee is at a very reasonable level and that there are other aspects of managing a 12 flat block of this type in respect of which no complaint has been made. It is noted that the service charge items which are not referred to in this decision were agreed to be reasonable.
26. In all the circumstances, the Tribunal considers that it is appropriate to make a modest deduction of £10 per unit (7.69%) in order to reflect the deficiencies in the service provided and that a reasonable total management fee for the year to 31.3.09 is £1440.00 (12 x £120). Accordingly, the sum of £120 falls to be deducted from the service charge claimed from the Applicants in the year ending 31.3.09 under this heading.
27. The Tribunal finds that it would be appropriate to make a similar deduction in subsequent years in order to reflect similar deficiencies in the service provided.

The entry phone costs

28. The Applicants state that the charge of £513.38 in the service charge accounts must be duplication because entry phone costs are also included as Estate Costs. They state that either the service is provided as an Estate Cost or it is provided as a Building Cost but that it cannot be both. The Respondent states that the costs of entry phone CCTV are recoverable under the leases and that the charge does not amount to double recovery.
29. At Paragraph 36 of her witness statement dated 27.6.13, Ms Ward states that both the CCTV and entry phone system in the Applicant's block and in the St George block is owned by St George and managed by Montalt. At Paragraph 63 of her statement she states that no separate charge was made for entry phones in 2009 and that the charge related to the whole of the Hoxton Square.

30. The entry phone charges for the whole of Hoxton Square are included in the Estate Costs (described as managing agents' costs in the accounts) and the Tribunal finds that there is no justification for the additional charge of £513.38 in respect of the entry phone costs which appears as a Building Cost in the 2009 accounts. Accordingly, the Tribunal finds that the additional charge of £513.38 is not reasonable or payable and that it falls to be deducted from the total sum payable by the leaseholders in the year 2009.

The Estate Costs

31. By paragraph 1 of the Ninth Schedule to the lease, Estate Costs are:

1. Inspecting repairing maintaining resurfacing rebuilding repainting renewing replacing cleaning lighting redecorating or otherwise treating and keeping clean and tidy (and providing a water supply (as appropriate) for the purposes of cleaning) the Communal Areas and Facilities and all other parts of the Maintained Property (excluding the Main Structure) within the Estate as often as in the opinion of the Landlord it shall be reasonably necessary and the payment of all costs and charges relating thereto and clearing snow from the Accessways where necessary.

2. Keeping the gardens and landscaped areas (including the water feature) of the Communal Areas and Facilities and all other parts of the Maintained Property generally in a neat and tidy condition and tending renewing and laying out any lawns flower beds shrubs and trees forming part thereof as necessary and maintaining repairing where necessary reinstating any boundary wall hedge or fence (if any) and railings on or relating to the Maintained Property including any benches seats garden ornaments sheds structures and the like (if any)

3. Repairing maintaining inspecting as necessary reinstating or renewing the Service Installations forming part of the Communal Areas and Facilities.

32. By clause 1(2)(iii) of the leases, the Communal Areas and Facilities are areas of the Estate which are used or intended for use in common by the leaseholders or owners of two or more of the premises in the Building.

33. By Part II of the Seventh Schedule to the leases, the Communal Areas and Facilities comprise accessways, gardens, grounds and landscaped areas and communal refuse facilities. During the course of the hearing, it was agreed the relevant area in the present case, is an accessway

shared by the Applicant's Building and the St George Building leading to the entrances to the respective buildings.

34. The Maintained Property is defined at Part IV of the Seventh Schedule. The definition of the Maintained Property includes entry phones, security systems and Service Installations not used solely for the purpose of individual premises in the building.

35. By clause 1(2)(ix) of the leases:

“Service Installations” means sewers drains channels pipes watercourses gutters mains wires cables conduits aerials watercourse gutters pumps mains the lift and any other conducting media tanks and apparatus for the supply of water gas electricity telephone television signals or other services and for the disposal or foul surface water or any of them.”

