FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AJ/LSC/2024/0241**
Property	:	**100 Skyline House, Dickens Yard, Longfield Avenue, Ealing Broadway, London W5 2BJ**
Applicants	:	**Karim Saad Mosaad Saad (1)** **Violette Victor Fayez Mosaad (2)**
Representative	:	**Curwens LLP Solicitors Reference: 146311-1**
Respondent	:	**Berkeley Sixty-One Limited**
Representative	:	**Forsters LLP**
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 H Carr** **Judge J Moate**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**16th January 2025**

DECISION

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Decisions of the tribunal

(1) The tribunal determines not to make an award of damages for breach of covenant as a set-off and counterclaim to the service charges in dispute.

(2) The tribunal determines that all the sums in dispute are payable by the Applicants in respect of the service charges for the years ending 31st December 2022 and 31st December 2023.

(3) The tribunal makes the determinations as set out under the various headings in this Decision

(4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2022 and 2023.

The hearing

2. The Applicants were represented by Mr Keith Chipato of Counsel at the hearing and Mr Mina Saad, the son of the Applicants, attended and gave evidence. The Respondent was represented by Mr Sam Madge-Wyld of Counsel. In attendance for the Respondent was Mr Darren Osgood, Head of Estates at St George West London Limited who gave evidence on behalf of the Respondent.

3. Immediately prior to the hearing the parties handed in further documents, namely an agreed chronology of the issues relating to hot water and heating. That chronology is referred to in the decision and attached as an appendix.

4. The Applicants requested permission to submit a report on the heating system prepared in 2024. The Respondent objected to the submission of the report on the grounds that it was too late in the proceedings for it to be admitted, and that it was not relevant to the issues in dispute as they relate to service charges demanded in 2022 and 2023. The Respondent also pointed out that the bundle in these proceedings had only recently been prepared and there is therefore no reason why permission to include this report could not have been asked earlier.

5. The tribunal determined not to admit the report. It agreed with the Respondent that the request was too late and that it would be of very limited relevance to the dispute before it.

The background

6. The property which is the subject of this application is a penthouse flat on the thirteenth and fourteenth floor of Block C, 100 Skyline House, Dickens Yard, Longfield Avenue London W5 2BJ. The square footage of the property is 2673 sq ft.

7. Dickens Yard is a mixed-use development comprising commercial property and multi-storey residential apartment blocks, (A – H). The apartment blocks vary in size and construction. There is a residents' gym including a swimming pool in Block C. There is a large two-storey car park below ground.

8. The development has an Energy Centre which supplies hot water and underfloor heating to the common parts and, via a Heating Installation Unit (HIU) within each apartment, to the apartments.

9. 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.

10. The Applicants hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

Relevant clauses of the lease

11. The clauses of the lease which were referred to in the hearing are set out below.

    (i) The Service Installations, defined in the definitions clause of the lease, include pipes, mains and ducts for the supply of water, gas, electricity and heating.

    (ii) Paragraph 4 of the Lease sets out the landlord's covenants which include the covenants in the 6th and 9th Schedule.

    (iii) Paragraph 10 of Part 1 of the Sixth Schedule sets out the landlord's covenant to provide 'hot water and also heating ... from the Energy Centre... to the common parts'.

(iv) Paragraph 19 of Part 2 of the 6th Schedule states as follows:

> The responsibility of the Landlord in relation to the supply of hot water and central heating to the Demised Premises shall include all Service Installation and Plant and Equipment relating to it up to and including the interface change unit situated within each Flat

(v) Paragraph 5 of the 9th Schedule to the lease states that the landlord is:

> To use all reasonable endeavours to carry out the works and do the acts and things set out in the Sixth Schedule

The issues

12. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) The payability and/or reasonableness of service charges for the years 2022 and 2023 relating to

    a. Management Fees

    b. Staffing Costs

    c. Receptionist and concierge

    d. Repair works and general repairs and maintenance

    e. Insurance

    f. Estate manager

    g. M and E Maintenance contract

    h. M and E Repair works

    i. Security guarding

j. Gym costs

(ii) Whether the Applicants are entitled to damages arising from the hot water and heating issues, and if so, whether those damages can be set off against their service charges.

