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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	LON/00AW/LSC/2013/0638
Property:	Flat 1, 65 Cadogan Square, London SW1X 0DY
Applicant:	Nearfine Ltd
Representative:	Mrs H Ryman, Property Manager, Nearfine Ltd.
Respondents:	Mr B Madi & Ms H Lawton
Representatives:	Mr B Madi
Type of application:	Section 27A and section 20C, Landlord and Tenant Act 1985
Tribunal members:	D Banfield FRICS Ms S Coughlin MCIEH Mrs R Turner JP BA
Dates of hearings:	26 February 2014 27 May 2014
Date of Decision:	23 June 2014

DECISION

Background

1. The Applicant applied for a determination of the Respondent's liability to pay service charges for the financial years 2009-2013. At a case management hearing on 8 October 2013 the Respondent asked for earlier years to be considered and in directions dated the same day it was determined that service charge years 2006 to 2013 would be considered.

2. The following issues were identified at the case management hearing:

   - Whether the landlord had complied with S.20 of the Landlord and Tenant Act 1985 in 2008 and 2009.
   - Whether the works carried out in the "refurbishment of the building" had been done to a reasonable standard and cost.
   - Whether to make a determination under S.20c of the Landlord and Tenant Act 1985 to limit the landlord's costs of proceedings.

3. Helpfully a number of matters were agreed between the parties prior to the hearing and those items remaining were set out on a Scott Schedule.

Hearings

26 February 2014

4. At the commencement of the hearing on 26 February 2014 Mr Madi said that additional information had just come into his possession that cast doubt on the veracity of the invoices from D.M. Stubbenhagen which formed part of his service charges and which indicated that the amounts shown on the invoices were not the amounts actually charged to the Applicant. He considered that agreements he had previously entered into with the Applicant would have to be re-visited and asked for permission to call Mr Stubbenhagen as a witness which request was refused by the Tribunal. He then sought an adjournment in excess of four weeks to give him time to make further investigations and prepare a fresh case.

5. Mrs Ryman said that reductions already negotiated would significantly exceed any alleged irregularity in the Stubbenhagen invoices and resisted the granting of an adjournment.

6. The Tribunal considered the request and determined that an adjournment would not be granted. It also determined that before

deciding the matter and issuing its decision it would invite further representations in respect of D.M.Stubbenhagen's invoices only.

7. Directions were made setting out a timetable for discovery of documents, exchange of statements of case and the submission of the bundle. The matter was to be determined by written submissions unless either party called for a hearing. In the event the Respondent called for a hearing which took place on 27 May 2014.

8. The Tribunal then invited submissions as to whether their jurisdiction was limited in respect of the 2008 S.20 works by the exchange of letters at pages 113 and 114 of the bundle which, the Applicant considered was an unequivocal agreement by the Respondent to accept £5,000 as compensation "in full and final settlement of all our grievances" and which had been paid. The Respondent said that the agreement was conditional on various verbal assurances which, due to the good relations existing between the parties at the time he felt unnecessary to confirm in writing. These verbal assurances were denied by the Applicant.

9. The Tribunal determined on the basis of the evidence before it that in view of the agreement between the parties it did not have jurisdiction to consider any dispute in respect of the 2008 works. The Respondent was however entitled, in disputing the necessity for later works to refer to the extent of the works carried out under the 2008 contract.

10. The Respondent then raised a general objection that the Applicant had failed to provide proof that sums claimed as expenditure had actually been paid and for which he wished to examine their banking records. The Tribunal explained that its jurisdiction was limited by s.s 19 and 27A of the Landlord and Tenant Act 1985 and that their determination would be limited to the reasonableness and payability of the service charge and not a forensic examination of the Applicant's accounts.

11. The Tribunal then examined the Respondent's obligation to pay service charges as set out in the leases. The occupational lease is an underlease between Cavendish Offices and Houses Investments Ltd and Peter Donovan Bowen for a term of sixty four and a half years from 25th December 1984 less the last 7 days thereof. The Head Lease is between The Honourable Charles Gerald John Cadogan and Cavendish Offices and Houses Investments Ltd for a term of sixty four years and two quarters of another year from 25th December 1984.