36. The Tribunal was informed that whereas the Building Costs are paid solely by the Applicants, the Estate Costs are shared between the Applicants and the occupants of the St George Building. It is the Tribunal's understanding that the figures set out under the sub-heading “NHHO apartmnt” in a document headed “Actual breakdown of invoices as recvd from Montalt” which has been provided by the Respondent are the Estate Costs i.e. the costs incurred by Montalt which are to be apportioned between the Applicants and the occupants of the St George Building in accordance with the Estate Costs percentages specifically set out in the leases.

37. The figures in this breakdown which appear under the heading “Estate Est Cost” heading clearly include the costs attributable to the St George Building as well as the costs which fall within the definition of Estate Costs to be shared between the occupants of both buildings pursuant to the leases. If the incorrect percentages have been applied and the costs under the heading “NHHO appartmnt” have solely been paid by the Applicants, the percentages payable by each individual lessee in accordance with their lease should be applied when calculating the final sum payable. Where no evidence has been provided that the total figures for the costs applicable to both the St George Building and the Estate Costs are unreasonable, the Tribunal has solely considered the issue of apportionment.

38. *Electricity*

39. Unfortunately, although the electricity charges for the Applicant's block, the St George block and the common accessway should be treated differently, there is only one electricity meter serving the whole of 15 Hoxton Square.

40. The Applicants argued that they have been charged too high a proportion of the total electricity bill relative to the occupants of the St George Building. They did not take issue with the apportionment of the bill between the Estate Costs and the Building Costs although a proportion of the electricity costs included in the Estate Costs breakdown must relate to the Applicants' Building rather than to the area shared by the Applicants and the occupants of the St George Building. Accordingly, the Tribunal will simply determine whether or not the total sum attributed to the Applicants is too high.
41. The parties agreed that there are 19 communal lights in the Applicants' four storey block. It was also agreed that the five storey St George block has its own underground car park with 10 florescent lights which stay on 24 hours a day and that there are approximately 80 further communal lights in the St George block, including the lights in the area leading to the car park.
42. There are also two fob doors to the car park (one entry door and one exit door); three CCTV cameras in the car park (one of which may be pointed at the shared accessway); and four bollard lights in a courtyard belonging to the St George block. Additionally, the St George block has a concierge office containing office equipment, a television, a microwave, a kettle and lighting.
43. It is the Tribunal's understanding that the shared accessway has a fob gate; a covered area with 6 overhead lights; and an open area with 5 external bollard lights. There are two CCTV cameras in the accessway.
44. It is unfortunate that there is only one electricity meter covering the whole of 15 Hoxton Square and the Tribunal has found it necessary to take a broad and pragmatic approach given the limited information available. The Tribunal finds that a reasonable proportion of the total electricity costs to attribute to the Applicants in respect of both Estate Costs and Building Costs would be in the region of 15% and the Tribunal finds no grounds for departing from the percentage of 15.5155% which was agreed to comprise the appropriate share of the total electricity bill making up Estate Costs in 2011. However, the percentage of the overall bill of £5,300 which was applied in the year ending 31.3.09 was 23.5206%. Accordingly, 8.0051% of £5,300, namely £424.27 falls to be deducted from the Estate Costs charge for the year ending 31.3.09.

Mechanical Plant

45. The sum of £6,500 was budgeted for in respect of mechanical plant in the year ending 31.3.09 with £1,528.84 charged to the Applicants by way of Estate Costs. This sum was never expended. Accordingly, whilst it may have formed part of a reasonable service charge estimate, any charge in respect of mechanical plant should have been removed

when the balancing process was carried out. It is noted that whether or not the total sum payable by the Applicants will decrease by this amount will depend upon whether or not the other estimated sums are under or over estimates.

