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

Case Reference : LON/00AG/LSC/2017/037

Property : Flat 2, 113 Broadhurst Gardens,
London, NW6 3BJ

Applicant : Mr Shashank Krishna (Flat 2)
Ms Kushal Bhimjiani
Oto Miyaoi (Flat 1)
Frances Radford (Flat 3)
Paul Gibbs (Flat 4)
Vasili Eleftheriou (Flat 5)
Francesca Magliulo Parker (Flat 6)
Caroline Dibbs (Flat 7)

Representative : In person

Respondent : Mr Rabindra Sharma

Representative : London Land Securities Ltd

Date of Application : 3rd October 2017

Type of Application : Determination of the reasonableness
of and the liability to pay service
charges

Tribunal : Mr I B Holdsworth MSc FRICS
Mr M Cairns MCIEH

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

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the leaseholders of Flats 1, 2, 3, 5, 6 and 7 are due a refund of **£4,569.14** each for overpaid service charges in the years 2013 through to 2017. The leaseholder of Flat 4 is due a refund of **£3,736.80**.
2. In total the Respondent is directed to make a total payment to reimburse the leaseholders of **£31,151.64**.
3. The Tribunal makes an order under Section 20C for the reimbursement in respect of two thirds of the costs incurred in making this application.

The Application

4. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("The Act") as to the amount of service charge, major works costs and management charges payable in respect of the service charge years 2013, 2014, 2015, 2016 and the estimated service charges for 2017 in respect of Flat 2, 113 Broadhurst Gardens, London, NW6 3BJ.
5. The initial Applicants Mr Shashank Krishna and Miss Kushal Bhimjiani. The Application was made on 3rd October 2017. The other Applicants have subsequently joined this Application. The permission to join this application was granted to leaseholders of flats 5 and 6 by Judge Hewitt on 7th November. Judge Andrew confirmed the remainder of the applicants on 17th November 2017.
6. The total value of the dispute when made was £4,386.19. The disputed sum was revised at the hearing. The Applicant confirmed at the hearing that the total monies now in dispute was £43,401.96.
7. On 9th October 2017 the Tribunal gave Directions on this matter. The Directions identified the following issues to be determined.
 - Whether the fee charged by the management is reasonable. The fees range from £390 for Flat 2 in 2013 to £437.50 in 2016.
 - Whether additional management fees in 2013 in the Sum of £1,410 in respect of major works were payable and reasonable given that a previous Tribunal had found it not to be payable.
 - Whether the amount charged for insurance is reasonable, this ranges from £1,081.98 for Flat 2 in 2013 to £1,237.53 in 2016, whether an order under Section 20C of the 1985 Act should be made and whether an order for reimbursement of application hearing fees should be made.

The Hearing

8. The Applicants were represented by Mr Krishna. The Respondent was represented by Mr A R Sinai Counsel under the Direct Access Scheme. The Hearing bundle was prepared by the Applicant.
9. Mr Sharma, a representative from London Land Securities Limited also attended the hearing.
10. Neither Party requested an inspection and the Tribunal did not consider that one was necessary nor would it have been proportionate to the issues in dispute.

The Property

11. The subject property is a four storey late Victorian built detached dwelling which is converted into eight self-contained flats.
12. It is described in an Inspection Report prepared by Tant Building Surveying Limited dated 1st December 2017 and submitted in the bundle at Tab 9.

The Law

13. The relevant legal provisions are set out in the Appendix to this decision.

The Lease Provisions

14. A copy of a lease dated 15th October 1971 between Fortyburg Limited and Mr and Mrs J G B Mason was provided for Flat No. 2 at the premises. It is assumed that this is a specimen lease for all the properties at the premises joined in this application.
15. The Parties referred the Tribunal to **Section 4, Landlord's Covenants, (2)**, this states that the Landlord is to insure

*“that at all times during the term hereby granted to insure and keep insured the building and buildings which may hereafter be erected on connection therewith against loss or damage by fire in some insurance office of some repute to the full replacement value thereof with the power at the **landlord's discretion** to take out a valued policy the landlord making all payments necessary for the above purposes”.*

And **Section 5, Service Charges, 6 (f)**

“The cost of taking out and maintaining in force an active insurance policy or policies against any and every liability for injury to or death of any person but without limiting the generality of the foregoing the cost of insurance against such injury and/or maintenance of the building”.