12. Clause 2 of the underlease contains the lessee's covenants, sub clause 3 of which states; *" To pay to the Lessor on demand a sum equal to 2/11ths of the cost and expense incurred by the Lessor in the performance of its covenants contained in the Head Lease under which the Lessor holds the Building and/or under Clause 3 hereof including ...the preparation of specifications and schedules in connection therewith and the fees charged and expenses of any expert*

consulted by it in connection therewith together with an annual management charge equal to fifteen per centum of the amount payable by the Lessee as aforesaid Such proportion (2/11ths) shall be ascertained by the auditors for the time being of the Lessor in respect of the six monthly periods ending on the thirtieth day of June and the thirty first day of December in each year....."

13. Clause 3 sets out the Lessor's covenants the cost of which the above clause places on the lessee. Sub-clause 2 refers to the Lessor's obligation to insure. Sub-clause 3 sets out the lessor's obligations for repair, namely; *(a) the main structure and in particular the roof chimney stacks gutters and rain water pipes of the building and all external parts thereof. (b) The gas and water pipes drains and electric cables and wires in under and upon the building and enjoyed or used by the Lessee in common with the owners or lessees of the other flats. (c) The main entrance passages landings staircases and lift (if any) of the building so enjoyed or used by the Lessee in common as aforesaid and the boundary walls and fences of the building and the Lessor will so often as reasonably required decorate the exterior of the building so that the same shall be in keeping with other buildings in the locality"*

14. Sub-clause 4 sets out the Lessor's covenant to provide the services specified in the Third Schedule.

15. The Third Schedule contains the following services which we summarise as; Supply of constant hot water; Central heating from October to April; Provision of a lift; cleaning, lighting heating and carpeting of the common parts; refuse collection and the provision of a resident caretaker the cost of which includes wages and all other expenses incidental to such employment, the cost of the maintenance and upkeep of the flat and the rack rent letting value of such flat. The caretaker's duties are set out in sub clause 6.(a) to (f)which includes at (c) attending to and refuelling the boilers in the Building

16. The lessor's covenants contained in the Head-lease a proportion of the cost of which is to be met by the Respondent are set out in clause 2 and may be summarised as:- (3)(a) to repair and maintain the building in good and substantial condition; (3)(b) in 2009 and 2030 to restore and clean the whole of the exterior (excluding the roof); (5) to paint the interior;(7) to contribute to party walls etc.; (8) to insure with the Eagle Star Insurance Company Ltd or in such other Insurance Office or with such underwriters as may be named in writing by the Company.

17. On enquiry by the Tribunal it was confirmed that the service charge proportion charged was 2/14ths rather than the 2/11ths specified in Clause 2 of the under-lease.

27th May 2014

18. Prior to the hearing on 27 May 2014 a bundle was prepared containing amongst other things statements of case from both parties, witness statements from Mr D Stubbenhagen and Dr R Etminan together with various supporting documents. Mr Madi attended the hearing accompanied by Mr D Stubbenhagen whilst the Applicant decided that their attendance was unnecessary.

19. Mr Madi said that whilst he had previously had suspicions that the service charges were inflated it was only when Mr Stubbenhagen provided information immediately prior to the last hearing that he considered that his suspicions could be demonstrated as correct.

20. He called Mr Stubbenhagen who confirmed his witness statement and referred to the breakdown in his long standing relationship with the Applicant. This he believed had occurred due to the evidence he had given in a previous Tribunal case which had gone against the Applicant. Once again he had been asked to provide a large number of documents in support of the Applicant but in view of the large amount of money he was owed he was not prepared to do so. He had terminated his relationship with the Applicant by a letter dated 18 February 2014 in which he set out the total of invoices outstanding and, after deduction of 15% which he alleged to be in respect of commission the money that he claimed to be owed. (page 42 of the bundle) He said that this letter had not been replied to.

21. He confirmed the situation was as set out in paragraph 9 of his witness statement (page26) which in summary was that from 2006 to 2008 he was asked by Nearfine to inflate his invoices by 15% which amount was paid to Nearfine "in kind". This he described as work to other properties owned by Nearfine or Dr Etminan.

