



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

Case reference : LON/00BJ/OCE/2019/0160
LON/00BJ/LSE/2020/0079

HMCTS : V: CVPREMOTE

Property : 47 Longley Road, Tooting, London,
SW17 9LA

Applicant : Charles Bassey (Flat 47C)
Fatos Braha (Flat 47A)

Representative : Derrick Moriarty represented Charles
Bassey;
Fatos Braha appeared in person

Respondent : Longley House Properties Limited

Representative : Ian Oliver (Solicitor)

Type of application : For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985

Tribunal members : Judge Robert Latham
Kevin Ridgeway MRICS

**Date and Venue of
Hearing** : 16 September 2021 at
10 Alfred Place, London WC1E 7LR

Date of decision : 2 November 2021

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing which has not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all the issues could be

determined in a remote hearing. The Respondent has provided a Bundle of Documents which totalled 529 pages.

Decisions of the tribunal

- (1) The Tribunal finds that the insurance premium for 2019 of £3,383.11 to be reasonable and payable.
- (2) The Tribunal caps the insurance premium payable for the years 2012, 2013, 2014, 2015, 2016, 2017, and 2018 at £3,375.
- (3) The Tribunal caps the management fees payable for 2012, 2013, 2014, 2015 and 2016 at £175 per flat.
- (4) The Tribunal caps the management fees payable for 2017, 2018, 2019, and 2020 at £150 per flat.
- (5) The Tribunal finds that the other service charges in dispute are reasonable and payable.
- (6) Mr Bassey was the tenant of Flat 47C throughout this period. Mr Braha acquired the leasehold interest in Flat A in February 2016 and is only entitled to benefit for the years 2016 to 2020.
- (7) The Tribunal determines that the Respondent shall pay the Applicants £150 within 28 days of this Decision, in respect of the reimbursement of 50% of the tribunal fees paid by the Applicants.
- (8) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 restricting the costs which can be passed on through the service charge to a total of £750 for the three flats.

The applications

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 2012 to 2021. The Tribunal has allocated two case references to their applications.
2. There is a complex background to these applications. 47 Longley Road, Tooting, London, SW17 9LA (“the Property”) is a detached Victorian house which has been divided into three flats:
 - (i) The lease for Flat A is dated 5 July 2000 (at p.455) and is for a term of 125 years from 25 March 2000. It is a spacious two bedrooms flat in the second floor roof space. On 16 February 2016, Mr Fatos Braha

acquired the leasehold interest. He does not currently occupy the flat. He has represented himself in these proceedings. On 30 June 2021, the Respondent alleges that there were service charge arrears of £11,200.53.

(i) The lease for Flat C is dated 21 April 1995 (at p.456) and is for a term of 99 years from 24 June 1994. It is a three bedroom flat on the first floor. The leaseholders were initially Solomon Savage and Charles Bassey. In 2005, the lease was transferred into the sole name of Mr Bassey. He has been represented by Mr Derrick Moriarty in these proceedings. On 30 June 2021, the Respondent alleges that there were service charge arrears of £21,047.05.

(iii) There is also the Ground Floor Flat which has three bedrooms. The leaseholder was Mrs Annie Moriarty. She died on 29 September 2020. Mr Derrick Moriarty is her son. Mrs Moriarty had been a party to both applications. On 8 June 2021, Judge Dutton made Directions and, on the application of her executors, was removed as a party to both sets of proceedings. On 7 May 2021, Mr Braha acquired the leasehold interest for £435,000. A sum of £15,844 was paid to clear the arrears which had accrued on the service charge account. The service charges payable in respect of this flat are no longer part of the current proceedings.