16. The Tribunal are also asked to consider **Section 6, Exclusions from Annual Service Cost (7)**

“The landlord will use his best endeavours to maintain the annual service cost at the lowest reasonable figure consistent with due performance and observance of its obligations..... and to include in the relevant annual services accounts the reasonable rate of profit in respect of such provision or performance”.

The Issues

Amount Claimed

17. At the outset the Tribunal asked the Applicant to identify the extent of their claim. The papers and financial information submitted as the bundle were not consistent with the amount claimed in the application.
18. The Parties were asked to recess and recalculate the claim. It was also proposed that after determination of the amounts claimed under each of the headings they attempt to reach a settlement.
19. After the recess the Applicants advised that they had recalculated the amount claimed from the Respondent as follows:
- In total the amount claimed was now £43,401.96.
 - The details of the revised claim were presented to the Tribunal by the Applicant and is shown on Tribunal Schedule Table 1 appended at Appendix B. This table is prepared by the Tribunal from the information provided to them.
 - These sums were agreed by the Applicant and Respondent as the sums claimed under the revised application that includes 7 leaseholders.
20. They told the Tribunal that they were unable to reach agreement on the sums claimed and asked the Tribunal to make a determination on the disputed sums.

Managing Agents Fees

21. The Applicant said that the managing agent, London Land Securities Limited, had made excessive management charges. These ranged from £312.50 to £437.00 per annum over the period of claim for each flat. They compared the charges against a recently agreed management charge secured by the Right to Manage Group that had recently taken over the management of the property. They had agreed an annual charge of £300 inclusive of VAT with Tant Building Surveying. The Applicant sought to recover the difference between the monies that are now being charged by the management company and that charged over the period by London Land Securities Limited.

22. The Applicants submitted details of the scope of services to be carried out by Tant Building Services Ltd. They said that the scope of services complied with the guidance offered by the RICS in the RICS Residential Management Code.
23. The Applicant told the Tribunal that the residents did not have a contract from London Land Securities Limited for the management services. Copies of a contract with works scope had been requested on many occasions but had not been supplied.
24. The Applicant emphasised the requirement in the lease for the landlord to use "*his best endeavours to maintain the annual service cost at the lowest reasonable figure consistent with due performance and observance of its obligations herein*".
25. The Applicant told the Tribunal that it was appropriate for the costs of management service to be allocated to the individual leaseholders.
26. The Respondent said the management service offered by London Land Securities Limited, was more comprehensive than that specified in the RICS Guidance. Mr Sharma claimed that it had included services such as asbestos review and supervision of major works that were not charged to leaseholders. He argued that it was not possible to identify and allocate the specific costs incurred by each leaseholder within the management charge.

Insurance Charges

27. Mr Krishna told the Tribunal that he and his colleague who act as the directors of the Right to Manage Group had secured six quotes for the insurance of the building. He told the Tribunal that the Right to Manage (RTM) Group had agreed an insurance premium of £1,542.89 for 2018 for the premises. The leaseholders have accepted this premium.
28. The Applicant also said the managing agents had failed to instruct a chartered surveyor to advise on the risk posed by previous subsidence and that this had had an impact on insurance charges.
29. Expert report was submitted as evidence by the Applicants to illustrate their efforts in securing lower cost insurance for the premises. The details of the insurance returns were provided at Tab 4, Section 4.11.12.
30. The Respondent offered evidence of previous attempts to secure lower cost insurance since 2013 and claimed that despite these efforts they had failed on several occasions.
31. Counsel said that under the terms of the lease Sections 2, 6(f) and 13 (7) of the lease the leaseholders were not granted the authority to determine whether the insurance charges made by the landlord were reasonable. This authority rested solely with the Landlord under the named lease provisions.

Major Works

32. After discussion between parties the Respondent confirmed that the year 2013 claim against the leaseholders for £1,420 major works supervision charges would be withdrawn. They referred all parties to the relevant service charge accounts issued by London Land Securities Limited.

20C Order

33. The Applicant claimed that there had been a total lack of communication over many years about the issues raised at the hearing. They had difficulties in securing from London Land Securities Limited the necessary information to appraise and consider the appropriateness of any of the disputed charges.
34. He said that this was the underlying reason for the application and hearing with associated costs.
35. The Respondent replied that the claim was fanciful and without basis. He referred to previous Tribunal Determinations that directed First Tier Tribunals to make 20C Orders that were proportional to the outcome of their decision.

