



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

Case Reference : **MAN/00CA/LSC/2019/0057**

Property : **Oxford House, Fernhill Road, Bootle, L20 9JS**

Applicants : **One Vision Housing Ltd.**

Representative : **Trowers & Hamlin LLP**

Respondents : **Peter McBride, John Naylor, Andrea Carbone, Linda Mawer, Emma Ferrigan, Michael and Maureen Ramsden, Elizabeth Roscoe, Elsie Lunt**

Type of Application : **Landlord and Tenant Act 1985, s.27A(3)**

Tribunal Members : **Professor Caroline Hunter
Ms Jenny Jacobs MRICS**

Date of Decision : **20 January 2020**

DECISION

Summary Decision

1. The Tribunal finds that:
All costs of the works specified in the application are payable by the respondents under their leases.

Application

2. On 29 July 2019 the applicant, One Vision Housing Ltd, applied for a determination as to whether proposed future works are recoverable through services charges in respect of Oxford House, Fernhill Road, Bootle (the block).
3. Directions were made by the Tribunal on 9 August 2019. The Directions required that the Statement of Case specify the total service charges the applicant believes to be payable by the respondents based on the estimation of the costs of the works. In their covering letter to the Tribunal dated 30 August 2019, the applicant's solicitors explained that no formal tenders have yet been obtained, and that any estimates would be very broad. Accordingly this application is limited to ascertaining whether the works proposed are in principle recoverable through the service charge provisions of the lease. The works will be subject to the reasonableness test in section 19 of the Landlord and Tenant Act 1985 once the costs are incurred.
4. The applicants provided a statement of case and a bundle in line with the directions. None of the respondents responded to the statement of case. This means they have not applied for an application under section 20C of the Landlord and Tenant Act 1985.
5. The Tribunal considered that it was appropriate for the application to be determined on the papers. None of the parties requested a hearing, and this decision is made on the papers.

Background

6. The applicant in this case is One Vision Housing (the applicant). The applicant is the freeholder of Oxford House, Fernhill Road, Bootle (the block), following a stock transfer from Sefton MBC (the Council).
7. The block is made up of 91 flats, of which 83 are let on short leases to social tenants. The remaining 8 flats are let on long leases to the 8 respondents in this case. The respondents have previously exercised their right to buy under the Housing Act 1985 when the block was in the ownership of the Council.
8. The applicant is planning to undertake work to the block, in particular:
 - a. Replacement lifts (see Schedule 2 of the Statement of Case and the report of Mottram Associates in the bundle);
 - b. Works to the communal areas (see Schedule 2 of the Statement of Case);

- c. Replacement windows (see Schedule 2 of the Statement of Case);
 - d. Replacement ventilation systems (see Schedule 2 of the Statement of Case).
9. Under the Landlord and Tenant Act 1985, s.27A(3) a party to a lease can apply to the Tribunal for ‘a determination whether if costs were incurred for services, repairs, maintenance, improvements [...] of any specified description, a service charge would be payable for the costs and, if it would, as to the person by whom it would be payable and the person to whom it would be payable.’ The applicant seeks a determination that the proposed works to the block would be an item of expenditure in relation to which the respondents would be liable to pay a 1/91st contribution under the terms of their leases.

The lease

10. The leases for the 8 flats are generally in the same format in terms of the services and service charges provisions. In each case, the building is defined in the lease as “Oxford House, Fernhill Road, Bootle and the grounds surrounding it” and the demised premises is identified through a plan.
11. In Clause 3(C) of the lease, the lessee covenants to pay:
(C) by way of further rent during the term hereby granted upon receipt of the Lessor’s written demand, the proportionate amount required to cover the costs and expenses incurred by the Lessor in carrying out the Lessor’s covenants referred in the Sixth Schedule hereto and to cover any such costs and expenses incurred or to be incurred by the Lessor in carrying out such reasonable improvements whether works or services to the demised premises and/or the Building as the Lessor shall in its absolute discretion deem necessary.
12. In the Fifth Schedule the lessee covenants to ‘contribute one ninety-first (1/91st) equal proportionate part of the cost of discharging the obligations contained in Paragraph (a) of the Sixth Schedule of this deed.’
13. In the Sixth Schedule paragraph (a) the lessor covenants:
(i) to keep in repair the structure and exterior of the demised premises and of the Building (including the roof, foundations and main structures) and the services conducting media and other facilities serving them but excluding all items repairable by tenants under their respective leases;
(ii) to keep in repair any other property over or in respect of which the Lessee has rights by virtue of Schedule 6 of the Housing Act 1985 or of this deed;
(iii) to ensure as far as practicable that services (if any) which are to be provided by the Lessor and to which the Lessee is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of these services;
(iv) to paint and decorate in a workmanlike manner the exterior of the premises upon the Lessor’s repainting cycle for the area

Application of the lease to the proposed works

14. If the lease did not include Clause 3(C) there might have been some issue as to whether the works were repairs or improvements under the Sixth Schedule. However, that is not in issue in this case. Similarly, there is no issue whether works are within the demised property or the building. The lease covers works by the lessor to the demised properties as well as to the building, except as far as it is covered by the lessee's repairing covenants. The lessee repairing covenants do not cover any of the proposed works. Accordingly, we decide that:

Replacement lifts

15. The costs of the lifts works are payable by the respondents under their leases under para.23 of the Fifth Schedule and the Sixth Schedule paragraph (a) and so far that the works are not repairs under Clause 3C.

Works to the communal areas

16. The costs of the works to the communal areas are payable by the respondents under their leases under para.23 of the Fifth Schedule and the Sixth Schedule paragraph (a) and so far that the works are not repairs under Clause 3C.

Replacement windows

17. The costs of replacement windows are payable by the respondents under their leases under para.23 of the Fifth Schedule and the Sixth Schedule paragraph (a) and so far that the works are not repairs under Clause 3C.

Replacement ventilation systems

18. The costs of the replacement ventilation systems are payable by the respondents under their leases under para.23 of the Fifth Schedule and the Sixth Schedule paragraph (a) and so far that the works are not repairs under Clause 3C.

RIGHTS OF APPEAL

19. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.
20. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
21. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

22. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge Hunter

Date: 20 January 2020

Appendix – relevant legislation

Landlord and Tenant Act 1985

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.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, the First-tier Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.