



12882

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

Case Reference : LON/00AT/LSC/2018/0036

Property : 7 Denton Court, Avenue Road,
Isleworth, Middx. TW7 4RS

Applicant : Denton Court Management Co Ltd

Representative : Thompson Allen LLP

Respondents : David Christopher
Susan Simmonds

Type of Application : Liability to pay service charges

Tribunal : Judge Nicol
Mr C P Gowman MCIEH MCMi BSc
Mrs J A Hawkins BSc MSc

Venue of Hearing : 10 Alfred Place, London WC1E 7LR

Date of Decision : 9th July 2018

DECISION

Decisions of the Tribunal

- (1) The Tribunal has concluded that the service charges claimed by the Applicant are reasonable and payable by the Respondents, as broken down in the Schedule attached to this decision as Appendix 2, subject to the reductions specified therein under the headings of Cleaning General, General Repairs, Accountancy General and Management Fee – Fixed.
- (2) The charges claimed under the headings Directors & Officers Insurance, Company Secretarial and Bank Charges are not service charges and are therefore outside the jurisdiction of the Tribunal to determine.

- (3) There shall be an order under section 20C of the Landlord and Tenant Act 1985 that the Applicant may not recover 50% of the costs of these proceedings through the service charge.
- (4) This matter is now transferred back to the county court to address any remaining issues within its jurisdiction.

Relevant legislative provisions are set out in Appendix 1 to this decision.

The Tribunal's Reasons

1. The Applicant is the lessee-owned management company and the Respondents are the lessees of the subject property, one of 12 units in a three-storey purpose-built block of flats with a garage in the basement, with a communal lawn to the rear and shrub beds to the front.
2. In or about September 2017 the Applicant issued proceedings against the Respondents in the county court (claim no:D60YM985) for the sum of £6,529.63 in service charges, plus contractual interest and costs. The Respondents put in a defence in Form N9B alleging that they had been denied access to the service charge accounts and were being overcharged on some items. The court transferred the case to the Tribunal.
3. The Tribunal issued directions on 6th March 2018. In accordance with the directions, the parties compiled and exchanged a Scott schedule setting out the Respondents' particular objections to certain service charges and the Applicant's response. A version of the schedule, completed with the Tribunal's comments, is attached to this decision as Appendix 2. The cost for each category in each year is taken from the service charge accounts – the Respondents had also put budgeted figures in for the later years but those have been removed as they are no longer relevant. There is a new "Pages" column, added by the Tribunal, which refers to the relevant pages in the bundle prepared by the Applicant's solicitors for the final hearing.
4. The hearing of the case was held on 28th June 2018. Mr Christopher attended on the Respondents' behalf. He was clearly inexperienced in legal proceedings and when the Tribunal sought to explain what kind of evidence would be helpful in order to determine each item in dispute, he plainly thought he had missed the opportunity to provide evidence he had or could have obtained but had not realised would be useful, such as photographs or past correspondence. He also sought to raise complaints about the frequency and content of the cleaning and gardening services which he had not raised previously in these proceedings. The Tribunal had indicated in its directions that he could rely on alternative quotes and the Applicant's solicitor, Ms Emma Thompson, had invited him to add what he wanted to the hearing bundle but he felt he could have done with more guidance. The Tribunal's role in providing such guidance is limited and it is always recommended that parties take legal advice, possibly from one of the free sources such as the Leasehold Advisory Service.
5. Ms Thompson of the Applicant's solicitors represented the Applicant. Although the bundle prepared by her trainee included a witness statement

from Ms Jodie Lynch, a property manager for the Applicant's agents, HML Shaw, neither Ms Lynch nor any other witness attended. Ms Thompson relied entirely on hearsay evidence and, perhaps inevitably, when the Tribunal asked additional questions, she was unable to answer some and some of her answers were limited in content. The Respondent rightly pointed out that he was the only person in the room who could give direct evidence and the Tribunal had to give due weight to each party's evidence. If a party chooses to attend without a witness and to rely entirely on hearsay in a case like this, it is virtually certain that they will lose out on at least some items as other evidence has greater weight.

