SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/OOHN/LAM/2007/0002

IN THE MATTER OF SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

BETWEEN:

MR J I SHEIK-ALI

Applicant/Lessee

- and -

HEYSPORT PROPERTIES LIMITED

Respondent/Landlord

PREMISES: 17 Pendennis
7 Derby Road
Bournemouth
BH1 3PU ("the Premises")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MISS T A CLARK
MR P E SMITH FRICS

HEARING: 19th SEPTEMBER 2007

DETERMINATION: 10th OCTOBER 2007

DETERMINATION AND REASONS

1. The Application

1.1 On 19th May 2007 the Applicant made an application to the Tribunal under Section 24 of the Landlord & Tenant Act 1987 ("the Act") for the appointment of a manager in respect of the property known as "Pendennis" at 7 Derby Road, Bournemouth BH1 3PU ("the Property").

1.2 A notice under Section 22 of the Act had been served on the Landlord on 8th February 2007. The grounds for seeking an order specified in the said notice were

a) that the Landlord was in breach of its obligations under the Lease

b) the renting of flats in the block to short-term occupiers and the renting out of rooms as individual bed-sits resulting in over-occupation and devaluation of the Property

c) the tenants in the short term lettings causing nuisance and annoyance to other residents by way of noise, the leaving of rubbish and dumping of furniture in the common parts resulting in a devaluation of the Property and a risk to health.

1.3 The notice stated that the above matters were capable of remedy and that this should be done within six weeks of 8th February 2007.

1.4 The steps that the Applicant required the Landlord to take to remedy these matters were set out in a schedule to the notice. Paraphrased, these were:-

a) for the Landlord to impose strong controls over the tenants of the short-term let flats to abate noise, mess and disturbance

b) for the Landlord to ensure the communal parts were kept free of rubbish and kept looking respectable

c) for the Landlord to redecorate and repair all damaged areas of the building without charge to the leaseholders

d) for the Landlord to repair damage to the Applicant's flat dating back to twelve years ago

e) for the Landlord to ensure that all accounts were correct and audited properly

f) for the Landlord to ensure that no flat was unlawfully sub-let or rented out as bed-sits and to ensure that the right number of people were occupying the premises.

1.5 Further particulars of the grounds for serving the notice were set out in Schedule 3 to the said notice. They were as follows:-

a) (said to be in breach of the First Schedule but in fact, if proved, a breach of paragraph 6 of The Fifth Schedule) the Landlord's visitors leave bicycles and inflatable boats on the landings making the Property look "undesirable".

b) the Landlord's tenants leaving broken down vehicles on the reserved property without valid vehicle excise licences displayed.

c) the Landlord depriving the Lessees of their rights in respect of the Property due to noise levels, rubbish, furniture and bicycles being left in the communal areas.

d) tenants of the Landlord's flats being allowed to hang up washing to dry in the windows and on cars in the garden.

e) the Landlord permitting unacceptable behaviour by its tenants.

f) the Landlord having failed to ensure that redecoration works were carried out to a reasonable standard.

g) the Landlord failing to ensure that the communal parts were kept clean between the cleaners' visits and failing to maintain adequate lighting.

h) the Landlord's tenants being permitted to let off fire-extinguishers and the Landlord failing to ensure the extinguishers were properly replaced. There are no fire alarms or smoke detectors on the landings it was alleged.

i) the Landlord's failure to keep proper books of account.

2. Inspection

2.1 The Tribunal inspected the Property immediately prior to the hearing on 19th September 2007.

2.2 The Property is a substantial 1920's Art Deco style building comprising twenty two flats on three floors.

2.3 There was an area of garden to the front and rear of the Premises which appeared to be kept in good order.

2.4 Many of the windows to the flats had been replaced with upvc units.

2.5 The exterior of the Premises was in reasonably good order.

2.6 Although there were a number of garages to the rear of the Premises, these were on a different title to that of the block of flats and the leases of the flats did not confer on the lessees any rights to use the garages.

