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

Case Reference : **BIR/00GG/LBC/2013/0007**

Property : **15 North Street, Shrewsbury,
Shropshire, SY1 2JG**

Applicant : **Sevenside Housing**

Representative : **Counsel – Mr Bastin instructed
by Shakespeares Legal LLP**

Respondent : **Mr Robert John Gamble**

Representative : **N/A**

Type of Application : **Application under section 168 (4) of
the Commonhold & Leasehold Reform
Act 2002 for an order that a breach of
covenant has occurred.**

Tribunal Members : **Judge M K Gandham
Mr P J Hawksworth Solicitor
Mrs S Tyrer FRICS**

**Date and venue of
Hearing** : **6th September 2013
Priory Courts, 33 Bull Street
Birmingham B4 6DS**

Date of Decision : **9th October 2013**

DECISION

1. The Tribunal determines that a breach of the following covenants in the Lease to the Property have occurred:
 - Clause 3(5) – to pay all rates
 - Clause 3(14) – to keep the gardens in a neat and proper condition

REASONS FOR DECISION

Introduction

2. The Applicant is the Landlord of the Building known as 11 to 19 North Street, Shrewsbury ('the Building'). The Respondent is the owner, under a lease dated 15th November 2004 ('the Lease'), of the leasehold flat known as 15 North Street, Shrewsbury, SY1 2JG ('the Property'), which forms part of the Building.
3. The Applicant made an application to the Tribunal on 2nd August 2013 under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the Act') seeking an order that a breach of covenant or condition had occurred in respect of the Lease, attaching to the Application a statement of Applicant's case.
4. Section 168 (1) of the Act, as amended by paragraph 141 of Schedule 1 to the Transfer of Tribunal Functions Order 2013, provides that a landlord under a lease of a dwelling may not serve a notice under section 146 (1) of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in a lease unless subsection (2) is satisfied. Subsection (2) may be satisfied in one of three ways – if the tenant admits the breach; if a court or arbitral tribunal has finally determined that the breach has occurred; or (of particular relevance in the present case) if the appropriate tribunal, on an application by the landlord under sub-section (4), has finally determined that the breach has occurred. It is important to appreciate that an application by the landlord under section 168 (4) of the Act may lead to the service of a section 146 notice under the Law of Property Act 1925 and a subsequent application to the Court for an order for forfeiture of the lease.
5. Following receipt of the Application, the Tribunal wrote to the Respondent making him aware of the application and subsequently to both parties providing details of the time and date for the inspection of the Property and the Hearing.
6. On 3rd September 2013, in response to a request for further information made by it on 30th August 2013, the Tribunal received a copy of a letter from Shakespeares Legal LLP enclosing a letter from West Mercia Police to the Applicant dated 30th May 2013. The Tribunal also received from them Office Copies relating to the Property on 5th September 2013.

7. Despite forwarding copies of the correspondence and documentation to the Respondent, the Tribunal received no representations or other communication from the Respondent.

The Inspection

8. The members of the Tribunal inspected the Property on 6th September 2013. Although the Applicant and Mr Banham, from Shakespeares Legal LLP, were present, the Respondent did not attend and therefore the Tribunal considered it inappropriate to carry out any internal inspection of the Property.
9. The Building comprises a modern two storey block of purpose built flats with separate gardens and door entries. The Building externally appeared to be in a satisfactory condition although the garden area forming part of the Property was clearly overgrown and appeared not to have been maintained for some time. Upon inspection it was evident that the exterior door to the Property had been secured by a metal security panel.

The Lease

10. The Tribunal was provided with a copy of the Lease, in which Clause 3 details the covenants by the lessee as follows:

“3. The Lessee hereby covenants with the Lessor as follows:-

...

(2) To pay during the said term the rent hereby reserved on the in each year in the manner aforesaid without any deduction.

...

(4) To pay to the suppliers thereof all charges for gas water and electricity (including meter rents if any) consumed in the flat during the said term.

(5) To pay all rates taxes assessments charges impositions and outgoings of any nature whatsoever which may at any time be assessed charged or imposed upon the flat or any part thereof or the owner or occupier in respect thereof and in the event of any rates taxes assessments charges and impositions and outgoings of any nature whatsoever being assessed charged or imposed in respect of the building to pay the proper proportion of such rates taxes assessments charges impositions and outgoings attributable to the flat as certified by the Lessor.

...

(14) Not to use the garden edged green (if any) on the plan for any purposes other than as private gardens ancillary to the occupation of the flat and to keep the gardens in a neat and proper condition to the satisfaction of the Lessor.

(15) Not to use the flat or permit it to be used for any illegal or immoral purpose.

...

(36) To pay the proper proportion as certified by the Lessor of those costs and expenses incurred by the Lessor in complying with the covenants on its part to be observed and performed and herein contained.

The Hearing

11. A public hearing was held, after the inspection, at the Tribunal's hearing rooms in Priory Court, Birmingham. The Applicant did not attend but was represented by Mr Banham, from Shakespeares Legal LLP, and by Counsel, Mr Bastin. The Respondent did not attend and was not represented.

The Applicant's Case

12. Mr Banham stated to the Tribunal that he was instructed that the Property had been vacant for the past two and a half years. He stated that it was the Applicant's belief that the Property had been used for the supply and cultivation of drugs and that, as the Applicant had now received a complaint regarding the state of the Property, it wished to take steps to resolve the situation.
13. Mr Banham referred the Tribunal to the Applicant's Statement of Case, submitted with the Application, and contended that the following breaches of the Lease had occurred:

Clause 3(2) and 3(36) - Mr Banham stated that the Respondent had failed to pay his rent and service charge since vacating the Property in January 2011. As the Applicant had not supplied a copy of the ground rent and service charge demands, the Tribunal requested copies of same to be forwarded to it.