(iii) Whether there should be any reduction in expenditure arising from hot water and heating issues in the Applicants' flat.

13. The Applicants' challenge to the service charges can be summarised as follows: the Applicants have refused to pay any service charges for the years 2022 and 2023 because they allege that they have experienced huge inconvenience as there has been a lack of basic amenities and a failure to deal with the prompt resolution of urgent issues. They argue that the high service charges demanded require a high quality service which was not received.

14. Having heard evidence and submissions from the parties and considered all the documents provided, the tribunal has made determinations on the various issues as follows.

Hot water and heating issues

15. The hot water and heating issues experienced by the Applicants provide the underlying cause of dispute in this case. It is therefore appropriate to set out that dispute at this stage and to determine the set off and counterclaim.

16. The parties agreed a chronology heating and hot water issues

17. The chronology is attached to this decision as an Appendix.

18. The oral evidence given by Mr Mina Saad was helpful and clear. He told the tribunal that the chronology and the emails covered the vast majority of the times when there was an outage to the hot water. There were, he said, other times when the hot water failed, but this tended to fail across the block and he relied on other residents to complain. He considered there was less urgency when other residents were affected as the management would be obliged to respond.

19. He also explained that when there was no hot water then the underfloor heating did not function. When the hot water was restored the underfloor heating took some time to function properly.

20. He explained to the tribunal that whilst the cooling system provided an alternative form of heating it was very expensive to operate. When there

was no heating he used an electric heater but again he was concerned about the expense, particularly in the light of escalating fuel costs.

The set off and counterclaim

21. The Applicants argue that the landlord has failed to comply with its covenant as set out at paragraph 5 of the 9th Schedule to the lease which has caused them loss and damages are payable which can be set off against service charges.

The argument of the applicants

22. The Applicants argue that the landlord's obligations cover repairs to the service installation from the communal boiler up to and including the interface change unit which is located within the property.

23. The Applicants draw attention to various reports about the heating and hot water issues in the applicants' property. The first report is from Edmund Services and dated 21st February 2022. This recommends that the pump and the expansion vessel be replaced in the HIU, that the services should be isolated to the HIU, and suggests that until these works are complete they would be unable to advise whether any other issues needed to be addressed.

24. The second report is from Abbotsway Engineering Ltd dated 18th November 2022. Abbotsway Engineering carried out a full service of the HIU between 18th and 22nd October 2022 and left the hot water and heating working. On 2nd November 2022 there was no hot water and no heating to the property. The report says this demonstrates that the fault lies with the mains boiler not heating sufficient water or not pumping sufficient hot water to the property.

25. Finally the Applicants refer to a report by Smart Residential Solutions dated 8th June 2024 which identifies that the pressure reducing valve supplies water at 3 bar to the sprinkler system as well as the HIU. The sprinkler systems require a minimum of 4 bar to achieve correct operation whilst the HIU requires 2 bar to produce hot water. It recommends that an additional PRV be added at an identified location to supply to the HIU set to 2 bar.

26. The Applicants say that the reports demonstrate that the issue lay not within the property but with the heating system prior to its entry to the property and therefore very clearly responsibility lay with the landlord. For the Applicants by 18th April 2022 at the latest, it was known that the pipework needed to be split to keep sufficient pressure levels for the sprinklers and the taps. There was a reminder in February 2023 that this was the problem, yet the works were only carried out in May 2024.

27. The Applicants therefore say that the landlord breached its repair obligations and damages are payable to the Applicants to be set off against service charges.

28. The Applicants argue that the lack of heating and lack of hot water in the property for large parts of the period in dispute contributed to their inability to appropriately use and enjoy their property. The basic amenities were absent such that the applicants' enjoyment of the property was significantly impaired. Moreover the services were also significantly slow or lacking entirely to the point that the heating was not fully restored until the beginning of 2024.

29. They argue that the period of time when there was a lack of the basic amenities such as heating and hot water, particularly in the winter months, should be taken into consideration to compensate the Applicants for the lack of services offered to the property and the failure on the part of the Respondent to act reasonably and do the acts it was required to do, namely to repair the heating and hot water and comply with its lease covenants, as aforementioned.

