

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL
of the
NORTHERN RENT ASSESSMENT PANEL****LANDLORD AND TENANT ACT 1985
SECTIONS 27A**

PROPERTY 82, Oxford House, Fernhill Road, Bootle,
Merseyside L20 9JT

Applicants: Mr Thomas and Mrs Emma Ferrigan

Respondent: One Vision Housing Ltd

The Tribunal: Chairman: John R Rimmer BA, LL.M
Valuer Member: J W Shaw JP, FRICS
Lay member Miss C Roberts JP.

Date of Hearing: 16th April and 31st May 2007

Present: Mr Thomas Ferrigan

Mr J Griffiths, solicitor for the Respondent, Mr I Mutch (16th April only) and Mr J Southern (31st May only)

1. Application.

- a. The Applicants apply under Section 27A of the Landlord And Tenant Act 1985 for a determination that the service charges for five financial years (2004-5 to 2008-9). order of the Tribunal that the Respondent's costs of, and incidental to the substantive application should not be recoverable as otherwise provided for by the terms of the leases to the properties. The application is dated 22nd January 2007, signed by Mr Ferrigan on behalf of himself and his wife.

2 Background

- a. The Applicants hold a long lease at low rent of the flat numbered 82, Oxford House, Fernhill Road, Bootle. The Applicants were originally tenants of the flat under a tenancy of the flat from Sefton Borough Council. By virtue of their long standing status as tenants of both Sefton Borough Council and its predecessor, Bootle county Borough council, they were entitled to, and chose to exercise their right to buy the flat under the "Right to Buy" legislation. After what appear to have been a number of false starts they were eventually able to do so by a lease dated 29th March 2004 which granted them a lease, at a rent of one

peppercorn, for a period of 125 years from 1st April 2001. The Applicants clearly feel aggrieved that by reason of a delay, or delays, in the right to by process they were ultimately obliged to pay a higher premium than first envisaged and also a higher service charge than was envisaged at the time of their original application. The Tribunal was obliged to indicate during the course of these proceedings that it was not the tribunal's function to review that right to process, nor to examine the service charge other than in the context of, and in accordance with the principles relating to, this application.

- b Shortly after granting the long lease to the Applicants Sefton Borough Council disposed of its housing stock, including Oxford House, to the Respondents who assumed the liability of lessor under the lease. Thereafter the Respondents embarked upon a process of making the cost of the provision of services within its housing stock, including all high rise blocks more transparent by setting out a clear distinction between the occupational rent for flats and the actual cost of related services for which the service charge is levied. This, in effect, changes the historical position whereby some service charges were paid for within the rent and the additional "service charge" related only to those other services not within the rent account. Although the Respondents had adjusted rental figures downwards to reflect the increase in the amount payable as service charge throughout their housing stock, the resultant increase in the service charge payable by the Applicants, who of course have no compensatory reduction in rent as they do not now pay any, prompted the making of this application. It is also the case that under the terms for the purchase of flats under the "right to buy" scheme tenants are given an estimate of service charges to be incurred for the five years after a purchase which effectively provides a cap on the amount payable should the estimate be exceeded in any one or more years. Purchasers acquiring their flats before The Applicants were given much lower estimates, and therefore a much lower maximum amount payable in any year, by virtue of the estimates being based on the subsidised service charge above.
- c The issue within the service charge identified by the Applicants as giving particular cause for concern was the concierge charge in both the 2004-5 and 2005-6 service charge accounts, amounting to £1495.20 and £1314.00 for the respective years. The Applicants also referred to the communal electricity charge (£277.26) and management charge (£59.24) in the 2004-5 account together with the Heating charge (£119.80) and repairs and maintenance charge (£386.78) in the 2005-6 accounts.
- d Directions for the future conduct of the application were given by a procedural chairman on 29th January 2007 and subsequently the Respondents asked that Sefton Borough Council be joined as a party to the application as The respondents had only taken over responsibility for Oxford House on 30th October 2006. The procedural chairman refused te application on 22nd February 2007.
- e In compliance with the directions the Respondents provided a statement of its case to the effect that the Applicants had been made aware of the estimated service charge costs applicable to 82, Oxford House at the time they entered into the purchase process (a copy of the council's letter of 9th February 2004 was provided) and the level of the charge was justified by the statement of account provided, though this was a summary of the charge for the year ending 31st march 2006 rather than a

detailed breakdown of the overall costs of the services. Copies of the open correspondence between the Applicants' solicitors and the Respondents was also provided. Subsequently a paginated and indexed bundle of documents was provided by the Respondents containing further information relating to the service charge accounts and certain elements within them together with the estimate for the account for 2007-8.