22. In January to June 2009 he issued invoices with the "usual 15% mark-up" but these were subsequently cancelled and revised invoices without the mark-up issued identified by the addition "D" to the invoice number. He said that of the 73 invoices issued and listed at page 57/58 of the bundle 11 related to 65 Cadogan Square. On enquiry from the Tribunal he said that he had copies of the re-issued invoices but hadn't thought to include them in the bundle.

23. For the period July to December 2009 161 invoices were underpaid by 15% of which 15 related to 65 Cadogan Square. On a schedule dated 20 May 2010 were listed the various invoices showing the property to which they related, the date of issue, the value, the discount and the new total. On page 36 the total invoices were shown as £52,072. There were then a series of manuscript figures the authorship of which is contested. They do show however that after the deduction of the last two invoices on the list a total of £50,111.25 remains from which £7516.68 is deducted leaving £42,594.57. There are then notes identifying cheques received of £39,295.50 and £3,299.07 totalling the £42,594.57.

24. For 2010, 2011 and 2012 invoices were issued including the 15% commission which was again paid to Nearfine or Dr Etminan "in kind".

25. Mr Stubbenhagen said that in 2013 the situation changed and with one exception his invoices were promptly paid in full and without any deduction.

26. On questions from the Tribunal Mr Stubbenhagen said that he had tried to keep a record of the "in kind" work he carried out by means of worksheets and pro-forma invoices but that Dr Etminan would never accept them. He also agreed that although he had written on many occasions to Nearfine regarding commission he had never received anything in writing in return. He said that the payment of commission was quite usual in his industry and that he paid it to others himself on many occasions and could see nothing wrong it.

27. Mr Madi also argued that Mr Stubbenhagen was operating under a Qualifying Long Term Agreement as defined in the Service Charges (Consultation etc.) (England) Regs. 2003 and as such consultation should have occurred. He referred to an agreement for 5 years from 1 January 2003 dated 4th November 2002 between Nearfine and D M Stubbenhagen & Associates by which the latter was to provide "general maintenance support" for a number of properties at an annual charge of £1,280 per annum plus vat per property. Mr Madi considered that the agreement covered all of the payments made to Mr Stubbenhagen and not just to the annual charge. Mr Stubbenhagen said that this was the only agreement he had entered into and that after it had expired in 2007 he had operated on a year to year basis.

28. In Nearfine's Reply to Respondent's Statement of Case dated 14th April 2014 they submit that an agreement had been reached between the parties in respect of the majority of Property Repairs and Maintenance invoices and that the Respondent should be estopped from going back on this agreement.

Decision

29. We were not assisted by the lack of evidence from the Applicants and have therefore had to rely on the written submissions of the Respondent and the evidence given at the hearing on the 27th May 2014.

30. We were hampered by the shortage of written evidence, some of which we were advised was available but not supplied. Nevertheless we were impressed by the straightforward manner in which Mr Stubbenhagen gave his evidence which we consider was supported by the available documentary evidence particularly the schedule at pages 33 to 36 of

the bundle. As such we accept that the situation described by Mr Stubbenhagen was most likely to have been correct.

31. Although the written evidence only covers 2009 we are satisfied that the balance of probability suggests that the same practise existed for the whole of the period under review until 2013 and we therefore make an adjustment to deduct the 15% commission element whether received in cash or in kind.

32. With regard to the Qualifying Long Term Agreement point we are unable to agree with Mr Madi. We accept Mr Stubbenhagen's evidence that the agreement terminated in 2007 and thereafter it was on a year to year basis which could have been terminated by either party. The commencement date for the regulations is 31st October 2003 and only relates to agreements entered into after that date. As such there was no obligation for Nearfine to consult with the lessees either before entering into the original agreement or in respect of the arrangement that continued after its expiry.

33. The matter of estoppel was not argued at either hearing and neither party has submitted evidence upon which we could make such a determination. This request is therefore denied.

Scott Schedule

34. The Scott schedule covers the period from 1/1/2006 to 30/6/2013 and our decision is limited to this same period unless stated otherwise. It was agreed that where items appeared in more than one year there was no need to repeat the argument. The following matters are therefore common throughout all service charge years.