30. Otherwise, the Applicants have at all times paid the service charges in full and in a timely fashion since they purchased the property on 17th March 2015

31. The Respondent argues as follows:

(i) It does not dispute that the property suffered from, on occasions intermittent heating and hot water from the flat's HIU. The Respondent says that the flat was never without heating because it was always possible for the cooling system to provide heat. However, the Respondent argues that the main problems had been resolved by the end of 2022. It also points out that it is not contentious that in May 2024 any lingering issues were finally resolved by the fitting of a new compression pressure release valve adjacent to the HIU.

(ii) The Respondent accepts that it is possible for the tribunal to entertain a claim by a tenant that its landlord has breached a covenant under a lease but only if it is as a set-off in a defence to a claim that service charges are payable (*Continental Property Ventures Inc v White* [2007] L & TR 4). However, the set off must be treated in the same way as it would be in court, i.e. it must be properly particularised and be supported by evidence which proves the tenant's claim on the balance of probabilities. Moreover, the

existence of a breach of covenant does not extinguish the tenant's obligation to pay the service charge.

(iii) The Respondent argues that it is not liable for the breach of the obligations because by clause 4.2 of the lease, the landlord is not liable for any breach of its obligations where the breach arises from any failure in any service installations or utilities serving the property as long as the landlord takes all reasonably practicable steps to restore performance of its obligations. The Respondent says that it has taken all reasonably practicable steps to restore performance o any of the service installations serving the demised premises once it was aware that there was a problem.

(iv) Moreover the Applicants have failed to provide evidence of the market rent for the property. The Respondent says it is not possible to quantify the claim without knowing the market value of the flat if it were to be let. Even if the tribunal preferred to make a global award rather than a diminution in the market value the market value must always be a guide to any award as it will generally be impermissible for a global award to exceed the market rent.

(v) The Respondent points out that the Applicants' statement of case does not particularise the market value of the tenancy. Nor has any evidence as to its value been supplied. In the absence of such evidence the Respondent argues that it is impossible for the tribunal to assess what damages would be payable if there were a breach of covenant, which is denied.

The tribunal's decision

32. The tribunal determines not to award a sum as a set-off counterclaim against the service charges in dispute.

Reasons for the tribunal's decision

33. The evidence before the tribunal demonstrates that there were intermittent interruptions to the supply of hot water and heating during the period in dispute. The most serious interruption to supply was for around three weeks from 14th November 2022 until 9th December 2022. For most of that period, at a cold time of year, the Applicants had no hot water and access only to expensive forms of heating.

34. It is also clear that the problems commenced prior to the disputed period and the tribunal is very sympathetic to the Applicants and their son. It appreciates how difficult it is to spend any time without hot water and heating, and also understands that not knowing whether there would be heating or hot water on any particular occasion would provoke a lot of anxiety.

35. However it accepts the evidence of the Respondent that the system providing heating is very complex and it is not possible for the tribunal to identify one cause of the problem that was overlooked by the respondent. The lack of any expert evidence has also hampered the Applicants' case. There was no evidence before the tribunal to suggest that there was a clear cause of the issues faced by the Applicants which should have easily been identified and resolved.

36. The tribunal also considers that the expectation of the Applicants, that the high level of service charges and the prestigious nature of the development means that the Applicants are entitled to urgent resolution of issues that affect the habitation of the property. What the Applicants are entitled to is performance of the landlord's covenants.

37. It accepts the Respondent's evidence that it made every effort to respond to the problems as speedily as possible. The emails provided demonstrate a concern for the Applicants, and a rapid response to the issues faced. Whilst the problems may not have been immediately rectified efforts were made, and in the overwhelming majority of the outages hot water was restored very quickly. It therefore concludes that there was no breach of covenant by the Respondent.

38. In addition the claim was not particularised and no market rental value was provided for the property. There was no expert evidence to demonstrate what loss was suffered, if any, by the applicants. Therefore, even if there had been a breach of covenant, it would have been impossible for the Applicants to demonstrate the monetary value of the damages consequent upon that breach.