Entry Phone/CCTV

46. The charges in respect of entry phone and CCTV were relatively high until 2010 when they decreased significantly. The Tribunal accepts the Respondent's account that this is likely to be due to the initial installation costs of the equipment and finds that the overall charges are reasonable. However, the Tribunal also accepts the Applicants' argument that the proportion of the total costs reasonably attributable to the Estate Costs is likely to be lower than has been provided in the breakdown (where it is described as "NHHO apartmnt").
47. The St George block has the use of 36 video entry phones; two fob doors to the car park; a shared fob entry door to the building; and a fob entry door to the St George block.
48. The Applicants have the use of 12 ordinary entry phones without video facilities; the shared fob entry door to the building; and a fob entry door to the Applicant's block. There are also 5 CCTV cameras two to three of which focus on the shared accessway and therefore benefit both the Applicants and the occupants of the St George block (the other cameras solely benefit the occupants of the St George block).
49. The video entrance phones are likely to be more expensive than the entry phones without the video facilities. The Tribunal has necessarily taken a broad and pragmatic approach in the absence of any detailed breakdown and finds that 10% of the total CCTC/entry phone charges amounts to a reasonable charge for the proportion of charge attributable to Estate Costs. 23.5206% of the total costs of £15,000 in this year has been attributed to the Estate Costs and the Tribunal therefore finds that a deduction of 13.5206% of £15,000, namely £2,028.09 falls to be made under this heading in respect of the service charge costs for the year ending 31.3.09.

Montalt's Estate Management Fee

50. 18.7206% of Montalt's management total fee of £10,575 for the year ending 31.3.09 has been attributed to Montalt's management charges in respect of the Estate Costs. As indicated above, Montalt also manages the St George building which is a private block with 5 storeys; 36 flats; an underground car park; a courtyard area; and a concierge flat. Further, the Tribunal notes that in the course of its management, Montalt has incorrectly applied some invoices to the Estate Costs which in fact relate to the St George block. The Respondent argues that this

will not have added to the time which Montalt has spent in carrying out its management functions.

51. Having considered all of the evidence, the Tribunal finds that a reasonable charge for Montalt's Estate Costs management fee would amount to 12% of Montalt's total management costs. Accordingly, a deduction of 6.7206% of £10,575 namely £710.70 falls to be made under this heading in respect of the service charge costs for the year ending 31.3.09.

Repairs

52. The invoices relating to this service charge year commence at page 28 of the invoice bundle and the invoices for the year ending 31.3.09 and for the year ending 31.12.09 were presented and dealt with together.
53. The Tribunal finds that the invoice dated 15.10.08 at page 31 in the sum of £123.38 for jetting washing hard standing areas is likely, on the balance of probabilities, to relate to the shared accessway and that it is therefore an Estate Cost. The Tribunal finds that this sum is reasonable and payable.
54. The Tribunal finds that the invoice at page 29 dated 24.5.09 in the sum of £75 is a likely to relate to the removal of a for sale sign which had been left as rubbish in the area to which the Estate Costs relate and that it is reasonable and payable. Due to the correction of the accounts, this sum is to be charged in respect of the year ending 31.12.09 because it post-dates 31.4.09.
55. The Tribunal does not find that any of the other invoices in respect of the period 08/09 are payable.
56. In respect of the invoice at page 28, the Tribunal accepts the Applicants' evidence that their building does not have a "Zone 4" which is referred to on the invoice and, in any event, the Estate Costs do not include the costs of maintaining either of the two buildings. Accordingly, the Tribunal finds that this invoice is attributable to the St George block rather than to the Estate Costs. The Tribunal finds that the invoice at page 30 similarly relates to the St George block which is the only building on the estate managed by Montalt.
57. In respect of the invoice at page 32, which does not state where the work took place, the Tribunal accepts the Applicants' account that this work did not relate to lights in the accessway and finds that it is therefore more likely to relate to lights in the St George block courtyard.
58. The sum attributed to Estate Cost repairs in the year ending 31.3.09 was £294.01 whereas the sum found to be payable is £123.38.

Accordingly, the sum of £170.63 falls to be deducted under this heading in respect of the service charge costs for the year ending 31.3.09.

Deductions

59. In summary:

The following deductions are to be made from the total Building Costs payable by the Applicants in this service charge year:

Item	Deduction
The Respondent's management fee	£120
Entry phone	£513.38

60. The following deductions are to be made from the total Estate Costs payable in this service charge year:

Item	Deduction
Electricity	£424.27
Mechanical plant	£1,528.84
Entry phone/CCTV	£2,028.09
Montalt's management fee	£710.70
Repairs	£170.63

The Service Charge Year ending 31.12.09

61. As stated above, this service charge year comprises 9 months because a correction was made in order to bring the service charge year in line with the provisions of the leases.

