



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

Case Reference : LON/00AT/LBC/2015/0062
LON/00AT/LBC/2015/0276

Property : Ground Floor Flat, 19 Vaughan
Avenue, London, W6 0AX

Applicant : Raymond and John Zucconi

Representative : Gary Thompson, Chartered
Surveyor

Respondents : William and Lucille Lataaya-
Malokweza

Representative : No appearance

Type of Application : 1. Declaration as to a breach of
covenant – section 168(4)
Commonhold and Leasehold
Reform Act 2002
2. Determination of the
reasonableness and the liability to
pay a service charge

Tribunal Members : Judge Robert Latham
Hugh Geddes RIBA MRTPI

**Date and venue of
Paper Determination** : 22 October 2015
at 10 Alfred Place, London WC1E 7LR

Date of Decision : 22 October 2015

DECISION

(i) The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, a breach of the lease has occurred in that the Respondents have erected a brick built extension and a conservatory in breach of Clause 3(8) of their lease.

(ii) The Tribunal determines that the sum of £763.81 is payable in respect of the insurance premium for 2014/5.

(iii) The Tribunal determines that the Respondents shall pay the Applicants £280 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Applications

1. By two applications dated 23 June 2015, the Applicants seek:
 - (i) a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that the Respondent tenants are in breach of three clauses of their lease of the Ground Floor Flat, 19 Vaughan Avenue, London, W6 0XS (“the Flat”) by reason of the erection of a brick built extension and a conservatory.
 - (ii) a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the payability and reasonableness of an insurance premium payable for the year 2014/5.
2. On 28 July 2015, the Tribunal gave Directions. The Tribunal was anxious to ensure that these proceedings were brought to the attention of anyone living in the Flat or in a garden shed that has been erected in the rear of the garden. On 1 August, Mr Mark Thompson attended the premises and knocked on the door and the bay window of the Flat. There was no reply. It appeared vacant. He accessed the rear garden and noticed shoes and other items of clothing left outside the shed at the rear of the garden. He pinned a copy of the Directions to the door of the shed and posted a copy under the front door of the Flat.
3. The Applicants have served their statement of case and supporting documentation as directed by the Tribunal. The Respondents have played no part in these proceedings.
4. At the hearing, Mr Gary Thompson FRICS appeared on behalf of the Applicants. He was accompanied by Mr Raymond Zucconi. The Respondents did not appear.
5. Mr Raymond Zucconi is aged 77. Mr John Zucconi, his brother, is aged 79. Mr John Zucconi recently had a stroke. They are anxious to occupy the first floor flat.

The Law

6. Section 168 of the 2002 Act provides as follows:
- (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
- (2) This subsection is satisfied if—
- (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
 - (b) the tenant has admitted the breach, or
 - (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
- (3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
- (4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
7. Strictly, all this Tribunal is asked to determine is whether the Respondents have breached a term of their lease. It is not for this Tribunal to anticipate any order that another Court might make on a forfeiture application.

The Background

8. In 1982, the Applicants purchased the property at 19 Vaughan Avenue. There was a sitting tenant who occupied the first floor flat. On 20 December 1982, the Applicants granted a lease of the Flat to the Respondents.
9. The sitting tenant died a few years later. Thereafter, the Applicants let the flat under a series of assured shorthold tenancies.
10. In 1995, the Respondents erected a brick built extension at the rear of the ground floor flat. When the First Applicant challenged them about this, they responded that they had a growing family and needed additional space.
11. In 2005, the First Applicant became aware that the Respondents had erected a conservatory to the rear of the ground floor flat adjacent to the brick extension.