The reasonableness of the service charges

39. The Applicants, in submissions attached to their Scott Schedule, make some general points about their service charges. They point out that they are required to pay service charges of over £17,000 for each year and would expect a speedy resolution and an exceptionally high standard service in response to the absence of basic amenities. They say that particular urgency and a swift resolution and attention to the heating and hot water issues were required from the Respondent and its agents.

40. The Respondent's charges, they say, are disproportionately high, which do not correspond with the slow response and lack of services the

Applicants received for the period in dispute. The Applicants rely on the copy correspondence with the Respondent's managing agents which show the lack of services and breach of the Respondent's covenants for this property.

41. The Respondent incurs significant costs each year on maintenance, staff costs and management costs, but the Applicants' requests for the urgent repairs required to the hot water and heating were not handled appropriately or at all by the Respondent; there was a lack of speedy resolution.

Management Fees and Motiv8 Management Fees: 2022 - £1,123.55 and £209.38; 2023 - £1,146.01

42. The Applicants argue that the management fees are very high and disproportionate. They allege that there was poor service by management staff including:

    (i) Failure to respond to concerns with heating and hot water in the property;

    (ii) Failure to inform the Applicants that window cleaners would be accessing the terrace of the property.

43. The Respondent argues that the fee of £1,123.55 is the managing agent's fee for overseeing the management of the building. A copy of the management agreement dated 28th September 2012 was provided.

44. The Respondent demies that the service by staff at Lee Baron has been poor. There has been a significant amount of correspondence regarding the hot water in the property and multiple surveys have been arranged.

45. The Respondent says that the management fee is calculated in the usual way and is based on square footage.

46. The Respondent says that the fee is comparable with other properties within its portfolio.

47. The Respondent explains that the Motive8 management fees are for the management of the gym and spa facilities which are managed by a specialist supplier. A copy of the management contract with Motive8 is provided in the bundle by the Respondent.

48. The cost of £209.38 relates to the management fees for the gym and spa which is entirely unrelated to the heating and hot water issues raised.

The Tribunal's decision

49. The Tribunal determines that the amount payable in respect of management fees and Motiv8 management fees is the sum claimed in the service charge demand, namely £1,123.55 and 209.38 for 2022 and £1,146.01 for 2023.

Reasons for the Tribunal's decision

50. There was no evidence before the Tribunal that the management fees were high or disproportionate generally as compared to previous years or compared to the management fees of other similar properties. Accordingly, the Applicants' challenge as to reasonableness generally was not made out, the burden of proof being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

51. As regards the specific challenge raised by the Applicants in the Scott Schedule that there was poor service by management staff due to *a failure to respond to concerns with heating, hot water in the property*, the evidence, based on a series of emails between Mina Saad and Lee Baron which were set out in an agreed chronology and aired in oral evidence, showed that the management staff responded quickly to the Applicants' concerns. The Applicants accepted that Lee Baron sent contractors to inspect and restore heating and hot water either on the same day or within a maximum period of 2-3 days. The Tribunal considered that this was a reasonable period.

52. Moreover, the Applicants did not provide any breakdown of the management fees or suggest which portion of those fees was allegedly unreasonable. The management fees cover a wide range of services, most of which are not under challenge.

53. In the circumstances, there was insufficient evidence to enable the Tribunal to conclude that the Applicants' specific challenge, that there was *a failure to respond to concerns with heating, hot water in the property,* was justified.

54. The Applicants did not pursue at trial their case that there was poor service by management staff due to *a failure to inform of window cleaners accessing the property terrace*. Mr Chipato limited the oral evidence and his submissions to issues about hot water and heating. Accordingly, this challenge was not made out.

55. For completeness, the Applicants did not offer any evidence relating to the Motive8 management fees. The Tribunal noted that these fees related to the management of the gym and spa about which no complaints were made by the Applicants. Accordingly, the Applicants' challenge to the reasonableness of these fees was not made out.