3. Inspection

On the morning of 16th April 2007 the Tribunal inspected Oxford House and its environs. It is a high rise block of 91 individual flats with communal areas by way of stairs, landings and lifts together with an entrance foyer and large refuse room on the ground floor. There are no significant grounds other than parking areas and a row of garages let separately from the flats. Recent storm damage has occurred to the facings on the South Western side of the building. The block stands on its own in an area of mixed private residential housing near the busy Balliol Road/Southport Road junction. It not particularly well situated for the main commercial and retail areas of Bootle but is well served by local bus routes. Flat 82 is a two bedroomed flat on the 11th floor of the block well maintained, in accordance with their respective obligations, by both the landlords and the Applicants. Most recently the installation of double glazing also provided the opportunity to enclose the former open balcony to provide a useful, if small, sitting room.

4. The evidence and the hearing

- a At the start of the hearing the chairman suggested that although it was usual for the Applicants to present their case first it might be of assistance in this instance for the respondents to outline the issues and their views upon them for the mutual benefit of all parties present. The Respondents agreed and outlined the circumstances in which they had taken over from Sefton Borough Council the control and management of the former council housing stock which include 14 tower blocks of flats. The respondents had inherited the service obligations as landlords which were recoverable within the service charge, by far the most expensive of which was and is the concierge service. At the same time tenants were having to adjust to the new method of calculating the amount of service charges by removing their hidden subsidy from the rent.
- b The Tribunal confirmed with both parties that they accepted that the costs of the service obligations referred to were recoverable under Clause 3 and Schedule 6 of the lease and that there was no issue to be taken other than the amount to be paid and by whom.
- c Mr Jeffries and Mr Mutch moved on to outline to the Tribunal the extent of the concierge service, clearly the most contentious element of the service charge, and were able to supply details of the job description together with an estimate of the cost of the service for the 2007-8 year. They also explained how the respondents were seeking to effect both improvements to the service by employing modern technology and reduce cost as a result of the efficiencies that would follow. In essence the respondents recognised that the scheme they had inherited was

expensive and in need of change but provided a satisfactory level of service to tenants generally at a cost that was not unreasonable.

- d Mr Ferrigan indicated his main concern was the concierge charge and the amount paid by him, both as a total sum and also when compared to others who were paying a smaller sum as their charges had been estimated and capped at a much lower level. He highlighted a number of concerns about the concierge service itself, particularly the standard of the cleaning of common parts carried out by the concierges and the difficulty of tradesmen and other legitimate visitors gaining access to Oxford House before the start of a staffed shift at 8am.
- e As the Tribunal explored these issues and perused the documents provided, particularly those that were presented for the first time at the hearing it became apparent to the Tribunal that further information was required from the Respondents as to the meaning and effect of the figures contained in the estimate for the concierge service for 2007-8 and the planned move towards an electronically monitored security system and contract cleaning services to replace the traditional concierges provided on a fixed or mobile basis according to time of day. The tribunal therefore issued further directions as to the information that it would wish to see and then adjourned the hearing to the morning of 31st May 2007
- f prior to the resumed hearing the Respondents provided the Tribunal and the Applicants with further documentation in the form of the Borough Council Housing Department review to establish best value from the concierge service. This is a document 48 pages in length which reviews the current service and its manner of delivery, together with its relationship with the other services that make up the full service charge for flats within the housing stock. The document then moves on to explore the way in which the service could be provided in the future and the options available for this and their implication for the amount of the service charge. Details are also given of the consultation process undertaken to establish the views of occupiers.
- g The Respondents also provided a document detailing the breakdown of concierge costs for the financial years 2003-4, 04-5 and 05-6., together with indicative costs for the four following years. Within this breakdown were the staffing and other costs of the provision of the service, an indication of the likely provision for salary increases and brief descriptions of the roles of each grade of employee. Budget forecasts of the implications of moving to central CCTV control of entry and exit, abolition of the mobile concierge service and the change to contract cleaning were also given.
- h It was upon the information provided in these documents that the Respondents sought to justify the cost of the concierge service and answer a number of questions posed by the Tribunal as to the quality of the service provided. There was a clear difference of opinion between the parties upon this matter. Mr Ferrigan is clearly of the view that the services provided, with particular reference to door security to Oxford House and the cleaning of its common parts, leave something to be desired. The Respondents sought to rely upon the evidence gleaned from

their consultation process and the small number of complaints received to give the impression of a level of service widely perceived to be satisfactory or better. Mr Ferrigan was prepared to indicate that he had not himself complained about the service directly, nor had he attended tenants' meetings to discuss current or future service provision. A regular newsletter is sent out by the Respondents to all tenants and leaseholders.