6. In contrast, Mr Christopher was able to give evidence based on the fact that he was the only resident leaseholder present since the building opened and tended to be at home virtually 24/7. He came across as straightforward and the Tribunal had no doubt that he expressed his genuine beliefs. However, he relied to a large extent on his personal observations, including of when and how often operatives attended. He found it difficult to accept that such observations were unlikely to be comprehensive. For example, he both conceded that he had seen bait boxes around the property and that he had never seen any pest control operatives but was reluctant to accept that this was evidence that his observations were imperfect.
7. The lease was signed on 11th December 1986 between the parties and includes provisions for the Applicant to maintain and manage the property while the Respondents are liable to pay service charges to cover one-twelfth of the Applicant's costs. The lease further provides in clause 3(e) that the service charges may be estimated and collected in advance but that there should be a compensating credit if the Applicant's actual costs are less than the estimates.
8. It is notable that the service charge demands and the service charge account attached to the county court claim include all the estimated charges demanded but no credits, despite the accounts showing continuous, albeit often small, under-spends in many categories. While the Respondents are liable to pay on demand the estimated advance service charges, they are equally entitled to credits if and when the accounts later show that the actual costs have been less. The service charges claimed in this case were demanded up to 5 years prior to the issue of proceedings, by which time most, if not all, of the actual costs would have been known. It follows, therefore, that the amounts claimed in the county court were known at all times to the Applicant to be wrong in that they were too high, being based on the estimates rather than the lower actual costs. However strong the Applicant's case may have been in other respects, the Respondents had at least a partial defence from the start and this has costs consequences considered later below.
9. Further, the service charges included three categories, namely Directors & Officers Insurance, Company Secretarial and Bank Charges, which, when prompted by the Tribunal, Ms Thompson conceded were company costs, not service charges, and so outside the Tribunal's jurisdiction. They do not appear to have been pleaded as such in the county court.

10. For the reasons set out in the Schedule at Appendix 2, the Tribunal has determined that the due proportion of the actual service charges claimed by the Applicant from the Respondents and set out in the Schedule are reasonable and payable, except for the following:

- (a) A reasonable charge for the cleaning service provided by Mr Monfaradi would be half what he charged, so that there is a reduction of £25 due on the Respondents service charges for 2011/12 and £30 on each of the following four years.
- (b) The charges for General Repairs are limited to the amounts shown in the invoices identified for the Tribunal by Ms Thompson in the hearing bundle:

Year	Charge	Invoice total	Difference	Rs' reduction
2011/12	£1,476	£1,385.88	£90.12	£7.51
2013/14	£491	£215.40	£275.60	£22.97
2015/16	£960	£839.20	£120.80	£10.07

(c) The accountancy charges for MW & Co are limited to what is in their invoices (a reduction of £18 in each of 2013/14 and 2014/15) and further reduced by 25%.

(d) HML Shaw's management fees are reduced by 10%.

11. The Respondents also applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Applicant should not be permitted to add their costs of these proceedings to the service charges. The main factors which the Tribunal must take into account are as follows:

(a) If the lease permits a landlord to recover such legal costs through the service charge, then that is a contractual commitment by both parties which the Tribunal must respect.

(b) The Tribunal does not follow the rule in court that the loser should pay the winner's costs but who has succeeded on the main issues is relevant. In that context, the Applicant has successfully established the majority of the amounts claimed. On the other hand, there are some items they should never have sought (see paragraph 8 above), some they were unable to establish and some which the Respondents have been able to limit.

(c) The costs of these proceedings have been incurred because the parties took their dispute to litigation. Parties should always try to avoid litigation where possible by taking steps to narrow the issues between them. A party which does not do so makes it more likely that there will be litigation and higher costs than would otherwise be the case. The Tribunal accepts Mr Christopher's allegation that he asked for sight of the accounts but that the Applicant and their agents denied him access for a long time and, when they did eventually allow him to look at documents at their offices, limited access to the previous 12 months. Ms Thompson said they were following

their strict statutory rights but there is a difference between the letter of the law and genuinely looking to avoid litigation. The Respondents could and should have paid that part of the service charges which they did not dispute and bear some responsibility for the claim being issued but the Applicant also did not do even the minimum to try to avoid that happening.

12. In the circumstances, and taking a broad approach, the Tribunal has determined that the Applicant may not take into account 50% of their costs when calculating the Respondents' service charges.