Staff costs: 2022 - £725.37; 2023 - £860.52

56. The Applicants argue that these costs are high and disproportionate.

57. The Applicants say that it is not clear what the staff costs relate to, particularly when there are separate charges for management costs, maintenance, security fees etc.

58. The Respondent says that the staff costs relate solely to the gym. The Respondent denies that it is not clear what staff costs are in the service charge demand as they appear under a heading gym service charge. The gym opens from 06.00 to 22.00 Monday to Friday and 08.00 – 21.00 Saturday to Sunday. In line with the staffing strategy the gym is always staffed during opening hours.

The Tribunal's decision

59. The Tribunal determines that the amount payable in respect of staff costs is the sum claimed in the service charge demand, namely £725.37 for 2022 and £860.52 for 2023.

Reasons for the Tribunal's decision

60. There was no evidence before the Tribunal that the staff costs were high or disproportionate generally as compared to previous years or compared to the staff costs of other similar properties. The Applicants did not offer any evidence or pursue their case that it was not clear what the staff costs related to. The evidence supported the Respondent's case that the staff costs related solely to the gym, which service was not under challenge.

61. Accordingly, the Applicants' challenge to the reasonableness of this item was not made out, the burden of proof being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

Receptionist and concierge: 2022 - £1,637.17; 2023 - £1,616.83

62. The Applicants say the charges are very high and disproportionate and the security services have been sub-standard with incidents of unauthorised users using the lift and the building.

63. The Respondent says that a receptionist and concierge is provided for the benefit of the whole estate. It explains that the cost provision is to provide 24 hour concierge services to the residents in accordance with its obligations under the lease. The services include, key holding and parcel storing, general resident enquires, review of CCTV and daily patrols of health and safety which benefit the whole estate.

The Tribunal's decision

64. The Tribunal determines that the amount payable in respect of the receptionist and concierge is the sum claimed in the service charge demand, namely £1,637.17 for 2022 and £1,616.83 for 2023.

Reasons for the Tribunal's decision

65. There was no evidence before the Tribunal that the receptionist and concierge fees were high or disproportionate generally as compared to previous years or compared to receptionist and concierge fees of other similar properties. The Applicants did not offer any evidence or pursue its case that *the security services have been sub-standard with incidents of unauthorised users using the lift and the building*.

66. Accordingly, the Applicants' challenge to the reasonableness of this item was not made out, the burden of proof being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

M & E Repair works and General Repairs and Maintenance: 2022 - £858.36 + £338.32; 2023 - £145.21

67. The Applicants dispute these charges as their property experienced a lack of heating *for the duration of the majority of this period with no, or no effective resolution*. The Applicants say that repairs were either not carried out or not carried out to a satisfactory resolution, causing the Applicants great inconvenience in living in a property without heating and/or hot water.

68. The Respondent says that the M & E Repair works refers to the continuous maintenance of the energy centre. Only a very small proportion of these costs relate to the LTHW aspect.

69. The Respondent has reviewed the expenditure for the general repairs and maintenance and says that there are no costs associated with the heating or hot water and therefore the comments on heating are irrelevant.

The Tribunal's decision

70. The Tribunal determines that the amount payable in respect of the M&E repair works and general repairs and maintenance is the sum claimed in the service charge demand, namely £858.36 + £338.32 for 2022 and £145.21 for 2023.

Reasons for the Tribunal's decision

71. The Applicants did not identify which particular costs were under challenge and did not respond either orally or in writing to the Respondent's contention that a) the M&E repair works cost under item 4012 provides for continuous maintenance of the energy centre with a very small proportion relating to the heating and hot water aspect or that b) there were no costs associated with the heating or hot water claimed under the expenditure for the general repairs & maintenance under item 1305.

72. In the absence of any evidence from the Applicants as to which particular costs they alleged related to heating and hot water and why those costs were unreasonable, this challenge was not made out, the burden of proof being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

73. The Tribunal noted the Applicants' argument that the repairs undertaken in 2022 and 2023 were a "temporary" fix and that a permanent solution was not found until May 2024. However, based on the agreed chronology, the hot water and heating worked throughout 2023 and 2024, save for a 70 second delay in receiving hot water in February 2023, which was resolved satisfactorily. The repairs identified in the Report of Smart Residential Solutions dated 08 June 2024 related to the separation of the sprinkler system and the heat interface unit, which may or may not have been connected to the outages in 2022 and 2023. There was no expert or other evidence in support of this argument.

