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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BU/LBC/2013/0004**
Property	:	**Flat 9. Broomleigh, Booth Road, Altrincham WA14 4AU**
Applicant	:	**Broomleigh Property Management Company Ltd.**
Respondent	:	**Mandisa Investments Ltd.**
Type of Application	:	**Commonhold & Leasehold Reform Act 2002 Section 168(4)**
Tribunal Members	:	**M J Simpson Esq.** **D Bailey Esq.**
Date of Decision	:	**29TH July 2013.**

DECISION

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1. **The Respondent Company has breached, and continues to be in breach of, the Covenants set out in the Lease at the Fourth Schedule, Clause (3) [floor covering], Clause (7) [obstruction of balcony] and Clause (15) [increase in insurance premium], and the Fifth Schedule Clauses (3.1.1) [repair], (6) [Building Regs]and (18) [nuisance].**

2. **The alleged breaches of the Fifth Schedule Clauses (3.2) [floor renewal], (5) [consent for alterations] and (8) [entry for inspection] are not made out.**

Application.

On 26th February 2013 the Applicant Management Company lodged an application seeking, as a prelude to possible forfeiture proceedings, a determination that the Respondent tenant had breached 9 Covenants in the Lease

The matter was originally thought suitable for a paper determination and Directions given on 28th February. The Applicant complied with those Directions. The Respondent did not. Further Directions were given for an Oral Hearing preceded by an inspection, and for the Respondent to file the written case upon which it relied. That was not filed and served until the working day before the hearing, but, despite the terms of the Order of 20th May, the Tribunal allowed the representations to be admitted in evidence.

Inspection.

On the morning of 29th July 2013, preceding the hearing, we inspected Flat 9 (the subject property) and Flats 8 & 7. The inspection was in the presence of Mr Baig, the Director of the Respondent Company, Mr Foster (Counsel for the Applicant), his instructing solicitor, a representative of the Managing Agents and a Director of the Applicant Management Company.

In Flat 9 we observed the position, in the kitchen, of the water and waste pipes and water using kitchen appliances. A limited view was possible of the pipe work under the kitchen units. We observed the nature and extent of the floor tiling in both the kitchen and the hallway and bedroom corridor. We inspected the, now apparently disused, shower room and went out onto the balcony from an upper bedroom.

We inspected the 2 flats immediately below Flat 9 so as to see the location and extent of the previous ingress of water from Flat 9, to view the current condition and to relate that information to the layout of Flat 9 above. Most of the extensive previous water damage had been repaired and redecorated.

Lease

There is no issue between the parties that the Respondent is the Leaseholder under the 999 year lease, granted to its predecessor in title, dated 18th January 1995.

It provides for the Lessee to observe and perform the Covenants, the breach of which is now alleged.

Hearing.

Mr Foster of Counsel represented the Applicant. Mr Baig represented his Company, the Respondent.

With the agreement of both of the representatives, we dealt with each alleged breach in turn. Mr Foster made representations with reference to the extensive documentary evidence filed and served by the Applicant and Mr Baig replied with his own evidence and with reference to the recently supplied documentation from the Respondent.

We also heard oral evidence from Mr Gary Denman of Aspray Property Services, a plumber who had inspected the plumbing at Flat 9 on at least 2 occasions and had prepared detailed reports which were with the Applicant's hearing bundle. Mr Baig was afforded the opportunity to question Mr Denman.

Both representatives were afforded the opportunity to make closing submissions. Neither party averred that there was any submissions of law and both maintained that the Tribunal's task was one of fact finding, and the application of those facts to the Covenants in the Lease.

Determination.

Fifth Schedule. Clause (3).1.1 *To keep the premises in good and substantial repair and condition and as often as may be required to renew and keep clean the same.*

We find the Respondent Company to be in breach of this Covenant, by failing to keep the plumbing, especially the water supply and the waste water disposal systems, in good and substantial repair and condition, and failing to reasonably prevent the egress of water to the flats below.

We so find because Mr Baig accepted that there had been at least 8 leaks, some of very substantial amounts, between 2009 and January 2013, as set out in the schedule at page 7 of the Applicants' evidence.

We accept the evidence of Mr Denman, both orally at the hearing, and in his reports, that the plumbing was and is (potentially) liable to failure. The pipe work is defective (as set out in his report of 19th March 2013). The dishwasher and washing machine are inadequately piped and plumbed. The shower room (currently, on our inspection, used as a store room) has both wall and floor tiling that is un-grouted. There is incomplete tiling in the kitchen, such that even the use of a surfeit of water when mopping the floor would be likely to penetrate the walls/ceilings because the floor is not sealed. Much of this is corroborated by the Schedule of condition and photographs prepared by Ian W Willoughby FRICS after an inspection on 11th November 2011.

It is not a case of an isolated incident. Damage in excess of £35000 has been caused over the period in question. The flat was a shell and has been fitted out by the Respondent Company or its predecessors in title.