Name: NK Nicol

Date: 9th July 2018

Appendix 2

Case Reference: LON/OOAT/LSC/2018/0036

Premises: 7 Denton court, Avenue, Road, Isleworth, TW7 4RS

Financial Year 01/04/2011 to 30/03/2012					
ITEM	COST	TENANT'S COMMENTS	LANDLORD'S COMMENTS	PAGES	TRIBUNAL'S COMMENTS
Buildings Insurance	£3,203.00	Unable to comment fully as no sight of existing policies has been allowed. This figure could be reduced by seeking further like for like competitive quotes.	Policy provided with Statement	466-468	Mr Christopher has now seen the insurance documents but wanted to know that the insurance was market-tested. The Applicant's agents, HML Shaw, placed the buildings insurance through a broker, Oval. Ms Thompson's instructions were that they put the insurance to market each year amongst the largest firms on the basis that they were the ones who could be relied on. In the event, the insurance was placed with Zurich each year. The Tribunal had no evidence that the premium was anything other than reasonable. This item is reasonable and payable for each of the five years.
Directors & Officers Insurance	£121.00	Unsure of the requirement of this policy. No further information has been made available to make qualified objections.	Policy provided with Statement		The Tribunal pointed out to Ms Thompson that this item and the "Company Secretarial" item both appeared to be company costs, not service charges. The Respondent may well be liable for them as a member of the company but the Tribunal had no jurisdiction to determine their reasonableness or payability. Ms Thompson accepted that this was the position for these two items and for the bank charges (last item below).
Cleaning General	£655.00	This figure equates to an hourly rate of £89.00 p.h. Based on visits to site and time spent carrying out the work. Alternative cleaners are available for as little as £11 p.h.	The cleaning consists of rubbish and bins/bin area being dealt with on a weekly basis and a thorough clean being undertaken on a monthly basis is reasonable in price. The cleaner is not being paid an hourly rate of £311.00	487-488	Ms Thompson's instructions were that there was no cleaning contract nor a specification which had been put into writing. The invoices were the same for each year, six-monthly indicating one visit per month for £50 each (with an additional entry for changing light bulbs on the second invoice for this year). The invoices were handwritten by the cleaner, Mr Monfaradi. HML Shaw visited the property one or two times a year, including once before the AGM. In later years, this category of service charge included charges from

			<p>per hour. The Appliance is unsure how the Respondent has calculated an hourly rate of £311.00 per hour but can assure the Applicant that that is not the rate being paid to the cleaner.</p>		<p>Ken Dedman & Son for tidying the bin area and fly-tipping removal, which Mr Christopher had not appreciated.</p> <p>Mr Christopher complained that his own observations (including putting things on the floor to see how long they stayed there) were that the cleaner attended no more frequently than 6-8 weeks, not monthly and did no more than hoovering for about 15 minutes. There used to be an attendance record displayed in the communal areas but this was recently removed. He argued that the cleaner should receive only half of what was claimed.</p> <p>The Tribunal is satisfied that the cleaning service was not charged at anything more than a standard hourly rate. However, there is clearly no system in place for monitoring the cleaner's service. Mr Christopher's observations are not as reliable as he claims but, in this instance, the Tribunal is satisfied on a balance of probabilities, and in the absence of sufficient evidence from the Applicant, that the cleaner did not attend with the frequency claimed. In the circumstances, the Tribunal has decided that a reasonable charge would be half what the cleaner charged, so that there is a reduction of £25 (£300/12) due on this year's charge to the Respondents and £30 (£360/12) on each of the following four years.</p> <p>The Tribunal is satisfied that the bin tidying and fly-tipping service from Ken Dedman & Son in each of the following four years was reasonable and payable.</p>
Gardening General	£1,864.00	This figure equates to an hourly rate of £621 p.h. Based on visits to the site and time spent carrying out the work. Alternative gardeners are available for £10 p.h.	The Gardener attends the property once a month in winter months and fortnightly in summer months. The sum claimed is reasonable for the visits and work undertaken to the property.	511-519, 521-523	<p>The contractor was GD Landscapes. Again, there was no contract or specification. The invoices showed the same charge each month, despite the fact that Ms Thompson's instructions were that they visited twice per month in the summer but only once per month in winter.</p> <p>Ms Thompson said that knotweed removal was included in this category but the figures did not match on that basis and it seemed from the accounts and demands to have been charged separately.</p> <p>Mr Christopher challenged that the contractor came at least once per month. As an example, he claimed that they came only twice</p>

					<p>between the start of 2018 and 25th June. He also claimed that they did nothing but mow the rear lawn, taking only 15 minutes per visit. He asserted that no work was conducted on the front shrub beds.</p> <p>The Tribunal is not satisfied that Mr Christopher's observations are credible in relation to the gardening. Taking into account setting up and getting rid of cuttings at the end, it is unlikely the rear lawn could be mowed in as little as 15 minutes. Also, the front shrub beds clearly require some maintenance and it is not credible that there has been none at all. Again, the Tribunal is satisfied that the gardening service was not charged at anything more than a standard hourly rate. Therefore, this item is reasonable and payable.</p>
Electricity	£399.00	No site bills have been presented. Unable to make comment until bills are made available.	Electricity bills are attached to Statement of Case		Having now seen the bills, Mr Christopher no longer disputes this item.
Pest Control	£270.00	No evidence of any pest control being applied. No fee payable.	Invoices in respect of pest control are attached to the Statement of Case.	505-510	The invoices showed that the contractors, Masons Pest Control, visited the site for treatment, including emptying bait boxes, once every two months. Mr Christopher said he had not seen the contractors but had seen the bait boxes. He said he understood that there used to be a rodent problem but not currently. The Tribunal is satisfied that this item is reasonable and payable for each of the five years.
General Repairs	£1,476.00	No visible signs of any repairs being made. No invoices made available. No fee payable.	Invoices in respect of general repairs are attached to the Statement of Case	497-502	The invoices showed various items of reactive maintenance from various contractors. This was the category in which the invoices provided to the Tribunal were most likely not to add up to the amount set out in the service charge accounts. Ms Thompson pointed out that the accounts were audited and submitted that the Tribunal should therefore trust and accept the figures in the accounts. However, the Tribunal found that the accounts contain errors (e.g. see the "Accountancy General" category) which establishes that they are not wholly reliable. In other categories,