74. Furthermore, there was no expert or other evidence in support of the Applicants' contention that the repair works in 2022 and 2023 were not carried out to a reasonable standard.

75. The Tribunal decided that it did not have sufficient evidence to conclude that the repairs undertaken in 2024 addressed an underlying problem which could have been identified earlier or that the repairs carried out in 2022 and 2023 were not carried out to a reasonable standard.

Build & Loss of Rent Insurance: 2022 -£2,016.00; 2023 - £2,225.00

76. The Applicants say these are very high and disproportionate.

77. The Respondent says that St George appoint an independent third-party broker to procure insurance on reasonable terms. The declared value of the building is calculated by a 3rd party surveyor through a reinstatement cost assessment. This is reviewed every 4 years in line with RICS guidance.

The Tribunal's decision

78. The Tribunal determines that the amount payable in respect of the Build and Loss of Rent Insurance is the sum claimed in the service charge demand, namely £2,016.00 for 2022 and £2,225.00 for 2023.

Reasons for the Tribunal's decision

79. There was no evidence before the Tribunal that the Build & Loss of Rent Insurance fees were high or disproportionate generally as compared to previous years or compared to the insurance fees of other similar properties.

80. Accordingly, the Applicants' challenge to the reasonableness of this item was not made out, the burden of proof being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

Estate Manager: 2022 - £631.32; 2023 - £824.78

81. The Applicants claim that these costs are very high and disproportionate. The Applicants say that there has been a lack of proper management in respect of this property and dealing with the issues raised by the Applicants. The correspondence provided in the bundle is evidence of this.

82. The Respondent says that the estate manager is for the entire development and not for the individual property. The development has 700 apartments, 31 commercial units, podium gardens and a spay and gym which the Estate Manger must oversee. His salary is reasonable in comparison with other developments.

The Tribunal's decision

83. The Tribunal determines that the amount payable in respect of the Estate Manager is the sum claimed in the service charge demand, namely £631.32 in 2022 and £824.78 in 2023. .

Reasons for the Tribunal's decision

84. There was no evidence before the Tribunal that fees for the Estate Manager were high or disproportionate generally as compared to previous years or compared to the estate manager fees of other similar properties.

85. The Applicants did not pursue at trial its contention that there *has been a lack of proper management in respect of this property and dealing with the issues as complained of by the Applicants.*

86. Accordingly, the Applicants' challenge to the reasonableness of this item was not made out, the burden of proof being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

M & E Maintenance contract & M & E Repair Works: 2022 - £472.87 and £57.35; 2023 - £441.18 & £203.46

87. The Applicants strongly dispute these costs as their property lacked heating for the duration of the majority of this period with no or no effective resolution.

88. The Respondent explains that the costs associated with the M & E contract are an estate charge as they relate to the entire development. The contract includes the maintenance of

(i) VRV fan coils

(ii) HIUs

(iii) Condensers for comfort cooling

(iv) Gas boilers

(v) Flues

(vi) Pressurisation units and vessels

(vii) Pumps etc

The Tribunal's decision

89. The Tribunal determines that the amount payable in respect of the M&E Maintenance contract and M&E Repair Works is the sum claimed in the service charge demand, namely £472.87 and £57.35 in 2022 and £441.18 and £203.46 in 2023.

Reasons for the Tribunal's decision

90. The Applicants did not identify which particular costs were under challenge and did not respond either orally or in writing to the Respondent's contention that *the costs associated with the M&E Contract are an estate charge as they relate to the entire development*.

91. In the absence of any evidence from the Applicants as to which particular costs they alleged related to heating and hot water and why those costs were unreasonable, this challenge was not made out, the burden of proof

being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

Security guarding: 2022 - £659.82; 2023 - £511.47

92. The Applicants say that these are very high and disproportionate to the services rendered.

93. The Respondent says that the security is onsite from 7.00 pm to 7.00 am every day. They are instructed by a third party company. The contract is appropriately tendered annually. This is an estate charge.