3. In 2006, Christopher Mackarness, the freeholder and original landlord, appointed Hampton Wick Estates Limited to manage the Property. Mr Christopher Case had responsibility for the Property. When he moved to SE1 Limited, the management of the Property was transferred to his new firm.
4. There has been previous litigation involving the Property. In 2009, Mr Mackarness issued proceedings in the Willesden County Court against Mr Savage and Mr Bassey claiming arrears of service charges of £15,383. The matter was referred to a First-tier Tribunal (“FTT”) which heard the application on 23 and 24 February 2009. Mr Case appeared for the landlord. Mr Bassey gave evidence and was represented by a Solicitor. The insurance premiums were found to be reasonable. The FTT restricted the management fee to £100 pa for Mr Bassey’s flat. The FTT had been very concerned about the state of the property and the poor condition of the common parts.
5. On 17 October 2013, Longley House Properties Limited, the Respondent, acquired the freehold interest in the Property, from Mr Mackarness. Mr Case introduced Mr Mackarness to the purchaser for whom he manages a number of properties.
6. In 2016, the tenants set up 47/3 Management Limited (“the Nominee Purchaser”) with a view to acquiring the freehold of the Property. On 9 December 2016, the Nominee Purchaser served an Initial Notice to acquire the freehold. On 19 February 2018, the parties agreed an

acquisition price of £50,480. The acquisition has not been completed because of the disputed arrears of service charges.

7. On 18 June 2018, the Nominee Purchaser issued a Part 8 Claim in the Wandsworth County Court (Claim No. E01W012) to protect their statutory right to enfranchise. Bishop & Sewell, Solicitors, was acting for the Nominee Purchaser but on 17 April 2019, they came off the record. On 3 July 2019 (at p.51), DDJ Paul made an order in the following terms:

“The Claimant to make an application to the First Tier Tribunal Property Chamber by 4pm 03/08/19 following (sic) which the claim will be dismissed”.

The parties are agreed that “following” should read “failing”.

8. On 1 August 2019 (at p.62), the Nominee Purchaser issued the first application which this Tribunal is now required to determine (LON/00BJ/OCE/2019/0160). The substance of the application was far from clear. On 4 December 2019, a FTT held a preliminary hearing. The following attended: Mr Moriarty, Mr Bassey, Mr Braha and Mr Case. At this time, the Property was still being managed by Hampton Wick. Mr Case stated that there were arrears of service charges of some £30,000. The Tribunal made the following determinations (at p.406):

(i) The application was accepted as an application under section 27A of the 1985 Act.

(ii) Mr Moriarty (Ground Floor Flat), Mr Bassey (Flat A) and Mr Braha (Flat C) were substituted as applicants in place of the Nominee Purchaser.

(iii) Directions were given for the determination of the application. The Applicants were further directed to issue a new Section 27A joint application setting out the service charges which are in issue.

9. On 13 February 2021 (at p.224), Mrs Annie Moriarty issued a further application for a determination under section 27A of the 1985 Act challenging the service charges for the years 2012 to 2019. Mr Bassey and Mr Braha also issued similar applications. Mr Bassey challenges the service charges payable for the years 2012 to 2020. Mr Braha restricts his challenge to the service charge years 2016 to 2020, the years that he has been the tenant of Flat 47A. The Tribunal has allocated the Case Reference LON/00BJ/2020/0079 to these applications.
10. On 19 March 2020 (at p.414), the Tribunal postponed these applications because of Covid-19. The Tribunal subsequently gave Directions on 23 September 2020 (at p.416) and 8 June 2021 which were amended on 6

August 2021 (at p.426). On 8 June 2021, the case was set down for hearing today.

11. There has been a history of the Applicants failing to comply with Directions. Mr Bassey has appointed Mr Moriarty as his representative. Mr Moriarty has been residing in Moscow for the past 15 months. It is for a party to appoint a representative who will be able to carry out their duties as representative. Mr Moriarty was in hospital with COPD between 16-18 August. This has apparently been a longstanding condition. On 8 September, he applied for the hearing to be postponed. Mr Braha supported this application. He complained that the property was in disrepair. The Respondent opposed the application on the grounds that the applications have been pending for many months.
12. On 13 September, Judge N Carr refused the application for a postponement. She directed that Bundles were to be filed by 14 September. On 14 September, the Respondent filed a Bundle of 529 pages of documents. Mr Braha and Mr Bassey have filed witness statements. Mr Braha has provided a number of photographs and an alternative insurance quote. The Applicants have not provided a Bundle as directed by the Tribunal.