					with a number of invoices showing regular charges, it is possible to assume that invoices have simply gone missing but that the figures are still accurate. That is not possible in this category, particularly given the absence of direct evidence on behalf of the Applicant. In the circumstances, the Tribunal has no realistic choice but to limit the charges to the amounts shown in the invoices identified for the Tribunal by Ms Thompson in the hearing bundle. For this year, that is £1,385.88, a reduction of £90.12, of which the Respondents' share is £7.51.
Door Entry System Rental/Supply	£616.00	It is my belief that this system was bought and installed by the builders of the building. Not on a rental basis. No fee payable.	The door entry system is on a rental basis. The invoices for the rental are attached to the Statement of Case.	503	AA Telecom maintain the door entry system to the 12 flats under a rental contract charged annually. The contract was not in the bundle but Mr Christopher had no evidence to gainsay the Applicant's position. This item is reasonable and payable for each of the five years.
Accountancy General	£420.00	Can and should this be done by the directors of Denton Court Management Ltd.	The accounts should not be produced by the Directors of Denton Court. The Lease requires the accounts to be prepared and audited by a qualified accountant.	504	<p>MW & Co provided accountancy services to the Applicant, including auditing the annual accounts. Somewhat peculiarly, the invoice for this year did not include the amount of the actual charge, the space for it having been left blank.</p> <p>The Tribunal is satisfied that it was in accordance with the lease and entirely reasonable for the Applicant to have their accounts audited by external accountants. However, the service charge accounts display a number of peculiarities and errors:</p> <ul style="list-style-type: none"> • Ms Thompson suggested that bills in some categories had been apportioned between years but, while this might have explained some shortfalls in the figures, it clearly was not done consistently and so it was impossible, in the absence of any evidence on the subject from the Applicant, to work out when it had been done or not. • Figures in the accounts were rounded up or down unnecessarily to the nearest pound. While individually trivial, it is possible for such a practice to mount up so as to produce

					<p>eventually a significant discrepancy.</p> <ul style="list-style-type: none"> • MW & Co's own charges for 2013-2014 and 2014-2015 were recorded in the accounts as £18 higher than the amount invoiced. • It was impossible, in the absence of any evidence on the subject from the Applicant, to work out what might have caused some of the discrepancies between the total amount of the invoices with the amounts in the accounts for some categories. <p>As well as limiting the accountancy charges to the amount of the invoices in 2013-2014 and 2014-2015, the Tribunal is satisfied that a reasonable charge would be 25% less. In this year, that produces a reduction of £8.75 (£105/12) in the Respondents' service charges.</p>
Company Secretarial	£390.00	Should be done by a member of Denton Management Ltd.	The Company Secretarial should not be undertaken by a member of Denton Court Management Limited. There are serious consequences for failing to comply with Company filing requirements and such requirements should therefore be dealt with by Professional Company Secretarials who understand the duties and filing requirements.		See the entry for Directors & Officers Insurance above.
Fire Risk Assessment	£?	No risk assessment undertaken. Should be carried out by a responsible person.			No assessment was carried out in this year, so none was charged for.
Management	£2,400.00	I believe that HML Shaw,	The management fee is within	478-481	The management fee per unit was around £166 plus VAT, with