Fifth Schedule Clause (3).2. *Not to carry out any work of repair renewal or maintenance to the floor or ceiling of the premises unless he has previously given notice to the Adjoining Occupier,*

We do not find the Respondent Company to be in breach of this Covenant by the installation of tiled flooring in the hallways, corridor and kitchen. The floor was not taken up. It was nor repaired or renewed or maintained by the installation of ceramic floor tiles.

The installation, as seen on our inspection, is, however, a clear and unequivocal breach of Clause (3) of Schedule Four *"To keep the floors.... covered with carpet and underfelt or with such other effective sound deading (sic) floor materials etc"*

Fifth Schedule Clause (5), *Not without the previous consent in writing of the Company to make.... any structural alteration to the Premises ....nor to erect or remove any internal partition for dividing rooms.*

We do not find the Respondent Company to be in breach of its Covenant. The property was bought as a shell. There is no evidence of structural alterations to load bearing walls etc. The only additions have been the partition walls in more or less identical format to the two lower flats that we inspected. Whilst there is no documentary evidence of approval of plans, such as those produced by the Applicant in respect of Flat 8, there is no suggestion that the structure or partitioning is inappropriate or should not have been undertaken. The consent to do in Flat 9 what has been done in all the other flats could well have been implied at the time of sale as a shell. Had written consent been sought we can not envisage that it would have been reasonably refused, or that the Applicant would have been able to exercise the degree of control over the workmanship that it now avers was lacking at the time.

We accept that defective plumbing was installed, but do not find that of itself to be a breach of this Covenant in the way that it is a breach in respect of several other Covenants.

Fifth Schedule Clause (6). *To comply ...with the bye-laws and regulations...prescribed by any competent authority.....in respect of ...alterations or additions to the Premises.*

We find that the Respondent Company is in breach of this Covenant. The nature and extent of the fitting out of the premises certainly required Building Regulations, Consent and approval. There is no evidence in the Respondent's representation and evidence of any such approval. Indeed there is positive evidence in the form of the email from Planning and Building Control Department of Trafford Council dated 14th March 2013, that no such approval or consent was sought.

This breach is germane to the Applicant's issues regarding Flat 9. It is unlikely that a Building inspector would have approved the plumbing and shower room construction. The absence of a Completion Certificate supports the Applicant's contention as to breach of this Covenant.

Fifth Schedule Clause (8). *To permit the Company and their respective agents at all reasonable times to enter upon the premises to examine the state and condition of the same,*

We do not find the Respondent Company to be in breach of this Covenant. There were difficulties in contacting Mr Baig. These have been replicated during this Tribunal process. It may be that the deteriorating relationship between the persons involved on both sides contributed to a lack of cooperation. Mr Baig, on behalf of the Respondent Company, responded to the request with a series of questions. That may have been stalling tactics, but we do not find the evidence of refusal to be sufficiently cogent to justify a finding of breach.

Fifth Schedule Clause (18), *to ensure that nothing shall at any time be done on the premises that shall be a nuisance or annoyance to any part of the Estate or its occupiers.*

We find the Respondent Company to be in breach of this Covenant.

The leakage of water onto adjoining premises is a nuisance both in the ordinary sense of the word and in the strict legal sense of the Tort of Nuisance. Mr Baig accepts the frequency of water ingress to the flats below. We find that, from our inspection of the premises and Flats 8 & 7, and the log at appendix A7 of the Applicant's representations, that the problem has not been solved and continues, albeit to a lesser degree than the deluge of May 2011, to be a potential, and occasionally an actual, nuisance.

Fifth Schedule Clause (7). *Not to obstruct... the entrance ways, staircases landing and passageways of the Building.*

This relates to the 'Balcony' which we inspected and of which we have seen earlier photographs. It is not included in the Respondent's demise. If that was a mistake it has never been rectified. The Applicant is correct when it avers that it is part of 'the building'. It affords passage and access to parts of the roof, a roof light that illuminates a landing below and a velux window that illuminates an adjoining flat.

The covering of the balcony was asphalt felt. The Respondent Company, in 2011, installed decking and assumed use of the balcony as a leisure area. The Report and photographs of C & H Chartered Valuation Surveyors (18th May 2012) confirm the obstruction and possible damage caused by the decking.

The decking and sub-frame was uplifted and remains stored on part of the balcony passageway.

The installation of the decking and sub-frame was a breach of this Covenant and the storage of the timber and remnants of the leisure apparatus is a continuing breach.

Fourth Schedule Clause (15). *Not to do or suffer anything to be done which may vitiate any insurance in respect of the Estate or cause an increase in the premium payable in respect thereof.*

Mr Baig accepted that the frequent leaks from Flat 9 to the two flats below and the insurance claims arising from them had led to an increase in premiums. The documented evidence was that the increase was over £1800 pa.

In view of our findings regarding a failure to repair, causing nuisance and failure to comply with bye-laws we are satisfied that the Respondent Company has allowed ('*suffered*') things to be done (the persistent use of defective plumbing and/or unsealed tiled flooring) which have caused an increase in the insurance premium payable.

The Respondent Company is accordingly in breach of this Covenant