Tribunal Decision

Management Charges

36. The Tribunal has considered representations made by both parties on this issue. They have considered the scope of services offered by the Respondent Company. They acknowledge that the management service offered by London Land Securities was more comprehensive than that now secured from Tant Building Surveying Limited, the recently appointed managing agent for the Right to Manage (RTM) Group.
37. The Tribunal members have professional experience of managing property and are aware of the difficulties and challenges these tasks can pose. The statements made by the applicant about separation of the workload to allow separate charging is not based on knowledge and experience of property management. It is the opinion of the Tribunal that such apportionment of costs is not practical.
38. After careful consideration the Tribunal decided that based on their knowledge and experience an annual charge per flat of £350.00 inclusive of VAT was deemed reasonable for an RICS compliant service. The scope of services assumed for this charge is as specified in the RICS Management Code.
39. This charge is reasonable and payable. It is applied as a basis for the revised service charge calculation.
40. The revised service charges for the period 2013 to 2017 are shown at **Table 2 at Appendix B**. The Tribunal rely upon the estimated charge for 2017.

Insurance Charges

41. The Tribunal considered the representations made by Counsel on the insurance charges levied by the Respondent since 2013. They are aware of the subsidence that took place in 2002 and the difficulties this can cause in securing insurance for affected properties.
42. The Tribunal gave careful consideration to the argument made by Counsel about the constraints applied to the leaseholders by the interaction of lease clauses in Section 4(2) and 6(f). The Tribunal were not persuaded that the service charge clauses restricted the right of the leaseholders to appraise and consider the appropriateness of the insurance charges levied by the landlord. It is wholly unacceptable for a landlord to pass on to his tenant's insurance charges that are not competitive premiums.
43. The market testing exercise carried out by the applicants in which they secured six returns from different insurance companies show that there is an interest in insuring this property, despite the previous subsidence. The Tribunal accepts the confirmation made by Mr Krishna that the RTM group were wholly transparent in the provision of necessary and complete information to these insurers. The Tribunal are also confident that a similar proactive market testing exercise in 2013 would have produced comparable insurance premium outturns.
44. The Tribunal has taken the six premium returns provided by the applicant. The lowest and highest premium figures were disregarded and the remaining four returns used to calculate an average cost of annual insurance for the property. They then applied this average figure per flat as a market cost of insuring this property. It is the opinion of the Tribunal that since 2013 the insurance charges made by the landlord were excessive and unreasonable. The Tribunal has applied the Tribunal average to calculate a revised service charge payable. The insurance charges shown in **table 2 at Appendix B** are deemed to be reasonable.
45. The use of the Tribunal average premium as the reasonable charge results in a reimbursement of insurance charges paid by Leaseholders. The tenants of flats 1-3 and 5-7 receive £3,462.75 for the four years from 2013 to 2016 and a further £873.89 for the estimated service charge year of 2017. The Leaseholder of flat 4 will receive a reimbursement of £2,670.41 for the period 2014 to 2016 plus £873.89 for 2017.

Major Works Costs

46. The Respondent confirmed at the hearing no supervision or other charges will be made for the costs of supervising these works which took place in 2013.

20C Application

47. The Tribunal considered the representations made by both parties.

48. After careful deliberation the Tribunal findings are divided between parties. It is unreasonable for all the costs of the application to be allocated to the leaseholders given the direction that a proportion of the insurance charges should be repaid. The Tribunal also acknowledge that their directions require only a small adjustment to the Respondent's management charges.
49. The Tribunal determines that the landlord Respondent can recover one third of the costs of making this application through the service charge. The remainder of the costs must be borne by the Respondent.

Chairman: I B Holdsworth

Dated: 19th February 2018

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.

- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Appendix of Tables 1 and 2

Details of sums dispute and Tribunal determination

113 Broadhurst Gardens London NW6 3BJ
LON/00AG/LSC/2017/0377

Table 1: Total Claim by Heads

Claimant and service charge year	Flat No	Service charge			Major Works Fee			Insurance charge			Total over payment alleged by claimant						
		Charged/ Paid	Proposed Payment	Difference	Paid	Proposed Payment	Difference	Paid	Proposed Payment	Difference							
Shashani Krishna and Kushal Bhimjani	2	£	390.00	£	300.00	£	90.00	£1,410.00	£	0.00	£	1,058.22	£	192.86	£	865.36	
		2014	£	312.50	£	300.00	£	12.50				£	1,081.98	£	192.86	£	889.12
		2015	£	437.50	£	300.00	£	137.50				£	1,148.56	£	192.86	£	955.70
		2016	£	437.50	£	300.00	£	137.50				£	1,237.53	£	192.86	£	1,044.67
		2017(Estimate)	£	405.00	£	300.00	£	105.00				£	1,139.77	£	192.86	£	946.91
		Total				£	482.50					£1,410.00			£	4,701.76	£
Otto Mivaoui	1	£	390.00	£	300.00	£	90.00	£1,410.00	£	0.00	£	1,058.22	£	192.86	£	865.36	
		2014	£	312.50	£	300.00	£	12.50				£	1,081.98	£	192.86	£	889.12
		2015	£	437.50	£	300.00	£	137.50				£	1,148.56	£	192.86	£	955.70
		2016	£	437.50	£	300.00	£	137.50				£	1,237.53	£	192.86	£	1,044.67
		2017(Estimate)	£	405.00	£	300.00	£	105.00				£	1,139.77	£	192.86	£	946.91
		Total				£	482.50					£1,410.00			£	4,701.76	£
Francis Radford	3	£	390.00	£	300.00	£	90.00	£1,410.00	£	0.00	£	1,058.22	£	192.86	£	865.36	
		2014	£	312.50	£	300.00	£	12.50				£	1,081.98	£	192.86	£	889.12
		2015	£	437.50	£	300.00	£	137.50				£	1,148.56	£	192.86	£	955.70
		2016	£	437.50	£	300.00	£	137.50				£	1,237.53	£	192.86	£	1,044.67
		2017(Estimate)	£	405.00	£	300.00	£	105.00				£	1,139.77	£	192.86	£	946.91
		Total				£	482.50					£1,410.00			£	4,701.76	£
Paul Gibbs	4	£	312.50	£	300.00	£	12.50				£	1,081.98	£	192.86	£	889.12	
		2015	£	437.50	£	300.00	£	137.50				£	1,148.56	£	192.86	£	955.70
		2016	£	437.50	£	300.00	£	137.50				£	1,237.53	£	192.86	£	1,044.67
		2017(Estimate)	£	405.00	£	300.00	£	105.00				£	1,139.77	£	192.86	£	946.91
		Total												£	3,836.40	£	3,836.40
Vasili Eleftheriou	5	£	390.00	£	300.00	£	90.00	£1,410.00	£	0.00	£	1,058.22	£	192.86	£	865.36	
		2014	£	312.50	£	300.00	£	12.50				£	1,081.98	£	192.86	£	889.12
		2015	£	437.50	£	300.00	£	137.50				£	1,148.56	£	192.86	£	955.70
		2016	£	437.50	£	300.00	£	137.50				£	1,237.53	£	192.86	£	1,044.67
		2017(Estimate)	£	405.00	£	300.00	£	105.00				£	1,139.77	£	192.86	£	946.91
		Total				£	482.50					£1,410.00			£	4,701.76	£
Francesca M Parker and Jeremy Parker	6	£	390.00	£	300.00	£	90.00	£1,410.00	£	0.00	£	1,058.22	£	192.86	£	865.36	
		2014	£	312.50	£	300.00	£	12.50				£	1,081.98	£	192.86	£	889.12
		2015	£	437.50	£	300.00	£	137.50				£	1,148.56	£	192.86	£	955.70
		2016	£	437.50	£	300.00	£	137.50				£	1,237.53	£	192.86	£	1,044.67
		2017(Estimate)	£	405.00	£	300.00	£	105.00				£	1,139.77	£	192.86	£	946.91
		Total				£	482.50					£1,410.00			£	4,701.76	£
Caroline Dibbs	7	£	390.00	£	300.00	£	90.00	£1,410.00	£	0.00	£	1,058.22	£	192.86	£	865.36	
		2014	£	312.50	£	300.00	£	12.50				£	1,081.98	£	192.86	£	889.12
		2015	£	437.50	£	300.00	£	137.50				£	1,148.56	£	192.86	£	955.70
		2016	£	437.50	£	300.00	£	137.50				£	1,237.53	£	192.86	£	1,044.67
		2017(Estimate)	£	405.00	£	300.00	£	105.00				£	1,139.77	£	192.86	£	946.91
		Total				£	482.50					£1,410.00			£	4,701.76	£
Overall Total claimed as unreasonable service charges																£	43,401.96