- i The tribunal then sought the views of the parties upon the other service charge issues raised in the Application: those being the communal electricity charge and management charge in the 2004-5 service charge account and the heating charge and repairs and maintenance charge in the 2005-6 account. Mr Ferrigan indicated that he did not wish to take his objection to these matters any further.

5 Tribunals Conclusions and Reasons

- a The Tribunal was satisfied that by virtue of clause 3C and schedule 6 of the lease, the landlord is entitled to charge the cost of provision of the services mentioned in the application to the service charge account subject to the overriding jurisdiction of the Tribunal to determine the liability to pay the amounts in question.
- b The law relating to that jurisdiction is found in Section 27A landlord and Tenant Act 1985 as follows
 - (1) An application may be made to a leasehold valuation 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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

- c Within this application the crucial matter for consideration is the amount payable for the concierge service for each of the years to which the application relates. The Tribunal gave careful consideration to both the more detailed evidence of the Respondents and the briefer, but succinct, observations upon the cost and quality of the service from the applicants.
- d The cost of the concierge service is very high. This was clear from the detailed figures provided by the respondents in respect of such services from other large scale housing providers and contained in the "Best Value Review" The Respondents acknowledge this high cost by the strenuous efforts they indicate they are making to bring those costs down. referred to in paragraph 4f above. Nevertheless the Tribunal accepts that the provision of such a service will be costly and for some providers the cost will be higher than for others. The Tribunal is aware of the social deprivation within Bootle and the

problems associated with this that the concierge system seeks to eradicate. Inevitably those problems will be more acute for some blocks of flats than others but the beneficial effects of the service were apparent during the Tribunal's inspection. The Tribunal was also impressed by the respondent's evidence as to the efforts made by newsletter, consultations and tenant's forums to seek views on the services provided and the generally positive responses referred to, again in the "Best Value Review". The Tribunal felt able to contrast this with the fact that the Applicants accepted they had not complained about the services provided or engaged in any consultation or forum process.

- e The conclusion of The Tribunal is that the Applicants are required to pay the concierge charge as detailed in the service charge account or estimated accounts for the five relevant years. In addition the Tribunal decides that in the absence of any serious issues being raised in respect of the amounts charged for the other services referred to in the application relating to the 2004-5 and 2005-6 accounts, and those amounts being found by the Tribunal, acting in its capacity as an expert tribunal, to be reasonable, shall also be payable by the Applicants in those years. The total amount charged, or to be charged, in each year is of course subject to the maximum amount for the relevant year referred to in the letter to the applicants from Sefton Borough Council dated 9th February 2004.

6 Section 20C Application

- a The Application also seeks an order under section 20C Landlord and Tenant Act 1925 preventing the landlord from adding to the service charge the costs of conducting these proceedings before the Tribunal.
- b The Tribunal is not satisfied as a matter of law that the Respondents are entitled to recover these in any event.. Clause 3c of the lease refers to recovering the costs and expenses of carrying out the landlords' covenants in Schedule 6 of the lease and neither clause 3C nor Schedule 6 adds to these the costs of proceedings before the Tribunal. No other charging provision in the lease, for example Schedule (15) encompasses these costs either.

7 Order

The recoverable amounts, for service charge purposes, for the provision of the concierge service for the five years, 2004-5 to 2008-9 inclusive, together with the communal electricity charge and management fee for the year 2004-5 and the heating charge and the repairs and maintenance charge for the year 2005-6 shall be those referred to in the landlords service charge accounts or estimated accounts for the relevant years, subject to the provision as to the overall maximum service charge amount payable for each year in accordance with the original terms upon which the service charge figure is based in the letter of 9th February 2004.

IL Hunt

Chairman

3rd April 2007