Fee- Fixed		the management company employed by Denton Court Management Ltd, are not fit for the purpose. As explained in covering letter. No fee payable.	a reasonable range of approximately £220.00 per unit. It is denied that the Managing Agents are not fit for purpose. Professional services is provided and the Appliance is seeking to recover the whole management fee.		<p>additional charges for an “out of hours service”. In her witness statement, Ms Lynch set out the services provided for the fee, including collecting service charges, arranging health & safety checks, visiting to assess condition, dealing with lessee enquiries, instructing contractors and dealing with major works.</p> <p>Although most of the correspondence between HML Shaw and Mr Christopher had not been included in the bundle, there was a letter dated 16th June 2017 from HML Shaw purporting to respond to a letter dated 1st August 2016 which Ms Thompson accepted was an unacceptably late response.</p> <p>Mr Christopher made general claims about HML Shaw, including that they lied. He was unable to produce any evidence to back this up. The only specific incident he relied on was a problem with a neighbouring property being used for drugs and in an anti-social way. He claimed that HML Shaw would be liable under the Misuse of Drugs Act as “managing” the relevant property but the Tribunal was satisfied this was a misunderstanding of the law. He further claimed that they did no more than send one letter but the Tribunal is satisfied that they did more than that, out of his sight, and helped to move the anti-social tenant on. Mr Christopher complained bitterly about the extent of the noise nuisance but apparently made no attempt to involve the local authority’s noise abatement service.</p> <p>HML Shaw’s service has been deficient in that there is evidence that they have taken too long to respond to Mr Christopher’s complaints, if they have responded at all, and some invoices have gone astray. Their annual charges for a property of this size have been low relative to the market in the expert opinion of the Tribunal but they are still too high in the light of the deficient service. The Tribunal is satisfied that a reasonable charge would be 10% less in each of the five years, producing a reduction of £20 (£240/12) in the Respondents’ service charges for this year.</p>
Bank Charges	£33.00	No apportionment figure made available. Need	The Respondent has no discretion/real bargaining		See the entry for Directors & Officers Insurance above.

		further information.	power in respect of bank charges		
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Financial Year 01/04/2012 to 30/03/2013					
ITEM	COST	TENANT'S COMMENTS	LANDLORD'S COMMENTS	PAGES	TRIBUNAL'S COMMENTS
Buildings Insurance	£3,389.00	Unable to comment fully as no sight of existing policies has been allowed. This figure could be reduced by seeking further like for like competitive quotes.	Policy provided with Statement	141-143	See the entry for 2011-2012 above.
Directors & Officers Insurance	£278.00	Unsure of the requirement of this policy. No further information has been made available to make qualified objections.	Policy provided with Statement		See the entry for 2011-2012 above.
Cleaning General	£945.00	Actual housing rate of £118.00 p.h. based on visits to site and time spent cleaning. Alternative cleaners are available for as little as £11 p.h.	The cleaning consists of rubbish and bins/bin area being dealt with on a weekly basis and a thorough clean being undertaken on a monthly basis is reasonable in price. The cleaner is not being paid an hourly rate of £311.00 per hour. The Appliance is unsure how the Respondent has calculated an hourly rate of £311.00 per hour but can assure the Applicant that that is not the rate being paid to the cleaner.	106, 138-139, 197, 283-284, 520, 524	See the entry for 2011-2012 above. The cleaner's charge per visit increased from £50 to £60 in this year.
Gardening General	£1,752.00	This figure equates on an hourly rate of £584.00 p.h. based on visits to site and time spent carrying out the work. Alternative gardeners are available for £10 p.h.	The Gardener attends the property once a month in winter months and fortnightly in summer months. The sum claimed is reasonable for the visits and work undertaken to the property.	100-102, 105, 107, 110, 113-116, 118	See the entry for 2011-2012 above. There were only 11 monthly invoices for this year but the charge was for the total of those invoices, rounded up to the nearest pound.

Electricity	£441.00	No site bills have been presented. Unable to make comment until bills are made available.	Electricity bills are attached to Statement of Case		See the entry for 2011-2012 above.
Pest Control	£225.00	No evidence of any pest control being applied. No fee payable.	Invoices in respect of pest control are attached to the Statement of Case.	133-137	See the entry for 2011-2012 above. There are only 5 invoices for this year but that is what has been charged for in the accounts.
General Repairs	£415.00	No visible signs of any repairs being made. No invoices made available. No fee payable.	Invoices in respect of general repairs are attached to the Statement of Case	131-132	See the entry for 2011-2012 above. The invoices total 20p more than the amount in the accounts.
Door Entry System Rental/Supply	£841.00	It is my belief that this system was bought and installed by the builders of the building. Not on a rental basis. No fee payable.	The door entry system is on a rental basis. The invoices for the rental are attached to the Statement of Case.	129-130	See the entry for 2011-2012 above.
Accountancy General	£420.00	Can and should this be done by the directors of Denton Court Management Ltd.	The accounts should not be produced by the Directors of Denton Court. The Lease requires the accounts to be prepared and audited by a qualified accountant.	119	See the entry for 2011-2012 above.
Company Secretarial	£450.00	Should be done by a member of Denton Management Ltd.	The Company Secretarial should not be undertaken by a member of Denton Court Management Limited. There are serious consequences for failing to comply with Company filing requirements and such requirements should therefore be dealt with by Professional Company Secretarials who understand the duties and filing requirements.		See the entry for Directors & Officers Insurance in 2011-2012 above.
Fire Risk Assessment	£675.00	No risk assessment undertaken. Should be carried out by a responsible person.	Risk Assessment Attached.	50-69, 140	An assessment was carried out and invoiced in this year. This item is payable.