2.7 Inside, the common areas comprised a very spacious hallway on the ground, first and second floors with wide landings radiating off. The communal areas were reasonably well carpeted and were clean. There was a large skylight in the centre of the building. The wired glass in this was cracked and there was evidence that there had at some time been a leakage of water from this skylight down one of the walls. It did not appear that the problem was current. The decoration to the walls and doors of the internal areas was tired and scuff-marked but was not in a poor state.

2.8 From the rear doors of each apartment there was access to the rear staircase/fire escape. Outside one flat the Tribunal saw a number of plastic bags filled with rubbish in the rear corridor.

3. The evidence

3.1 The Applicant's evidence

3.1.1 The Applicant stated that when his mother had purchased the flat she was told that as each flat became vacant they would be refurbished and put up for sale. However, the last time this was done was in 1991. Since then the freeholder has let out flats on short term tenancies, mainly to students who cause problems of noise, shouting and playing loud music. They occasionally let off the fire extinguishers. They bring cars onto the driveway at the front or side of the block which have no current tax discs. They hang out bedding on the cars and hang up washing in the windows of the flats so that this is visible from the road. They play pool or snooker in the front flat so that this can also be seen from outside the block. They leave rubbish in the communal halls and put out electrical goods on the front driveway for collection. They leave shoes and bicycles in

the hallways. Further, the Applicant believed that the Landlord had allowed the flats to be let out as bed-sits and not as whole flats.

3.1.2 The Applicant produced some photographs to illustrate the type of behaviour that these short-term tenants indulged in. He said that the Managing Agents did nothing to prevent this from happening. He had tried to complain to them but his complaints had been ignored and he had got nowhere. He felt as though the Managing Agents were only concerned to keep these flats rented out on short-term lets as much as possible and that they were not interested in the concerns of the long leaseholders.

3.1.3 It was the Applicant's case that Pendennis had been allowed to deteriorate in standard over the years since the present Landlord and Managing Agents had been in place. He had paid no service charge in protest for a number of years. At one stage, court proceedings were instigated against him for recovery of the service charge owed but those proceedings had not been pursued, he believed.

3.1.4 The Applicant produced evidence in the form of a letter from another long leaseholder, a Mrs Mason, who no longer has a flat at Pendennis. She was accustomed to dealing with accounts and she had written in 2005 to complain about changes that had been made to the 2002 Accounts which had been certified in their original form by accountants. She also pointed out that a request for payment had not credited her with certain payments, nor had there been any statement as to the Sinking Fund Account. The inference being suggested by the Applicant was that the Landlord and his Managing Agents were not dealing properly with the Accounts.

3.1.5 The Applicant stated that repairs were carried out to a poor standard. He had been promised replacement window sills, for example, but he discovered that these had only been patched up. This was twelve years ago and the Applicant had been in constant dispute with the Landlord's Managing Agents since that time. The Applicant said that he had reported a light bulb not working outside the rear of his flat which had taken two years to replace. The Applicant also complained that the lift had been non operational for a time and that it had been in a poor condition.

3.1.6 The Applicant called Ms Kim Head of House & Son Estate Agents of Christchurch Road, Bournemouth, whom he wished to appoint as Managing Agents in place of Ellis & Partners. She confirmed that she had been asked by the Applicant to take on the role and he had explained some of the problems he had been experiencing to her. However, she had not visited the Premises nor had she discussed with the Applicant her firm's terms for taking on the management. She had not considered how she would set about tackling the problems which had arisen as a result of the situation where there was a Landlord who owned the majority of the flats, used one as a holiday home and let out the rest on short-term tenancies. She confirmed, however, that even if appointed manager

by the Tribunal this would not prevent the Landlord from continuing to rent out the majority of the flats on Assured Shorthold Tenancies where the occupiers of those flats would have no liability to contribute to the service charge.