The hearing

13. Mr Moriarty joined the hearing from Moscow and represented Mr Bassey. He adduced evidence from Mr Bassey. Mr Braha appeared in person and gave evidence. Mr Braha is a builder. He also lets out other properties. Mr Ian Oliver, a Solicitor with George Ide LLP Solicitors, appeared for the Respondent. He adduced evidence from Mr Case. All the witnesses have provided witness statements.
14. On 22 February 2021, the parties had produced a Scott Schedule (at p.424) specifying the service charge items in dispute for the years 2012 to 2019. On 8 June 2021, The Tribunal directed the Applicants to provide an updated Schedule dealing with the accounts for 2020 and the interim accounts for 2021. The Applicants failed to comply with this Direction.
15. The Scott Schedule challenges the following service charges:
 - (i) Insurance: (a) 2012: £3,745.60; (b) 2013: £3,832.77; (c) 2014: £4,077.19; (d) 2015: £4,372.57; (e) 2016: £4,521.38; (f) 2017: £4,800.45; (g) 2018: £4,991.11; (h) 2019: £3,383.11.

(ii) Management Fee:

(a) 2012; 2013; 2014; 2015: £945 per annum, £315 per flat.

(b) 2016; 2017; 2018; 2019: £1,050 per annum; £350 per flat.

(iii) Repairs: (a) 2012: £144; (b) 2013: £678; (c) 2014: £185.

The Tribunal's Determination

16. In his witness statement, Mr Case sets out the relevant terms of the two leases which are drafted in similar terms. Each tenant pays one third of the service charge expenditure in respect of the services specified in the Second Schedule of the lease. The total service charges payable over the relevant period by each tenant has been: (a) 2012: £1,611.58; (b) £1,818.59; (c) 2014: £1,897.78; (d) 2015: £1,772.52; (e) 2016: £1,993.01; (f) 2017: £1,950.15; (g) 2018: £2,013.70; (h) 2019: £1,477.70.
17. The main service charge items have been insurance and management fees. Very modest sums have been expended on repairs. Mr Bassey and Mr Braha complain that the Property has been in a state of substantial disrepair for a number of years. In February 2009, the FTT had inspected the Property and found it to be in poor condition. It seems that little works have been done over the subsequent years. This is confirmed by the photos provided by Mr Braha.
18. On 6 January 2016, the Respondent served a Stage 1 Notice of Intention in respect of proposed works to the roof. The tenants were required to respond by 16 February. Mr Case stated that there were oral, but no written, responses. The required works have not been executed. Mr Case stated that he had attended with a roofer in 2017, but had been turned away by the tenants.
19. The current situation is extremely unfortunate. On 9 December 2016, the Nominee Purchaser served an Initial Notice to acquire the freehold for the benefit of the tenants. The premium has been agreed. However, the transfer of the freehold has not been completed because of the ongoing dispute about the arrears of service charges. The tenants have not paid the sums demanded. The landlord has not had the resources to carry out the works that are required. The sooner that the enfranchisement can be completed, the better for all parties. It is difficult to understand why the Applicants wanted to postpone this hearing.

Issue 1: Insurance

20. The landlord has demanded the following sums for insurance: (a) 2012: £3,745.60; (b) 2013: £3,832.77; (c) 2014: £4,077.19; (d) 2015: £4,372.57; (e) 2016: £4,521.38; (f) 2017: £4,800.45; (g) 2018: £4,991.11; (h) 2019: £3,383.11. In the Scott Schedule, the tenants' record their objection to the sums demanded as "demand only, no details". Mr Case has provided copies of the relevant documentation relating to the

insurance. The Applicant have not amended their Scott Schedule to include a challenge to the insurance for 2020.