Management Fee- Fixed	£2,472.00	I believe that HML Shaw, the management company employed by Denton Court Management Ltd, are not fit for the purpose. As explained in covering letter. No fee payable.	The management fee is within a reasonable range of approximately £220.00 per unit. It is denied that the Managing Agents are not fit for purpose. Professional services is provided and the Appliance is seeking to recover the whole management fee.	122-125	See the entry for 2011-2012 above. The charge per unit increased to around £171 plus VAT. The reduction in the Respondent's charges for this year is £20.60 (£247.20/12).
Bank Charges	£31.00	To date no sight of bank statements.	The Respondent has no discretion/real bargaining power in respect of bank charges		See the entry for Directors & Officers Insurance in 2011-2012 above.

Financial Year 01/04/2013 to 30/03/2014					
ITEM	COST	TENANT'S COMMENTS	LANDLORD'S COMMENTS	PAGES	TRIBUNAL'S COMMENTS
Buildings Insurance	£3,440.00	Unable to comment fully as no sight of existing policies has been allowed. This figure could be reduced by seeking further like for like competitive quotes.	Policy provided with Statement	192-194	See the entry for 2011-2012 above.
Directors & Officers Insurance	£291.00	Unsure of the requirement of this policy. No further information has been made available to make qualified objections.	Policy provided with Statement		See the entry for Directors & Officers Insurance in 2011-2012 above.
Cleaning General	£900.00	Actual hourly rate of £112.50 p.h. based on visits to site and time spent cleaning. Alternative cleaners are available to as little as £11 p.h.	The cleaning consists of rubbish and bins/bin area being dealt with on a weekly basis and a thorough clean being undertaken on a monthly basis is reasonable in price. The cleaner is not being paid an hourly rate of £311.00 per hour. The Appliance is unsure how the Respondent has calculated an hourly rate of £311.00 per	183, 202	See the entry for 2011-2012 above. The cleaning invoice for the second half of the year is missing.

			hour but can assure the Applicant that that is not the rate being paid to the cleaner.		
Gardening General	£2,099.00	This figure equates to an hourly rate of £700.00 p.h. based on visits to the site and time spent carrying out the work. Alternative gardeners are available for £10 p.h.	The Gardener attends the property once a month in winter months and fortnightly in summer months. The sum claimed is reasonable for the visits and work undertaken to the property.	198-201, 203, 206-209, 212-216	See the entry for 2011-2012 above. In contrast to the 11 invoices in the previous year, there were 13 in this year.
Electricity	£424.00	No site bills have been presented. Unable to make comment until bills are made available.	Electricity bills are attached to Statement of Case		See the entry for 2011-2012 above.
Pest Control	£270.00	No evidence of any pest control being applied. No fee payable.	Invoices in respect of pest control are attached to the Statement of Case.	217-222	See the entry for 2011-2012 above.
General Repairs	£491.00	No visible signs of any repairs being made. No invoices made available. No fee payable.	Invoices in respect of general repairs are attached to the Statement of Case	195-196	See the entry for 2011-2012 above. The invoices do not add up to the amount in the accounts. For this year, that is £215.40, a reduction of £275.60, of which the Respondents' share is £22.97.
Door Entry System Rental/Supply	£160.00	It is my belief that this system was bought and installed by the builders of the building. Not on a rental basis. No fee payable.	The door entry system is on a rental basis. The invoices for the rental are attached to the Statement of Case.	170	See the entry for 2011-2012 above. The invoice was for £641.08 but no explanation was provided for why only £160 was charged in the accounts.
Accountancy General	£438.00	Can and should this be done by the directors of Denton Court Management Ltd.	The accounts should not be produced by the Directors of Denton Court. The Lease requires the accounts to be prepared and audited by a qualified accountant.	171	See the entry for 2011-2012 above. The invoice for this year was £420, the same as the previous year but the accounts included an extra £18 (£15 plus VAT). MW & Co's charges

					did go up by this amount during the year but it is, of course, the invoiced amount that should go in the service charge accounts. This is a basic error which the accountants should not have committed and throws doubt on the adequacy of their auditing process.
Company Secretarial	£450.00	Should be done by a member of Denton Management Ltd.	The Company Secretarial should not be undertaken by a member of Denton Court Management Limited. There are serious consequences for failing to comply with Company filing requirements and such requirements should therefore be dealt with by Professional Company Secretarials who understand the duties and filing requirements.		See the entry for Directors & Officers Insurance in 2011-2012 above.
Fire Risk Assessment	£?	No risk assessment undertaken. Should be carried out by a responsible person.			Again, no assessment was carried out in this year.
Management Fee- Fixed	£2,582.00	I believe that HML Shaw, the management company employed by Denton Court Management Ltd, are not fit for the purpose. As explained in covering letter. No fee payable.	The management fee is within a reasonable range of approximately £220.00 per unit. It is denied that the Managing Agents are not fit for purpose. Professional services is provided and the Appliance is seeking to recover the whole management fee.	172, 175, 179-180	See the entry for 2011-2012 above. The charge per unit increased to around £176. The reduction in the Respondent's charges for this year is £21.52 (£258.20/12).
Bank Charges	£50.00	No sight of bank statements to verify amount.	The Respondent has no discretion/real bargaining power in respect of bank charges		See the entry for Directors & Officers Insurance in 2011-2012 above.