The Management Fee

62. The total management fee charged to the Applicants in respect of this service charge year was £1,228.50. For the reasons set out above, the Tribunal considers that a deduction of 7.69% of £1,228.50, namely £94.47 should be made in order to reflect the deficiencies in the service which was provided. Accordingly, the sum of £94.47 falls to be

deducted from the total service charge claimed from the Applicants in the year ending 31.12.09 under this heading.

The Estate Costs

Electricity

63. For the reasons set out above, the Tribunal finds that a reasonable charge for the electricity attributable to the Estate Costs under this heading amounts to 15.5155% of the total electricity costs of £7,000. As 18.7206% of the total costs have been attributed to the Estate Costs, a deduction of 3.2051% of £7,000, namely £224.36 falls to be made under this heading for the service charge year ending 31.12.09. The Tribunal notes that some of these costs will amount to Building Costs in respect of the Applicant's block rather than Estate Costs but that neither party made any submissions in relation to this.

Entry phone/CCTV

64. For the reasons set out above, the Tribunal finds that a reasonable charge for the entry phone use attributable to Estate Costs amounts to 10% of the total entry phone/CCTV charges of £14,000. The percentage applied was in fact 23.5206% and therefore a deduction of 13.5206% of £14,000, namely £1,892.88 falls to be made under this heading for the service charge year ending 31.12.09.

Montalt's Estate Management Fee

65. For the reasons set out above, the Tribunal finds that a reasonable charge for Montalt's Estate Costs management fee amounts to 12% of Montalt's total management costs. In this year, 18.7206% of Montalt's total management costs of £10,856.06 was attributed to the Estate Costs. Accordingly, a deduction of 6.7206% of £10,856.06 namely £729.59 falls to be made under this heading in respect of the service charge costs for the year ending 31.12.09.

Repairs

66. As stated above, the Tribunal finds that the sole invoice payable in respect of the Estate Costs is the invoice at page 29 dated 24.5.09 in the sum of £75.
67. The sum attributed to Estate Cost repairs in the year ending 31.12.09 was £561.62 whereas the sum found to be payable is £75. Accordingly, the sum of £486.62 falls to be deducted under this heading in respect of the service charge costs for the year ending 31.12.09.

Deductions

68. In summary:

The following deductions are to be made from the total Building Costs payable by the Applicants in this service charge year:

Item	Deduction
The Respondent's management fee	£94.47

69. The following deductions are to be made from the total Estate Costs in this service charge year:

Item	Deduction
Electricity	£224.36
Entry phone/CCTV	£1,892.88
Montalt's management fee	£729.59
Repairs	£486.62

The Service Charge Year ending 31.12.10

The Management Fee

70. The total management fee charged to the Applicants in respect of this service charge year was £1,638. For the reasons set out above, the Tribunal considers that a deduction of 7.69% of £1,638, namely £125.96 should be made in order to reflect the deficiencies in the service provided. Accordingly, the sum of £125.96 falls to be deducted from the total service charge claimed from the Applicants in the year ending 31.12.10 under this heading.

The Estate Costs

Electricity

71. For the reasons set out above, the Tribunal finds that a reasonable charge for the electricity to be attributable to the Estate Costs under this heading amounts to 15.5155% of the total electricity costs of

£8,500. As 18.7206% of the total costs have been attributed to the Estate Costs, a deduction of 3.2051% of £8,500, namely £272.43 falls to be made under this heading for the service charge year ending 31.12.10. The Tribunal notes that some of these costs will amount to Building Costs in respect of the Applicant's block rather than Estate Costs but that neither party made any submissions in relation to this.

Entry phone/CCTV

72. For the reasons set out above, the Tribunal finds that a reasonable charge for the entry phone use attributable to Estate Costs amounts to 10% of the total entry phone/CCTV charges of £4,000. The percentage applied was 23.5200% and therefore a deduction of 13.52% of £4,000, namely £540.80 falls to be made under this heading for the service charge year ending 31.12.10.