Clause 3(4) - Mr Banham confirmed that the Applicant had no evidence in relation to its allegation that the Respondent had failed to pay any suppliers' charges for utilities to the Property.

Clause 3(5) - Mr Banham forwarded to the Tribunal a copy of a Council Tax Demand that had been forwarded to the Applicant in relation to the unpaid council tax for the Property.

Clause 3(14) - Mr Banham submitted a set of photographs to the Tribunal, taken by the Applicant on 18th July 2013, which included photographs of the overgrown garden to the Property. In addition, Mr Banham referred the Tribunal to the inspection of the Property earlier that day.

Clause 3(15) - Mr Banham again referred the Tribunal to the set of photographs of the interior of the Property and contended that these evidenced the allegation made in the Applicant's Statement, that the Property had been adapted for the cultivation of cannabis. He stated that information received from the Police revealed that approximately £10,000.00 worth of cocaine had been removed from the Respondent's body and that the Police were still looking for the Respondent, the Respondent having absconded from them. He confirmed that, as the matter was still a live investigation, the Police were reluctant to provide any further information.

14. The Tribunal requested that, in addition to the ground rent and service charge demands, it would require a copy of the Landlord's title to the Building and requested that the photographs submitted to the Tribunal be numbered and clearly labelled detailing the content of each photograph with reference to the Applicant's case.
15. Copies of the Applicant's Rent demands were received by the Tribunal on 9th September 2013. As no Summary of Rights was attached to the copies supplied, and the Tribunal was not clear as to whether or not service charge payments were included in the demands, the Tribunal requested that further complete copies be supplied to the Tribunal.
16. The Tribunal received an email from Shakespeares Legal LLP on 16th September 2013 who confirmed that, having spoken to the Applicant, only ground rent and insurance were demanded in relation to the Property, that no service charges were payable and that the wording in the Applicants' Statement was therefore 'slightly misleading'.

The Respondent's Case

17. As mentioned above, no response to correspondence or submission of any evidence was received by the Tribunal from the Respondent who took no active part in the proceedings.

The Tribunal's Deliberations and Determination

18. The Tribunal considered all the evidence presented by the Applicant and considered each alleged breach:
19. *Regarding Clause 3(2)*, section 168 of the Act relates to procedures that must be followed before a landlord under a long lease can serve a notice under section 146 (1) of the Law of Property Act 1925. As a notice cannot be served under section 146(1) in the case of non-payment of rent, this issue is not relevant and outside the jurisdiction of the Tribunal.
20. *Regarding Clause 3(36)*, as the Applicant has confirmed that no service charge is in fact payable; the Tribunal did not consider this point.

21. *Regarding Clause 3(4)*, the Tribunal was not supplied with any evidence of a breach and so it determines that no breach of this subclause has occurred.
22. *Regarding Clause 3(5)*, the Tribunal is satisfied that the Council Tax demand clearly evidences that the rates for the Property have not been paid, as required by the Lease, and so determines that the non-payment of the council tax for the Property constitutes a breach of covenant.
23. *Regarding Clause 3(14)*, the Tribunal is satisfied from the photographs supplied by the Applicant, and from its inspection of the Property, that the garden has not been kept in a 'neat and proper condition to the satisfaction of the Lessor' as required by the Lease. The Tribunal determines that the failure to maintain the garden constitutes a breach of covenant.
24. *Regarding Clause 3(15)*, the Tribunal considered the photographs supplied by the Applicant, the letter dated 30th May 2013 from West Mercia Police and the information given in the Applicant's statement and at the Hearing. The clause in the Lease clearly states that 'the flat' is not to be used for any 'illegal or immoral purpose'. To this end, the letter from West Mercia Police does not provide any assistance as the offence for which the Respondent is being pursued relates to possession with intent to supply cocaine and the letter does not detail any illegal or immoral activity at the Property. Again, many of the photographs supplied by the Applicant appear to be irrelevant to the actual alleged breach of this subclause and although some of the photographs submitted by the Applicant did evidence some unusual items, such as grow bags, a water tank in the bath and some foil tubes - all of which may be used in the cultivation of cannabis-, again no actual illegal or immoral use was recorded. One photograph was of a book called 'The Cannabis Grow Bible'; however this is not a banned publication and appears to be widely available for purchase. The Tribunal therefore considers that the evidence presented to it to be insufficient to confirm that any illegal or immoral use has taken place at the Property by or with the permission of the Respondent, as would be required to constitute a breach of clause 3(15). To establish a breach of this clause, the Tribunal would have wished to have received more substantial evidence of the breach such as oral evidence (or a signed and verified witness statement) from the investigating police officer in the criminal case concerned, to the effect that drug use or other illegal or immoral behaviour had taken place at the property (with details of supporting evidence) and, ideally, an appropriate certificate of conviction by a court of competent jurisdiction. The evidence adduced by the Applicant fell somewhat short of what was required in this respect, mainly because it was obvious from the papers and information given at the Hearing that the Police were not able to assist until any criminal proceedings had been concluded.
25. Accordingly, the Tribunal determines that the Respondent has breached Clauses 3(2), 3(5) and 3(14) of the lease under which the Respondent holds the Property.

Appeal

26. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision stating the grounds on which that party intends to rely in the appeal.

M. K. GANDHAM

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Judge M. K. Gandham