GAS

35. This was for the communal boilers which provided the central heating and hot water. It is common ground that in 2000 the supply was placed on a commercial tariff and VAT was increased from the residential rate of 5% to 17.5%. In addition a Climate Change Levy was applied. The Applicant says that in 2009 they noticed that the prices charged for gas to the various buildings they owned differed significantly and they took the matter up with British Gas. The advice initially received was that due to the volume of gas consumed they were correctly on the commercial tariff but that it may be possible to renegotiate the unit price when existing contracts ran out. On 29 November 2010 the Respondents contacted British Gas direct after which British Gas accepted that an error had been made. After further delays a credit was made for the period from 2007 to 2011 and the amount received credited to the service charge account. British Gas were not prepared to go back further than 2007 that being the period in which HMRC would consider a refund of VAT.

36. The Respondent said that the Applicants, as experienced property managers should have been aware of the errors in charging and taken the matter up earlier. He also pointed out that the unit rate was significantly higher than that paid for on another property owned by him and should have been re-negotiated. He said it was significant that the lowest unit rates were in buildings owned by the Applicant where either the company or someone connected to the company had an interest. He said that the amount credited by British Gas was incorrect and referred to page 351 of the bundle on which he set out his calculations showing the amounts he said were overcharged due to an overly high unit rate and the incorrect application of CCL and VAT rate. He asked that despite being contrary to the Directions he be permitted to extend the period under consideration back to 2000.

37. The Applicant did not accept that the different unit rates were influenced by whether the company occupied the building or not and explained that this was due to the amalgamation of 2 different portfolios. Without agreeing their conclusion the Respondent's calculations at page 351 were accepted as arithmetically correct.

Decision

38. The Tribunal accept that as experienced investors in property the Applicants should have been aware of the VAT and CCL status of the building. They took from 2000 to 2009 to notice the anomaly and it was only at the intervention of the Respondent that the position was corrected. Likewise there is no sign that the unit rate was ever challenged and whilst it is not possible at this stage to predict what lower rates could have been achieved the Respondent's estimate of a 35% rebate is accepted by the Tribunal as fair.

39. The Respondent has submitted that the Tribunal's decision should go back to 2000. This is however contrary to the Directions made on 8 October 2013 and is therefore refused.

40. The Respondent has produced their own calculations as to the amount of overcharging which we adopt but have adjusted to exclude the years prior to 2006. The amount invoiced and paid for the years 2006 to the end of 2013 are shown in column B of the schedule on page 351 of the bundle and totals £74,360.50. Deducting the credits of £5,706.93 in column S leaves a total gas charge of £68,653.57. The Respondent's 2/14ths share amounts to £9807.65 to which a 15% management charge of £1,471.15 is added totalling £11,278.80.

41. The total "overcharging" figure inclusive of the management fee for 2006 to 2013 is shown in column T and amounts to £34,869.30 of which the Respondent's 2/14ths share is £4,981.28.

42. Deducting the figure shown in paragraph 41 from that in paragraph 40 gives the total amount allowable of £6,297.52

The Tribunal therefore allows the sum of £6,297.52 in respect of gas charges inclusive of management for the period 2006 to the end of 2013.

ACCOUNTANCY FEES

43. These fees rise from £625 per half year in 2006 to £750 per half year in 2013 and total £10,945 for the 7 ½ year period. The Applicant says that he simply divides the total accountancy fees charged on the company between the various properties that it owns. An example of an invoice to the company is at page 266 amounting to £6,112.00. Mrs Ryman says that this is a reasonable method to adopt for a company which has the sole purpose of property management/investment.

44. The Respondent says that both the method of apportionment and the actual fee charged is unreasonable. He says that the charge includes matters of a corporate nature which should not be charged to the lessees under the terms of the lease.