21. Mr Case explains that the freeholder has chosen to arrange insurance through Princess Insurance Agencies because of its expertise in arranging insurance for blocks of flats of all sizes and its bargaining power. Because it annually arranges cover on blocks for a number of freehold clients, comprising in excess of 20,000 flats on long leases, he believes that it has secured excellent value. He referred to claims for water damage in 2012 and 2015. From 20 November 2020, Christopher Trigg Limited took over the account of Cormorant Limited. Mr Case states that there is a 20% commission which is split between the broker and the managing agents.
22. The Applicants have produced an alternative quote from Tritan Insurance Services dated 14 September 2021 in the sum of £910. This does not include insurance premium tax. It also excludes subsidence and flood damage. Mr Braha stated that the insured value for the building was £1m, which was somewhat lower than the figure of £1.43m for which the Respondent has specified. It is always difficult for tenants to provide alternative quotes which reflect the cover arranged by the landlord.
23. This is an expert tribunal and consider the insurance premiums to be high for a property of this nature. We note that in 2019, the landlord secured insurance in the sum of £3,383.11. The insurance had been significantly higher in previous years. We are satisfied that the landlord should have secured a better premium in the earlier years, had it tested the market. We are not satisfied that a block policy has secured a reasonable premium for this Property. We therefore find that the premium of £3,383.11 payable for 2019 to be reasonable. However, we cap the premiums for the previous years 2012 to 2018 at this level.

Issue 2: Management Charges

24. The Respondent has charged £945 or £315 per flat for the years 2012, 2013, 2014, and 2015; and £1,050 or £350 per flat, for the years 2016, 2017, 2018, and 2019. We are satisfied that these management charges are not unreasonable for a property of this nature.
25. However, we accept the argument of the tenants that the quality of the service has been poor. The Property is in a state of substantial disrepair. In 2009, the FTT determined that Mr Bassey's contribution towards the management charge should be capped to £100 per annum. This reflected two factors: (i) the poor condition of the property and the common parts; and (ii) the poor state of the paperwork in connection with the property. In the current case, we make no criticism of the paperwork. We have been provided with the service charge accounts, the demands for payment and the statement of accounts for the two Applicants both of whom are in substantial arrears.

26. We therefore reduce the management fee payable in respect of each flat to £175 for the years 2012 – 2016 and to £150 for 2017-2020. We make a greater reduction for the recent years, because there has been no expenditure on repairs. We are satisfied that it is appropriate for this reduction to extend to 2020 albeit that the Applicants have not amended their Statement of Case. It was a year highlighted in their applications. It should also extend to 2021.

Issue 3: Repairs

27. The service charge accounts include the following sums for repairs: (a) 2012: £144; (b) 2013: £678; and (c) 2014: £185. The Applicants' response in the Scott Schedule is "demand only, no details".
28. The Respondent has provided service charge accounts. In 2012, Mr Case states that minor repairs were executed and inspected. There is an invoice at p.476. In 2013, a report was secured from a surveyor, and a consultation notice was served. In 2014, minor repairs were arranged and inspected. The lock was changed on the front door to comply with fire regulations. There is an invoice at p.498. During the course of the hearing, the Respondent emailed some additional invoices to the tribunal. We are satisfied that these sums are payable.

Other Matters

29. The Applicants complained that the Respondent has not accounted for the reserve fund contributions that they have made. Mr Case stated that a credit had been made on 10 June 2013. This would have been before Mr Braha had acquired the leasehold interest in Flatt 47A. On 15 April 2016, there was a zero balance in the service charge account for Flat 47A, any arrears being cleared before Mr Braha could acquire his interest. The jurisdiction of this tribunal is restricted to determining the payability and reasonableness of any service charges. It does not extend to an audit of each tenant's service charge account.
30. Mr Braha stated that he had spent substantial sums on the Property. Any claim for disrepair is a matter for the County Court. In certain limited circumstances, it can be raised as an equitable set-off in tribunal proceedings. However, this is not how Mr Braha has pleaded his case.

Application under s.20C and refund of fees

31. The Applicants made an application for a refund of the tribunal fees of £300 which they have paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicants have had some success in their application. The Tribunal orders the Respondent to refund £150, namely 50% of the fees, to the Applicants within 28 days of the date of this decision.

32. The Applicants have also applied for an order under section 20C of the 1985 Act. The Tribunal determines it is just and equitable in the circumstances for an order to be made restricting the costs that the Respondent it has incurred in connection with the proceedings before the tribunal which it is able to pass on through the service charge and limits this to £750 in total for the three flats.

Judge Robert Latham
2 November 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).