3.1.7 The Applicant sought an order under Section 20C of the Act precluding the Landlord's costs of the Tribunal proceedings from being added to future service charge demands on the basis that it was reasonable for him to have made his application in view of the current failings of the Landlord and the Managing Agents as alleged by him.

3.2 The Respondent's Evidence

3.2.1 This was given by Mr Ellis himself and by Mrs Rose, Property Manager with Ellis & Co, who was in day to day charge of looking after Pendennis.

3.2.2 The Tribunal heard how the Managing Agents kept a log of complaints and how they were dealt with. The last time the Applicant had made a complaint, Mr Ellis said, was in May 2000. All complaints were looked into and dealt with in the most appropriate manner. For example, when they had received a complaint about a vehicle they would put a notice on it. That had been generally effective.

3.2.3 Mr Ellis said the block did not need to have a fire alarm system because it was a purpose-built block pre-war. However, it did need to have emergency lighting and this had been installed. Fire extinguishers were checked and replaced if necessary. The building was due to be redecorated internally soon and they would be starting the Sec20 consultation procedure. They had looked into replacing the glass in the large skylight in the centre of the hallway but this had proved to be an expensive item and they had taken the decision to seal it and patch repair for the moment.

3.2.4 The cleaning contractor attended twice per week to clean the communal areas and take away any rubbish. The rubbish discovered by the Tribunal that morning must only have been there since the cleaners last attended.

3.2.5 Mr Ellis confirmed that they had a student letting side to their business but stated that it was not in their or the landlord's interests for the flats let out on short-term lettings to be let to undesirables. The lettings are not as individual bed-sits but the flats are large and lend themselves to two or three people sharing. One flat was let to three Polish mature students who, it was claimed, had been exemplary tenants. Seven of the twenty two

flats were let on long leases, the freeholder owned and occupied one flat and the remainder were let on short-term tenancies.

4. The Law

4.1 By Sec 24 of the Landlord & Tenant Act 1987 ("the Act") a leasehold valuation tribunal may make an order appointing a manager to carry out such functions in connection with the management of the premises or such functions of a receiver, as it thinks fit.

4.2 By Sec 24(2) of the Act, the circumstances in which an order may be made are as follows:-

(a) where the landlord is in breach of any obligation owed to the tenant under the tenancy and relating to the management of the premises.

(b) where unreasonable service charges have been made or are proposed to be made.

(c) where unreasonable administration charges have been made or are proposed to be made.

(d) where there has been a failure to comply with Sec 42 or 42A of the Act (not relevant here)

(e) where the landlord or the managing agent has failed to comply with any relevant provision of the code of practice approved by the Secretary of State.

(f) where the Tribunal is satisfied that there are other circumstances making it just a convenience for an order to be made.

4.3 Under Sec 20C of the Landlord & Tenant Act 1985 a tenant may apply for an order that the Landlord's costs of the proceedings are not to be regarded as relevant costs in determining the amount of any service charges payable by the tenant.

5. The Determination

5.1 The Tribunal did not find that the Applicant had produced sufficient evidence to show on a balance of probabilities that the Landlord had been in breach of any of its obligations to the tenant under the lease. He had been advised by the local authority to keep a log of incidents but he had not done so. He had not complained to the Landlord's agent about any matter in writing since 2000. Although the Tribunal was provided with some photographs depicting what the Applicant considered to be the unreasonable state in which the block was kept these were undated and covered incidents which may have occurred over a number of years. Further, some of the breaches alleged were not landlord's obligations under the lease. The Applicant quoted breaches of Schedules 1, 2 and 4 of the lease but these schedules were:- a description of the reserved property (Schedule 1), of the rights included in the demise (Schedule 2) and covenants by the lessee with the lessor (Schedule 4).

5.2 It is true to say that some of the Applicant's photographs did show some bicycles and an inflatable boat left in the hallway, said to be by the Landlord when his family were in occupation during holiday times but the Tribunal was not satisfied that the evidence showed behaviour sufficiently serious or frequent to justify the appointment of a manager in place of the Respondent's managing agent.