Financial Year 01/04/2014 to 30/03/2015

ITEM	COST	TENANT'S COMMENTS	LANDLORD'S COMMENTS	PAGES	TRIBUNAL'S COMMENTS
Buildings Insurance	£3,556.00	Unable to comment fully as no sight of existing policies has been allowed. This figure could be reduced by seeking further like for like competitive quotes.	Policy provided with Statement	249-254	See the entry for 2011-2012 above. Oval began using a trading name, "Arthur J Gallagher".
Directors & Officers Insurance	£298.00	Unsure of the requirement of this policy. No further information has been made available to make qualified objections.	Policy provided with Statement		See the entry for Directors & Officers Insurance in 2011-2012 above.
Cleaning General	£1,510.00	Despite only apportioning £800.00, they claim to have spent £1,510.00 without providing evidence or reason for the extra spent. An equivalent rate of £100.00 p.h. (£189.00 p.h.)	The cleaning consists of rubbish and bins/bin area being dealt with on a weekly basis and a thorough clean being undertaken on a monthly basis is reasonable in price. The cleaner is not being paid an hourly rate of £311.00 per hour. The Appliance is unsure how the Respondent has calculated an hourly rate of £311.00 per hour but can assure the Applicant that that is not the rate being paid to the cleaner.	261-264, 285, 287-290, 325	See the entry for 2011-2012 above. The cleaning invoice for the first half of the year is missing.
Gardening General	£2,116.00	This figure equates to an hourly rate of £840.00 p.h. (£705.00) based on visits to the site and time spent carrying out the work. Alternative gardeners are available for £10 p.h.	The Gardener attends the property once a month in winter months and fortnightly in summer months. The sum claimed is reasonable for the visits and work undertaken to the property.	265-276	See the entry for 2011-2012 above.
Electricity	£416.00	No site bills have been presented. Unable to make comment until bills are made available.	Electricity bills are attached to Statement of Case		See the entry for 2011-2012 above.

Pest Control	£315.00	No evidence of any pest control being applied. No fee payable.	Invoices in respect of pest control are attached to the Statement of Case.	277-282	See the entry for 2011-2012 above. An additional monthly charge of £45 has been included in the accounts, for which there is no explanation.
General Repairs	£571.00	No visible signs of any repairs being made. No invoices made available. No fee payable.	Invoices in respect of general repairs are attached to the Statement of Case	291-292, 294	See the entry for 2011-2012 above. For this year, the invoices total 8p more than the actual charge in the accounts.
Door Entry System Rental/Supply	£643.00	It is my belief that this system was bought and installed by the builders of the building. Not on a rental basis. No fee payable.	The door entry system is on a rental basis. The invoices for the rental are attached to the Statement of Case.	293	See the entry for 2011-2012 above.
Accountancy General	£456.00	Can and should this be done by the directors of Denton Court Management Ltd.	The accounts should not be produced by the Directors of Denton Court. The Lease requires the accounts to be prepared and audited by a qualified accountant.	296	See the entries for 2011-2012 and 2013-2014 above. Again, MW & Co have erroneously included an additional amount of £18 in the accounts compared with the invoice.
Company Secretarial	£474.00	Should be done by a member of Denton Management Ltd.	The Company Secretarial should not be undertaken by a member of Denton Court Management Limited. There are serious consequences for failing to comply with Company filing requirements and such requirements should therefore be dealt with by Professional Company Secretarials who understand the duties and filing requirements.		See the entry for Directors & Officers Insurance in 2011-2012 above.
Fire Risk Assessment	£0.00 (budgeted £559.00)	No risk assessment undertaken. Should be carried out by a responsible person.			Although originally budgeted for, no assessment was carried out.
Management	£2,645.00	I believe that HML Shaw, the	The management fee is within a reasonable range of	297, 299-	See the entry for 2011-2012

Fee- Fixed		management company employed by Denton Court Management Ltd, are not fit for the purpose. As explained in covering letter. No fee payable.	approximately £220.00 per unit. It is denied that the Managing Agents are not fit for purpose. Professional services is provided and the Appliance is seeking to recover the whole management fee.	301	above. One quarterly invoice was missing. The charge per unit increased to around £180 plus VAT. The reduction in the Respondent's charges for this year is £22.04 (£264.50/12).
Bank Charges	£28.00	Overcharged by £22.00. No apparent reason.	The Respondent has no discretion/real bargaining power in respect of bank charges		See the entry for Directors & Officers Insurance in 2011-2012 above.

