9153

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BH/LSC/2013/0079**
Property	:	**87 Bloxhall Road, London, E10 7LW**
Applicant	:	**Daejan Estates Limited**
Representative	:	**Shranks Solicitor** **Ms Bleasdale (Counsel)**
Respondent	:	**Ms T Manzoor**
Representative	:	**Mr T Crockett (Counsel)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge and the determination of an alleged breach of covenant**
Tribunal Members	:	**Mr L Rahman (Barrister)** **Mr P Roberts Dip Arch RIBA**
Date and venue of Hearing	:	**1.7.13** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**18.7.13**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £2,270.19 is payable by the Respondent in respect of the insurance premiums for the service charge years 2004-2013.

(2) The Tribunal determines the Respondent was in breach of the following Clauses of the lease; (xii)(works without consent), (xiii)(works without the necessary planning permission as required by the Town and Country Planning Act 1990), (xiv)(converting the property into separate dwellings and let as such), and (xv)(causing a nuisance annoyance or inconvenience to the Applicant by trespassing into the loft space and conversion of the loft space without building regulations consent).

(3) The Tribunal determines the Respondent was also in breach of Clause (viii) of the lease, namely, failing to provide access for the purpose of an inspection until 14.3.13 despite requests being made on 24.1.12, 20.10.12, and 28.11.12.

The applications

1. In an application dated 30.1.13 the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of insurance premiums payable by the Respondent for the service charge years 2004 to 2013 (amounting to £2,270.19 in total).

2. In an application dated 30.1.13 the Applicant seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), that the Respondent was in breach of Clause (viii) of the lease. In particular, the Applicant asserts that the Respondent failed to provide access for the purpose of an inspection until 14.3.13 despite requests being made on 24.1.12, 20.10.12, 28.11.12, and 7.3.13.

3. In an application dated 3.4.13 the Applicant seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), that the Respondent was in breach of various covenants contained in the lease. In particular, the Applicant asserts that the Respondent carried out unauthorised alterations to the property. Namely, the Respondent had converted the premises into 3 separate studio flats / bedsits, including extending the property into the loft space, installing a staircase for access into the loft space, cutting and removing the roof joists to install the staircase, installing a bathroom and kitchen in the loft space, the removal of purlin props supporting the roof, the installation of 3 velux windows in the loft

space, the removal of the chimney breast on the first floor, and the removal of the kitchen and bathroom from the first floor. The Applicant alleges the Respondent had breached Clauses (xii)(works without consent), (xiii)(works without the necessary planning permission as required by the Town and Country Planning Act 1990), (xiv)(converted the property into 3 separate dwellings and let as such), and (xv)(causing a nuisance annoyance or inconvenience to the Applicant by trespassing into the loft space and conversion of the loft space without building regulations consent).

The hearing

4. The Applicant was represented by Ms Bleasdale. Ms Drayton, a Management Surveyor, gave evidence on behalf of the Applicant (statement in tab 4 of the Applicant's bundle). The Respondent was represented by Mr Crockett. The Respondent and her husband, Mr M Hussain, gave evidence.

5. Immediately prior to the hearing the parties handed in further documents, namely, a skeleton argument on behalf of the Applicant and a witness statement from the Respondent. During the course of the hearing, a handwritten statement was provided on behalf of Mr Hussain.

The background

6. The property which is the subject of this application is a 2 bedroom first floor maisonette. The Respondent had never lived at the premise. The Respondents husband was effectively responsible for all matters concerning the relevant property.

7. Photographs of various parts of the property were provided in the hearing bundle. 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.

8. The Respondent holds a long lease of the property. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. At the start of the hearing the Respondent conceded the insurance premiums claimed by the Applicant were reasonable and payable under the lease.

10. The Respondent also conceded that works were carried out as alleged by the Applicant and she accepts they amounted to a breach of the various covenants in the lease.

11. The Respondent however disputes that she failed to provide reasonable access to the property. There was no dispute that under Clause (viii) of the lease the Respondent had covenanted to permit the Applicant or its agents to enter the demised premises and examine the state of repair and the condition of the property. The issue for the Tribunal to determine was whether there was a breach of that covenant.

12. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal determines as follows.

The Tribunals finding

13. The Respondent failed to provide access until March 2013 despite requests made in January, October, and November 2012 and only after an application was made to this Tribunal. Accordingly, there has been a clear breach of Clause (viii).

Tribunals reasons

14. Mr Hussain stated they had never provided the Applicant with any correspondence address, including their residential address in Chigwell. He stated he knew it was his responsibility to provide his correspondence address to the Applicant. Mr Hussain and the Respondent both denied being asked for permission, by their solicitors, in June and July 2006, to provide an address for communication to the Applicant (in response to letters written to their solicitors as the Applicant was having difficulty contacting them and letters were being returned from 87 Bloxhall Road stating the Respondent did not live there).

15. Mr Hussain confirmed he attended the relevant property. The property was tenanted. Initially he stated he never received any post at the property. He then stated if letters were sent for him or the Respondent the tenants knew they had to pass them on to him and they were forwarded to him. He confirmed he received letters from the Council at the address, in December 2012, concerning the building regulations with respect to the removal of the chimney breasts. He confirmed he attended the property in January 2012 every 3 days when works were being carried out. During one of those visits his workers had told him about leaks into the flat below, which he then remedied.