5.3 The Tribunal did see bags of rubbish deposited outside one of the flats but it had no means of knowing how long they had been there. The evidence was that such rubbish would be cleared away twice weekly by the cleaners. The Tribunal hopes that this will be something to which the Managing Agents will pay particular regard in future. If rubbish is being deposited outside flats and remains there for longer than is strictly necessary this is something which some of the other residents, let alone the long leaseholders, should not be expected to put up with.

5.4 The Tribunal heard evidence and accepted that the Managing Agents have a system for dealing with damaged or untaxed vehicles left on the premises and if the Applicant or any other residents have cause to complain in the future they need to do so in writing to the Managing Agents.

5.5 As far as the allegations of poor decoration and lack of repair is concerned, there were only a few areas which were defective. There was tree growth in a rainwater downpipe. The wired glass in the central skylight was cracked and would need to be replaced at

some stage. The decision had been made to repair instead of replace this due to the cost but the Tribunal was concerned to note that there had been no consultation with the long leaseholders as to their views. Indeed, there was evidence that the Managing Agents never called any meetings to discuss budgets or any other matters which concerned them, contrary to the recommendations in the RICS Code of Management Practice. The Tribunal urges the Managing Agents to remedy this straightaway. Indeed, this lack of involvement of the long leaseholders in decisions as to what should be or is actually happening at Pendennis seemed to bear out to some extent what the Applicant was saying, namely that the interests of the long leaseholders were not being taken sufficiently into account as against the interests of the freeholder with its own flat and those let out to short term tenants in order to maximise income. The situation where there is a mix of such tenancies is potentially problematical because different types of occupier have different interests and priorities. The whole situation requires handling with some sensitivity and the Tribunal was not convinced that the requisite sensitivity was being shown by the current Managing Agents towards the long lessees. That did not mean to say that the Tribunal felt there was sufficient evidence on this occasion to justify making the order sought but it is something which the Managing Agents need to take on board because should a long lessee furnish a future Tribunal with sufficiently strong evidence that the interests of the long leaseholders are indeed not being sufficiently taken into account then an order could well be made.

5.6 There is nothing in the lease to prevent the Landlord from letting out the flats it owns on Assured Shorthold Tenancies. The Tribunal heard evidence that prospective tenants were carefully vetted. No managing agent can guarantee that tenants will behave appropriately, but the Tribunal hopes that the current Managing Agents will, now they are aware of the sort of complaints which have been made about the short-term tenants, take extra care to ensure that the tenants they acquire for Pendennis are suitable for this property and that should they receive complaints they will act speedily and effectively to deal with the problem. Sometimes simply waiting until the end of the tenancy and not renewing the same may not be sufficient.

5.7 There was some evidence in the form of the letter from Mrs Mason that there had been an error with one set of Accounts. The evidence from the Managing Agents was that this had been looked into and rectified by them. Mistakes can occasionally occur and this mistake was rectified. There was insufficient evidence that the Managing Agents' accounting practices justified the Tribunal in imposing a change in Managing Agent.

5.8 The Tribunal was not satisfied that Mrs Head had had sufficient opportunity of familiarising herself with the situation at Pendennis. Furthermore, the Applicant had not gone as far as discussing with her her proposed fees. Even if the Applicant had produced sufficient evidence to satisfy one of the grounds upon which an order could be made these are matters upon which the Tribunal would need to be satisfied before making any order.

5.9 The Tribunal decided that in all the circumstances it would not make an order under Sec24 of the Act appointing a Manager in respect of Pendennis.

5.10 In those circumstances the Tribunal did not consider that it would be just and equitable to make an order under Sec 20C of the Landlord & Tenant Act 1985.

Dated this 5th day of November 2007

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D. Agnew LLB, LLM
Chairman