Decision

45. We do not accept that the method of charging adopted by the Applicant is reasonable. From the narrative on the sample invoice at page 266 it is clear that the fee includes writing up books and records of the company, submission of statutory financial statements, preparation of corporation tax returns and preparation of annual returns to Companies House. Whilst the preparation of the service charge accounts is no doubt included within this description there are a number of matters which relate solely to the company and which we determine should be excluded.
Doing the best we can we allow £350 for each of the 6 monthly periods under consideration giving a charge of £5,250 to which 15% is added for management giving £6,037.50. The Respondent's 2/14th share is £862.50.

We therefore allow the sum of £862.50 in respect of accountancy charges inclusive of management for the period 1/1/2006 to 30/6/2013.

HEATING MAINTENANCE

46. There are a number of invoices relating to works to radiators within individual flats. Mrs Ryman says that the communal heating system includes not only the boilers but all the pipework and radiators

attached and that the landlord is obliged to maintain the system. She refers to the Third Schedule in which there are obligations to provide constant hot water and adequate central heating from October to April. To be able to provide these services the equipment including radiators and pipework must be maintained in working order. Mrs Ryman also says that it is not reasonable to expect the caretaker to restart the boiler despite it being listed as a duty in the lease. She points out that boilers are now more sophisticated and need specialist care. In her contract the caretaker is specifically forbidden to access the boiler room.

47. The Respondent says that anything within the flat should be the lessees' responsibility. He says that it is apparent that most of the invoices relate to a flat in which an elderly woman resides and who does not undertake such minor items of maintenance herself. He says that most lessees would carry out tasks such as bleeding radiators themselves without troubling the landlord and that if the landlord wishes to assist an elderly tenant it should be at his cost not the service charge. He also says that the caretaker does in fact start the boiler on occasions and it is reasonable for her to do so thus avoiding expensive call out charges.

Decision

48. The Third Schedule of the under-lease places an obligation on the landlord to provide heating and to enable them to do so the heating system must be kept in working order. Whilst many lessees may indeed undertake minor works themselves this does not diminish the landlord's obligations as set out in the lease where lessees fail to do so. All invoices relating to the heating system from H.H.Abbs and totalling £2,828.12 are therefore allowed in full except the following: - (References refer to the page number in the Scott Schedule.)

Page 4	£208.74 This is clearly work to the lessee's taps and is not a service charge matter.
Page 5	£105.75 Both this and the invoice at page 6 refer to turning off the heating for the summer period. We consider one must be a duplication and as this invoice was rendered before the end of the heating period it is considered most likely to be sent in error.
Page 59	£209.30 This relates to draining services for plumbers working at Flat 4. As such the lessee of flat 4 should be responsible not the service charge.
Page 69	£116.15 Both this and the invoice at page 70 relate to venting radiators in the top floor flat and are on successive days. Two visits for one apparently simple maintenance task is excessive and we therefore disallow that relating to the first as clearly the result was unsatisfactory. A diligent manager would have ensured that such matters were queried at the time.

Page 100 £118.68. Not disputed by Applicant.
Page 124 £171.60 This relates to work to a lessees taps and is not a service charge matter.
Page 130 £48.00 This relates to work in the respondents' flat and is not a service charge item.

The total disallowed is £859.54 which when deducted from the total above gives a sum allowed of £1,968.58 to which 15% management is added giving £2,263.87. The Respondent's 2/14ths share is £323.41

We therefore allow the sum of £323.41 in respect of heating maintenance charges inclusive of management for the period 1/1/2006 to 30/6/2013.

PROPERTY REPAIRS AND MAINTENANCE

49. These mainly relate to unblocking pipes/drains affecting individual flats. Mrs Ryman says they are part of the landlord's obligations as included within Clause 3. (3)(b) as relating to water pipes used by the lessees in common. Where invoices refer to blockages being within individual flats she considers that the problem must have arisen in the communal system.

50. The Respondent says that all repairs within flats should be the responsibility of the lessee concerned.

51. The invoices with the exception of DH344199 for £250.27 are all submitted by D M Stubbenhagen. The total of all invoices claimed for the period is £5,360.59

Decision

52. Clause 3. (3) (b) of the under-lease gives the responsibility for maintaining pipes serving the lessees in common to the landlord. Where repairs can be shown to relate solely to defects within the flats' own pipework any costs cannot be charged to the service charge. In considering each of the invoices in turn we have applied this principle as follows and made the following deductions:-

Page 36 £47.00 This is a matter between lessees and the costs should be borne by them. There is no suggestion that D.M. Stubbenhagen was acting as an expert as envisaged in Clause 2. (3) of the under – lease and as such it must be disallowed.
Page 45 £94.00 Disallowed for the same reasons as above.
Page 47 £105.75 This relates to a drain blockage in a bathroom. For it to have been cleared using boiling water it is

considered unlikely to have been a problem in the main stack. As such it is disallowed.

Page 71 £80.50 This is for the attendance of D.M. Stubbenhagen at a site meeting. We determine this to be a management function and not maintenance. It is therefore disallowed.

Page 84 £246.75 This is for repairing brickwork damaged by works carried out by a lessee. There appears to have been no attempt to obtain recompense from the lessee and as such we consider unreasonable to place the charge to the service charge account. It is therefore disallowed.

Page 117 £590.40 This is for opening up areas of floor to assist telephone engineers seeking to repair a fault to a lessee's telephone. We consider this to have been solely for the benefit of the lessee concerned and as such is not a landlord's obligation. We disallow it entirely.

The total of the invoices disallowed is £1,164.40 which when deducted from the total in paragraph 51 gives a revised total of £4,196.19. With regard to the "Stubbenhagen" invoices included in this figure totalling £3,945.92 we then deduct an amount in respect of the 15% addition totalling £514.68 leaving a total of £3,681.51. To this we add 15% management giving £4,233.74 the respondent's 2/14^{ths}s share being £604.82.

We therefore allow the sum of £604.82 in respect of Property Repairs and Maintenance inclusive of management for the period 1/1/2006 to 30/6/2013.

CARETAKER'S FLAT

53. This relates to an invoice for £616.88 at page 37 from D M Stubbenhagen for a new fan and light fitting; an invoice for £500 at page 75 relating to a contribution towards privacy shutters; an invoice for £259.56 at page 131 for repairs to tiles; £144.90 at page 72 for the cost of copying a CCTV tape following a break in and totals £1,521.34 plus £3,005.64 in respect of a replacement kitchen in all totalling £4,526.98.

54. Mrs Ryman says that providing a resident caretaker is one of the services referred to in the Third Schedule and as such the costs for which are payable as a service charge in accordance with Clause 2.(3). She says that little had been spent on the flat in the past and the works now undertaken did no more than put it into an acceptable condition. There was no element of improvement. With regard to the kitchen replacement she said that as all the other lessees had agreed to the expenditure she had not gone through the S.20 consultation procedures. She accepted that as such the landlord could only claim £250 in respect of these works from the Respondent.

55. The Respondent considered that the replacement kitchen was an improvement for which he did not have a liability and that it was due

to past neglect that the tiles in the bathroom needed replacing. He also considered that the bathroom fan was an improvement not a replacement. He considered that whilst an employer may wish to provide such things for his staff it was not reasonable to charge it to the service charge.

Decision

56. We accept that the lease gives an obligation for the Applicant to provide a caretaker and for the Respondent to pay a share of the costs. Part of those costs must be the proper maintenance of the accommodation occupied by the caretaker. There is sometimes a fine line between maintenance and improvement but we do take the view that replacing worn out kitchen units and retiling areas of the bathroom are reasonable. It may be that if we had to consider the whole cost of the kitchen we may have determined that an element was an improvement. However in view of the limitation of the Respondents' contribution to £250 we do not consider this to be necessary. We do however consider that providing blinds is a matter of furnishings and as such we disallow it. The cost of the CCTV copy seems to us to relate to the overall security of the building and as such we allow it.

57. The "Stubbenhagen" invoice for £616.88 is adjusted as above and reduced to £536.42 giving total allowable expenditure of £940.88 to which we add 15% management and arrive at £1,082.01 of which the Respondent's share is £154.57. To be added to this is the £250 contribution towards the kitchen replacement limited in accordance with S.20.

We therefore allow the sum of £404.57 in respect of the Caretaker's flat inclusive of management for the period 1/1/2006 to 30/6/2013.