The Tribunal's decision

94. The Tribunal determines that the amount payable in respect of security guarding is the sum claimed in the service charge demand, namely £659.82 in 2022 and £511.47 in 2023.

Reasons for the Tribunal's decision

95. There was no evidence before the Tribunal that fees for securing guarding were high or disproportionate generally as compared to previous years or compared to the security guarding fees of other similar properties.

96. Accordingly, the Applicants' challenge to the reasonableness of this item was not made out, the burden of proof being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

Gym costs: 2022 - £909.96; 2023 - £607.17

97. The Applicants say that it is not clear what costs have been incurred in respect of this charge as there is a separate charge for gym annual reserve charge.

98. The Respondent says this is the cost to the residents of using a gym. This equates to £75.83 per month which allows five people access to the gym and spa. The costs are for the maintenance of the gym, swimming pool jacuzzi, steam room and sauna.

99. These costs are for the gym operating costs. The figure does not include the gym management fee and the gym staffing costs which are under a separate heading.

The Tribunal's decision

100. The Tribunal determines that the amount payable in respect of the gum costs is the sum claimed in the service charge demand, namely £909.96 in 2022 and £607.17 in 2023.

Reasons for the Tribunal's decision

101. There was no evidence before the Tribunal that fees for the gym were high or disproportionate generally as compared to previous years or compared to the estate manager fees of other similar properties.

102. The Applicants did not pursue at trial its contention that it was *not clear what costs have been incurred in respect of this charge*.

103. Accordingly, the Applicants' challenge to the reasonableness of this item was not made out, the burden of proof being with the Applicants as per *Schilling v Canary Riverside* LRX/26/2005.

Application under s.20C and refund of fees

104. The Applicants made an application for a refund of the fees that they had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicants.

105. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines not to make an order under section 20C of the 1985 Act.

Name: Judge H Carr **Date:** 16th January 2025

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Appendix – chronology

IN THE FIRST-TIER TRIBUNAL

APP REF LON/00AJ/LSC/2024/0241

(PROPERTY CHAMBER)

IN THE MATTER OF 100 SKYLINE HOUSE, DICKENS YARD, W5 2BJ

B E T W E E N:

(1) KARIM SAAD MOSAAD SAAD

(2) VIOLETTE VICTOR FAYEZ MOSAAD

Applicants

-and-

BERKELEY SIXTY ONE LIMITED

Respondent

CHRONOLOGY

30.5 / 1.6.18	Emailed to DO asking for feedback / action plan **p.354**
11.8.18	Complaint made that no hot water (1) 22 July to 9 August and (2) on 11 August **p.352**.
13.8.18	Apologises. Hot water is back up and running. Promise to bleed pipes to release air (as was problem) **p.381**
2.2.19	Email from Violette to DO. No hot water since the morning. Partial solutions failed. Want a formal report from a third-party expert **p.360**
2.2.19	Email from DO apologising for disruption to hot water supply that day. Had requested a water engineer to attend and promised a full investigation **p.359**.

4.2.19	Complaint made to St George by Karim demanding an expert review from a consultant **p.358/359**.
4.2.19	Apology from St George for ongoing inconvenience. Agreed long term solution needed **p.357**.
8.2.19	Email from St George indicating hopeful of a long solution following the provision of a proposal and design from an independent consultant **p.356**
11.2.19	Offer from St George to meet to discuss remedial works **p.355**
28.2.19	Proposal to undertake works to relocate valves **p.369**
5.3.19	Hot water outage. Plumber attended. Queried whether HIU or due to new commercial tenant **p.368** / **p.367 / p.362**
8.3.19	SAV attended. Satisfied system working correctly. Suggested a new pup which will be fitted. Promised to arrange a weekly bleed **p.366**
21.6.19	Complaint about hot water in cold taps **p.372**
9.11.19	Complaint of recurring issues with hot water **p.376**
12.11.19	Engineer attended the previous day to investigate issue with hot water. Not sure what the issue is. Promise of a specialist looking the next day **p.374**
28.11.19	Request to meet St George to discuss hot water amongst other issues **p.377**
January 2022	Third-party contractor attends. "Quite a confusion" / warm water and freezing cold water. Not resolved **p.141**
7.2.22	Edmunds attended to inspect **p.391**
16.2.22	Edmunds report. Changed pressure. Suggest replacing pump / AAV valves **p.667**
17.2.22	Report from engineer provided **p.390**
21.2.22	Edmunds attend. Suggests the pump be replaced **p.142.**
25.2.22	Check to see if issues with hot water
	Whether happy to pay for Edmunds quote **p.389**