Montalt's Estate Management Fee

73. For the reasons set out above, the Tribunal finds that a reasonable charge for Montalt's Estate Costs management fee amounts to 12% of Montalt's total management costs. In this year, 18.7206% of Montalt's total management costs of £12,488.87 was attributed to the Estate Costs. Accordingly, a deduction of 6.7206% of £12,488.87 namely £839.33 falls to be made under this heading in respect of the service charge costs for the year ending 31.12.10.

Repairs

74. The Tribunal accepts the Respondent's account that the invoices at pages 73 and 74 of the invoice bundle in the sum of £262.03 and £117.50 are likely to relate to the shared gate and finds that they are reasonable and payable by way of Estate Costs. It was agreed that the invoice at page 75 in the sum of £100 relates to an Estate Cost and the Tribunal also finds that this invoice is reasonable and payable.
75. The Tribunal finds on balance and doing its best on the limited evidence available that the invoices at page 77 in the sum of £377.35 and at page 78 in the sum of £150 are likely to relate to Estate Costs and that the sums claimed are reasonable and payable. The Tribunal finds that, of the property risk survey, fire risk assessment and insurance re-building valuation at page 83 in the sum of £2,160, the sum of £150 is likely to be reasonably attributable to the accessway and therefore to the Estate costs. The invoice at page 76 is a duplicate and the Tribunal is not satisfied that the other invoices relate to Estate Costs.
76. The sum attributed to Estate Cost repairs in the year ending 31.12.10 was £748.82 (on the basis that the Estate Costs appear under the "heading NHHO apartment" notwithstanding that the occupants of the

St George building are required to contribute to these costs because the costs under the heading "Estate Est Cost" clearly include costs relating to the St George block and appear to comprise the whole of Montalt's Hoxton Square Costs). However, the sum found to be payable is £889.38. Accordingly, no deduction falls to be made in respect of repairs.

Deductions

77. In summary:

The following deductions are to be made from the total Building Costs payable by the Applicants in this service charge year:

Item	Deduction
The Respondent's management fee	£125.96

78. The following deductions are to be made from the total Estate Costs in this service charge year:

Item	Deduction
Electricity	£272.43
Entry phone/CCTV	£540.80
Montalt's management fee	£839.33

The Service Charge Year ending 31.12.11

The Management Fee

79. The total management fee charged to the Applicants in respect of this service charge year was £1,704. For the reasons set out above, the Tribunal considers that a deduction of 7.69% of £1,704 namely £131.04 should be made in order to reflect the deficiencies in the service provided. Accordingly, the sum of £131.04 falls to be deducted from the total service charge claimed from the Applicants in the year ending 31.12.11 under this heading.

The Estate Costs

Electricity

80. For the reasons set out above, the Tribunal finds that a reasonable charge for the electricity to be apportioned to the Estate Costs under this heading amounts to 15.5155% of the total electricity costs of £8,500. As this is the percentage which was applied, no deduction falls to be made. The Tribunal notes that some of these costs will amount to Building Costs in respect of the Applicant's block rather than Estate Costs but that neither party made any submissions in relation to this.

Entry phone/CCTV

81. For the reasons set out above, the Tribunal finds that a reasonable charge for the entry phone use attributable to Estate Costs amounts to 10% of the total entry phone/CCTV charges of £1,000. The sum charged was 23.5200% and therefore a deduction of 13.52% of £1,000, namely £135.20 falls to be made under this heading for the service charge year ending 31.12.11.

Montalt's Estate Management Fee

82. For the reasons set out above, the Tribunal finds that a reasonable charge for Montalt's Estate Costs management fee amounts to 12% of Montalt's total management costs. In this year, 15.5155% of Montalt's total management costs of £13,250 was attributed to the Estate Costs. Accordingly, a deduction of 3.5155% of £13,250 namely £465.80 falls to be made under this heading in respect of the service charge costs for the year ending 31.12.11.