12. In 2005, the Applicants engaged Mr Thompson to help them to resolve the situation. Several attempts were made to speak with the Respondents. On 5 May 2007, Mr Thompson wrote to the First Respondent seeking access to inspect the Flat on 9 May. Mr Thompson visited the premises on 9 May, but was unable to gain access to the Flat. However, he was able to confirm that the structures had been erected. On 7 June, he wrote requiring the Respondents to remedy the breach and referred to the landlords' right to take forfeiture proceedings. He sent a further letter on 12 July. This letter was received by the Respondents who responded on 23 July stating that he had used the wrong post code. They stated that they wished to convene "to discourse the issues raised in your letter".
13. Both parties put the matter in the hands of their solicitors. We are told that this correspondence ceased in 2011, when Farrell Matthews & Weir, Solicitors, informed Mr Thompson that they were no longer acting for the Respondents.
14. In 2014, the First Applicant refurbished the first floor flat so that he could occupy it with his brother. His brother had just had a stroke. There was a third bedroom for a carer. They were unable to move into the flat because damp appeared on the walls in the kitchen.
15. The First Applicant arranged for Mr Thompson to inspect the first floor flat. He did so on 15 May and we have been provided with his report dated 3 June 2014. A visual inspection of the exterior of guttering to the exterior of the east elevation kitchen wall revealed the guttering to be blocked causing the damp problem to the upper flat. There was also evidence that the chimney chamber had been affected by the water and there were signs of deterioration. The two extensions prevented proper access to the affected areas to inspect and carry out repairs. Mr Thompson was satisfied that the extension and conservatory should be removed or modified to allow proper maintenance. There was no evidence that the felt covered roof was capable of supporting any ladders or scaffolding. There is no evidence that Respondents sought planning permission or building control approval for these structures.
16. The current situation is highly unsatisfactory. The Applicants are unable to occupy the first floor flat because of the damp. It seems that the ground floor flat has been empty since 2014. The Respondents have also erected a shed at the rear of the garden in which it seems that someone has been sleeping.
17. On 1 November 2014, the First Applicant demanded payment of the insurance rent of £763.81 for 2014/5. The demand was accompanied by the requisite Summary of Rights and Obligations. Further demands were made on 3 November, 17 December and 2 April 2015. The Respondents have not paid this sum. The Applicants claim an administration charge of £100 in respect of the last two demands.

The Lease

18. By Clause 3(8) of the lease, the tenants covenant:

“Not to cut maim or injure any of the structural parts roofs wall of the flat or make any structural alterations or additions to the flat”.

Our Determination

19. The Tribunal is satisfied that the Respondents have erected the brick built extension and the conservatory in breach of Clause 3(8) of the lease.

20. Mr Thompson also sought to argue that Respondents are in breach of (a) Clause 3(12)(a) in that the structures have had an adverse impact on the insurance of the premises; and (b) paragraph 1 of the Third Schedule of the lease in that the structures were an act of “nuisance damage annoyance or convenience to the Landlord”. No evidence was adduced that these structures had had an adverse impact on the insurance. Further, we are satisfied that the paragraph 1 of the Third Schedule relates to the conduct of the tenant rather than to structural additions. The matters of which complaint is made is rather covered by Clause 3(8) of the lease.

21. We are satisfied that the insurance rent of £763.81 is both payable and reasonable.

22. We do not allow the additional claim for the administration charge of £100. Mr Thompsons sought to justify this as expenses incurred by the landlord “incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925” under Clause 3(13) of the lease. We have had to regard to the Court of Appeal decision in *Freeholders of 69 Marina v Oram* (“69 Marina”) [2011] EWCA Civ 1258; [2012] L&TR 4 and the decision of the Upper Tribunal in *Barrett v Robinson* (“Barrett”) [2014] UKUT 0322 (LC). In *Barrett*, the Deputy President, Martin Rodger QC, gave guidance on how *69 Marina* should be applied by Tribunals. Having regard to his guidance at [51] and [52], we conclude that these are no more than routine rent collection letters. None of the letters refer to the possibility of forfeiture.

23. At the hearing, Mr Thompson made an application for a refund of the fees that he had paid in respect of the application and hearing¹. In the light of our findings, we are satisfied that the Respondents should refund the fees of £280 paid by the Applicants within 28 days of the date of this decision.

Judge Robert Latham

22 October 2015

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