28.2.22	Complaint about heating/hot water. “For months we have complained about not having heating” Hot water issue has existed since 2015 **p.388**
4.3.22	Edmunds will attend on 9 March 22 to replace AAV, expansions vessel, pump in HIU and review underfloor heating **p.386**
11.3.22	Edmunds provide report detailing works done **p.664 / 671 / 681**
16.3.22	A week since repairs. No report. Still an issue with a valve **p.398**
18.3.22	Repairs to HIU undertaken. Pressure valve had failed. Needed to be replaced. Left in an open position to allow for hot water. Underfloor heating is a controller installation issue **p.397**
18.4.22	Complaint. Patient over past few months for problem to resolved. Hot water ongoing for years. Replacement of valves a good step forward. Heating another issue for past few months **p.395**.
19.4.22	Edmunds attend to fit new valves and change pressure. **P.150.**
21.4.22	Richard Griffiths says can’t do anything until sprinkler service in August Heating engineer had attended. Inconclusive and will reattend **p.395**
18.10 – 2.11.22	Third-party contractor attends (instructed by Mina). Following service of HIU got heating and hot water. On 2 November, no hot water or heating. Erroneously said was due to the communal boiler (without investigating it). **P.147.**
13.11.22	No hot water or heating in the flat **p.415**
14.11.22	Came home to no hot water **p.414**

15.11.22	Hot water was working. Working hard to find permanent solution **p.410 / 413**
17.11.22	No hot water **p.452**
	Engineer had attended but no hot water or heat **p.451**
18.11.22	Edmunds had an issue with parts and so could not attend. Would attend following day **p.450**
19.11.22	Edmunds attended to do works but reschedule for following week. Bled the air **p.679**
20.11.22	Still no hot water **p.450**
	Edmunds suggest too much air in pipes and repair to pump **p.680**
21.11.22	We say problem is with AAV's in riser cupboard, mechanical seal **p.447**
	They say problem is with energy centre **p.446**
	From concierge. Engineer attended. Not yet hot water in flat. Problem due to air in circuit **p.401**.
	Engineer had replaced the mechanical seals to deal with excess air in the system. Als needed works to valves and prvs **p.445-446**
22.11.22	Engineer had worked on AAV's the previous night. Air may still be trapped. Request to take further work to release air **p.444**
22.11.22	Want the problem solved permanently **p.443**
22.11.22	Confirmation engineer will be round that day **p.442**
23.11.22	From concierge. Seven days without heating, years of intermittent loss of hot water **p.402.**
24.11.22	Eighth day without hot water or proper heating **p.403**
1.12.22	No heating or hot water **p.440**
1.12.22	Hot water reinstated **p.439**
4.12.22	No water in the flat **p.439**
5.12.22	Still no hot water **p.438**
5.12.22	Expansion vessel arrived. Will be replaced the following day **p.437**
9.12.22	Communal works completed. Isolation valve replace and water and pressure replaced, various other works undertaken **p.407**

12.12.22	No hot water in whole block **p.407**
12.12.22	10.08, Engineer had reinstated both hot water and pressure **p.406**
10.2.23	Hot water not fully resolved. 70 seconds to get hot water **p.437**
22.2.23	Hot water problem not fully solved yet **p.437**
12.8.23	Had a more regular supply of hot water in last six months
	Confirmed could get heat from cooling system but more expensive **p.455**
20/24.5.24	Third-party contractor finally resolves issue by installing new PRV **pp.329-331**

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).