Financial Year 01/04/2015 to 30/03/2016					
ITEM	COST	TENANT'S COMMENTS	LANDLORD'S COMMENTS	PAGES	TRIBUNAL'S COMMENTS
Buildings Insurance	£3,797.00	Unable to comment fully as no sight of existing policies has been allowed. This figure could be reduced by seeking further like for like competitive quotes.	Policy provided with Statement	385, 387-391	See the entry for 2011-2012 above.
Directors & Officers Insurance	£295.00	Unsure of the requirement of this policy. No further information has been made available to make qualified objections.	Policy provided with Statement		See the entry for Directors & Officers Insurance in 2011-2012 above.
Cleaning General	£1,218.00	This figure is double the previous year, increasing the actual hourly rate to £200.00 p.h. based on visits to the site and time spent cleaning. Alternative cleaners are available for as little as £11 p.h.	The cleaning consists of rubbish and bins/bin area being dealt with on a weekly basis and a thorough clean being undertaken on a monthly basis is reasonable in price. The cleaner is not being paid an hourly rate of £311.00 per hour. The Appliance is unsure how the Respondent has calculated an hourly rate of £311.00 per hour but can assure the Applicant that that is not the rate being paid to the cleaner.	326-337, 372-373	See the entry for 2011-2012 above.

Gardening General	£1,969.00	This figure equates to an hourly rate of ££85.00 p.h. based on visits to the site and time spent carrying out the work. Alternative gardeners are available for £10 p.h.	The Gardener attends the property once a month in winter months and fortnightly in summer months. The sum claimed is reasonable for the visits and work undertaken to the property.	338-341, 344-349	See the entry for 2011-2012 above. There are a couple of invoices missing but the figure in the accounts is for 12 monthly charges, rounded up to the nearest pound.
Electricity	£433.00	No site bills have been presented. Unable to make comment until bills are made available.	Electricity bills are attached to Statement of Case		See the entry for 2011-2012 above.
Pest Control	£270.00	No evidence of any pest control being applied. No fee payable.	Invoices in respect of pest control are attached to the Statement of Case.	350-355	See the entry for 2011-2012 above.
General Repairs	£960.00	No visible signs of any repairs being made. No invoices made available. No fee payable.	Invoices in respect of general repairs are attached to the Statement of Case	367-369	See the entry for 2011-2012 above. Again, the invoices do not add up to the amount in the accounts. For this year, that is £839.20, a reduction of £120.80, of which the Respondents' share is £10.07.
Door Entry System Rental/Supply	£649.00	It is my belief that this system was bought and installed by the builders of the building. Not on a rental basis. No fee payable.	The door entry system is on a rental basis. The invoices for the rental are attached to the Statement of Case.	370	See the entry for 2011-2012 above.
Accountancy General	£474.00	Can and should this be done by the directors of Denton Court Management Ltd.	The accounts should not be produced by the Directors of Denton Court. The Lease requires the accounts to be prepared and audited by a qualified accountant.	402	See the entry for 2011-2012 above.
Company Secretarial	£474.00	Should be done by a member of Denton Management Ltd.	The Company Secretarial should not be undertaken by a member of Denton Court Management Limited. There are serious consequences for failing to comply with Company filing requirements and such requirements should therefore be dealt with by		See the entry for Directors & Officers Insurance in 2011-2012 above.

			Professional Company Secretarials who understand the duties and filing requirements.		
Fire Risk Assessment	£0.00 (budgeted £350.00)	No risk assessment undertaken. Should be carried out by a responsible person.			Again, although originally budgeted for, no assessment was carried out.
Management Fee- Fixed	£2,712.00	I believe that HML Shaw, the management company employed by Denton Court Management Ltd, are not fit for the purpose. As explained in covering letter. No fee payable.	The management fee is within a reasonable range of approximately £220.00 per unit. It is denied that the Managing Agents are not fit for purpose. Professional services is provided and the Appliance is seeking to recover the whole management fee.	398, 403-406	See the entry for 2011-2012 above. The charge per unit increased to around £188 plus VAT. The reduction in the Respondent's charges for this year is £22.60 (£271.20/12).
Bank Charges	£28.00	Overcharged by £22.00. No apparent reason.	The Respondent has no discretion/real bargaining power in respect of bank charges		See the entry for Directors & Officers Insurance in 2011-2012 above.

Appendix 1 – 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 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.

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.