WINDOWS

58. This is the expenditure of £5,819.00 on replacing windows in flat 5. Mrs Ryman says that following complaints from the lessee regarding draughts the windows were inspected and it was decided to replace the french doors and bathroom window. She said that these works were not undertaken in the 2008 refurbishment as they were dependent upon lessees bringing such matters to their attention which in this case had not happened. She said that the contract manager had confirmed that no works were carried out to flat 5 and denied that there was any duplication of expenditure. She said that scaffolding had not been required.

59. The Respondent said that the works should have been done as part of the 2008 works and that the surveyor must have noticed if the windows had been rotten. He pointed out that there was reference to replacing windows not capable of repair in the specification together with an amount for inspection of the exterior from the scaffolding.

Decision

60. We are surprised that this work was not carried out as part of the 2008 refurbishment. Included within the specification is £1,320 to carry out an inspection of the windows £2,240 for window repairs and £5,000 for replacing windows not capable of repair. On examining the final account however we see that £5,390 was spent on window repairs and nothing on replacements. It clearly would have been better if all the repairs/replacements had been carried out as part of the major works but we are unable to say on the evidence before us that the overall cost would have been any less. As such we are prepared to allow the sum claimed in its entirety subject to the "Stubbenhagen" adjustment as above.
61. We therefore allow the adjusted amount of £5,060 to which we add management at 15% giving a total of £5,819 of which the Respondent's 2/14^{ths} share is £831.28.

We therefore allow the sum of £831.28 in respect of the replacement windows inclusive of management.

ELECTRICAL TESTING

62. This is a charge of £563.50 at page 62. Mrs Ryman says that it is the landlord's obligation to ensure that the electrics are safe and to have the whole building checked regularly.

63. The respondent says it was checked on completion of the 2008 works and should not have needed to be done again.

Decision

64. On examination of the certificate issued in 2008 it is clear that it only relates to areas of the building in which works were carried out. On page 316 there is reference to existing circuits not being tested. There has been no challenge to the amount charged and as such we allow the full amount of £563.50 to which we add management at 15% giving a total of £648.02 of which the Respondent's 2/14ths share is £92.58.

We therefore allow the sum of £92.58 in respect of electrical testing.

SATELLITE

65. This is a charge of £541.94 at page 90 for repairs to an existing satellite system. Mrs Ryman says that following reports of problems a contractor was called out who failed to make a repair. The original installers were then called who effected a repair. She said that the

unsuccessful repairers had not been paid and that the system was out of warranty.

66. The Respondent says that the first contractor should never been called, that the system was under warranty and that it was unreasonable to place the additional costs incurred by the original installers to correct the errors of a contractor who should not have been instructed. He offers a call out fee of £115 including VAT.

Decision

67. We accept that the system was out of warranty and that a call out charge would have been made in any case. We do not however consider it prudent for another contractor to be involved relatively soon after installation. Even if no charge was paid the work carried out by this contractor has incurred costs which would not otherwise have been incurred and we therefore disallow costs over and above a call out fee the amount of £115 suggested by the Respondent being accepted as reasonable. To this we add 15% for management giving a charge of £132.25 of which the Respondent's 2/14ths share is £18.89.

We therefore allow the sum of £18.89 in respect of the Satellite inclusive of management.

THE COST OF THE CURRENT PROCEEDINGS

68. The Respondent had made an application under S.20C of the Landlord and Tenant Act seeking to limit the landlords' costs of proceedings that could be charged to the service charge account. Mrs Ryman said that the landlords had incurred no costs that could be recovered under the lease and on this assurance no further submissions were made.

69. As part of the applicant's submission in respect of the May 2014 hearing a request was made that penal costs be awarded against the respondent in respect of additional costs incurred relating to what they considered an unnecessary further hearing.

70. At the first hearing the Applicant said that no recoverable costs had been incurred. In respect of the second hearing the Applicant's obligations were limited to those set out in Directions and related solely to discovery, the production of a Reply to the Respondent's statement of case and a witness statement. No details of the costs said to have been incurred have been particularised and as such we decline to make such an order.

D D Banfield FRICS
23 June 2014