Repairs

83. The Tribunal finds on balance and doing its best on the limited evidence available that the invoices at page 113 of the invoice bundle in the sum of £76; the invoice at page 115 of the invoice bundle in the sum of £105.75; the invoice at page 118 of the invoice bundle in the sum of £880 and the invoice at page 124 of the invoice bundle in the sum of £610 are likely to relate to Estate Costs and that the sums claimed are reasonable. Accordingly, the Tribunal finds that the total sum of £1,671.75 is reasonable and payable in respect of repairs falling within the definition of Estate Costs in this service charge year. The sum claimed under "NHHO apartmnt", which for the reasons stated above it is considered must constitute the Estate Costs, is £124.24 and, accordingly, no deduction falls to be made.

Deductions

84. In summary:

The following deductions are to be made from the total Building Costs payable by the Applicants in this service charge year:

Item	Deduction
The Respondent's management fee	£131.04
85. The following deductions are to be made from the total Estate Costs in this service charge year:	
Item	Deduction
Entry phone/CCTV	£135.20
86. Montalt's management fee	£465.80

The Service Charge Year ending 31.12.12

87. Accounts have not been provided in respect of this year but there is a budget said to be for the year to 31.3.12 (page 107 of the bundle) which forms the basis of the charge in respect of the estimated service charge. The Tribunal has assumed that the date shown is a type error and that the budget relates to the year ending 31.12.12.

The Management Fee

88. The total management fee charged to the Applicants in respect of this service charge year was £1,704. For the reasons set out above, the Tribunal considers that a deduction of 7.69% of £1,704, namely £131.04 should be made in order to reflect the deficiencies in the service provided. Accordingly, the sum of £131.04 falls to be deducted from the total service charge claimed from the Applicants in the year ending 31.12.12 under this heading.

The Estate Costs

Electricity

89. For the reasons set out above, the Tribunal finds that a reasonable charge for the electricity to be apportioned to Applicants' electricity under this heading amounts to 15.5155% of the total electricity costs of £8,000. As this is the percentage which was applied, no deduction falls to be made.

Entry phone/CCTV

90. For the reasons set out above, the Tribunal finds that a reasonable charge for the entry phone use attributable to Estate Costs amounts to 10% of the total entry phone/CCTV charges of £250. The sum charged

was 23.5200% and therefore a deduction of 13.52% of £250, namely £33.80 falls to be made under this hearing for the service charge year ending 31.12.12.

Montalt's Estate Management Fee

91. For the reasons set out above, the Tribunal finds that a reasonable charge for the Estate Costs management fee amounts to 12% of Montalt's total management costs. In this year, 15.1550% of Montalt's total management costs of £13,600 was attributed to the Estate Costs. Accordingly, a deduction of 3.5155% of £13,600 namely £478.11 falls to be made under this heading in respect of the service charge costs for the year ending 31.12.12.

Repairs

92. The figure of £4,500 has been attributed to the total repairs carried out by Montalt in this year with £698.20 said to be attributable to Estate Costs. The Tribunal considers that there are no grounds for finding that this estimate is unreasonable but notes that there will need to be a balancing calculation on receipt of the actual figures.

Deductions

93. In summary:

The following deductions are to be made from the total Building Costs payable by the Applicants in this service charge year:

Item	Deduction
The Respondent's management fee	£131.04

94. The following deductions are to be made from the total Estate Costs in this service charge year:

Item	Deduction
Entry phone/CCTV	£33.80
Montalt's management fee	£478.11

The Service Charge Year ending 31.12.13

95. Accounts cannot yet be provided in respect of this year but there is a budget at page 125 of the bundle which forms the basis for the

payments on account of estimated service charge. However, there is no breakdown of the estate costs and no submissions were made in respect of the estimated service charge for this year. Accordingly, the Tribunal makes no findings in respect of the service charge year ending 31.12.13.

Application under s.20C and refund of fees

96. At the end of the hearing, the Applicants made an application for a refund of the fees that they had paid in respect of the application/hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision. The Applicants did not have sight of the invoices in the invoice bundle until the evening before the first day of the hearing and at the time of issuing this application they had no means of ascertaining whether or not the sums charged were reasonable.

97. At the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Name: Naomi Hawkes

Date: 31.7.13

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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.

Section 20C

- (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 court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

- proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.