16. On the balance of probabilities, the Tribunal do not accept that the Respondent, via her husband who was effectively acting as her agent,

did not receive any letters from the Applicant at the relevant address and was unaware that the Applicant wished to inspect the relevant property.

17. The Applicant posted a letter to the Respondent at the relevant address on 24.1.12 (page 2 of tab 4). The same letter was addressed to the contractor and hand delivered at the relevant property. Further letters were posted to the relevant address on 18.10.12 (page 4 of tab 4), and 26.11.12 (page 6 tab 4). The Respondent accepts the letters were sent but denies receiving them. The Tribunal find the letters were correctly addressed and posted and are deemed to have been delivered unless there is evidence to the contrary. The Tribunal find no evidence to suggest the letters were not delivered.

18. The Tribunal note the letter dated 24.1.12, addressed to the contractors, was also hand delivered to the relevant address. It is inconceivable, given the contents of the letter, that the letter would not have been passed on to Mr Hussain. Other matters, such as the leak into the property below, were brought to his attention by the workers.

19. Mr Hussain was attending the property every 3 days in January 2012. Mr Hussain received other letters addressed to him, such as the council letter in December 2012. Mr Hussain stated if letters were sent for him or the Respondent, the tenants knew they had to pass them on to him and they were forwarded to him. The Tribunal do not accept the various letters sent by the Applicant, to the relevant address, were not forwarded to Mr Hussain.

20. The Respondent argued she provided access once she received the letter dated 5.3.13, which was sent to her residential address in Chigwell. The Respondent argued the Applicant could have found her address in Chigwell and written to her at that address much earlier. The Tribunal find the Applicant was not required to search for the Chigwell address or to write to that address. The Applicant was simply required to write to the address they were given. The Respondent had never provided the Applicant with any correspondence address, including their residential address in Chigwell, despite Mr Hussain stating he knew it was his responsibility to provide his correspondence address to the Applicant.

21. In any event, the Tribunal note the Applicant wrote to the Respondents solicitors in June and July 2006, asking for an address for communication as the Applicant was having difficulty contacting the Respondent and letters were being returned from 87 Bloxhall Road stating the Respondent did not live there. Given the nature of the 2 letters and the importance for the Applicant, as the landlord, to have the correct correspondence address, it is highly unlikely the Respondents solicitors would not have asked for the Respondents permission to provide an address to the Applicant or to have brought the matter to the Respondents attention.

22. The Tribunal find the Respondent and her husband, for whatever reason, chose to ignore the various letters from the Applicant.

Conclusion

23. There have clearly been substantial breaches of the various covenants under the lease by the Respondent. There was some disagreement between the parties as to how much of the alterations had been remedied and the extent to which the property had been reinstated to its previous state.

24. The Respondent had stated in her statement dated 2.5.13 that the individual bed-sits had been removed, the premise had been converted into a single self-contained maisonette, the property was no longer occupied otherwise than as a self-contained maisonette, and the loft space would be replaced and reinstated and the staircase to the loft removed if the roof space did not form part of the demised premises or the Respondent failed to purchase the loft space from the Applicant.

25. The Respondent subsequently stated in her statement dated 28.6.13 that there was an error in her earlier statement and that the premises had not, at that time, been converted back into a self contained maisonette. Their managing agent had led them to believe at the end of April that everything was in order and the works would be completed within the next few days. The Respondent had signed her earlier statement without personally inspecting the property. The Respondent stated in her second statement that the bed-sits had now been removed and the property had been restored into a single dwelling. The Respondent stated in oral evidence that she had personally inspected the property a few days before the hearing. The Respondent also confirmed the stair to the loft and the windows in the loft remained and she did not inspect the loft space.

26. Counsel for the Applicant stated in her skeleton argument, dated 30.6.13, that the Applicants surveyor had inspected the property on 3.6.13 and confirmed the property was still converted into separate dwellings and it appeared that no works to reinstate the premises into a single dwelling had been carried out.

27. The Tribunal did not deem it proportionate or just to inspect the property given the Respondent accepts the property, including the first floor, had been converted into separate dwellings, the loft space had not been reinstated to its former state and the stairs to the loft and the windows in the loft remained unchanged. Whether or not the first floor had been restored to its former state was not relevant to the outcome of the Tribunals decision.

28. Were the Tribunal required to make a finding on the extent to which the property had been restored to its former state, on balance, the Tribunal would have agreed with the Applicants evidence. The Tribunal did not find the Respondents evidence credible. Mr Hussain confirmed he owned a grocery business and 5 other investment properties (3 freehold and 2 leasehold properties), which were all rented out. The Respondent and her husband are clearly intelligent individuals and must have known they needed permission before converting the flat into separate dwellings. Yet they carried out the works without consent and avoided the letters that were sent to them by the Applicant. The Respondent signed her first statement clearly stating that the individual bed-sits had been removed, the premise had been converted into a single self-contained maisonette, and the property was no longer occupied otherwise than as a self-contained maisonette. This was clearly wrong and had only been corrected after the property was inspected on behalf of the Applicant on 3.6.13.

Application under s.20C and refund of fees

29. No applications were made by either party.

Name: Mr L Rahman **Date:** 18.7.13

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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 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 that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

Commonhold and Leasehold Reform Act 2002

Section 168(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred.