



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

Case Reference : LON/00AU/LBC/2017/0002

Property : Flat 1, 96 Tollington Way, London
N7 6RY

Applicant : Assethold Limited

Respondent : Mr John Lam

Type of Application : Application for determination
under section 168(4) Commonhold
and Leasehold Reform Act 2002
(breach of covenant in lease)

Tribunal Members : Judge P Korn
Mr K Cartwright
Mrs J Hawkins

In attendance : Mr R Gurvits and Mr Y Lieberman
of Eagerstates Limited, managing
agents for the Applicant

Venue : 10 Alfred Place, London WC1E 7LR

Date of Decision : 2nd March 2017

DECISION

Decision of the Tribunal

(1) The Tribunal determines that, on the basis of the evidence provided, breaches of covenant under the Respondent's lease have occurred.

(2) More specifically, for the reasons given below, the Respondent is in breach of the covenants contained in paragraphs 4, 5 and 6 of the Fourth Schedule and of the covenant contained in a combination of paragraph 30 of the Fourth Schedule and paragraph 2 of the Eighth Schedule of his lease. The Applicant has not demonstrated to our satisfaction that the Respondent is in breach of any of the other covenants contained in his lease.

The application

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") that breaches of covenant have occurred under the Respondent's lease.
2. The Respondent is the leaseholder of the Property and the Applicant is his landlord. The Respondent's lease ("**the Lease**") is dated 29th June 2001 and was originally made between Rosedale Construction Limited (1) and Jennifer Crisp (2).
3. Clause 3 of the Lease reads as follows: "*The Tenant covenants with the Landlord to observe and perform the covenants and obligations contained in the Fourth Schedule hereto*". Of the covenants contained in the Fourth Schedule the Applicant contends that the Respondent is in breach of covenants contained in paragraphs 4, 5, 6, 23.1, 23.2 and 30.
4. The Applicant has submitted a written statement of case but the Respondent has not made any representations or submissions.
5. Prior to the hearing the Tribunal inspected the Property in the presence of Mr Gurvits and Mr Lieberman of Eagerstates Limited, but the Respondent did not attend the inspection. Mr Gurvits and Mr Lieberman both attended the hearing itself, but again the Respondent did not attend.
6. The building of which the Property forms part is a Victorian terraced house converted into five flats. The Property is a ground floor studio flat with a kitchen and separate bathroom.

Inspection

7. At the inspection it was noted that leaks from the flat above had caused part of the ceiling to collapse. No gas, water or electricity was available.

The Property was unoccupied and was in poor condition. There were many cobwebs and the Property was in need of a thorough clean and redecoration.

Details of covenants relied on by Applicant

8. Paragraph 4 of Fourth Schedule

“To put and keep in good and substantial repair and condition the whole of the Premises and every part thereof ... and to keep the Premises clean and tidy and to clean all windows in the Premises at least once in every month”.

Paragraph 5 of Fourth Schedule

“In the third year of the Term and in every third year of the Term thereafter ... to decorate completely in accordance with then current good practice all the parts of the interior of the Premises which have been or ought to be or normally are so decorated ...”.

Paragraph 6 of Fourth Schedule

“To permit the Landlord and those authorised by him and others so entitled to exercise the Reserved Rights and not to interfere with the exercise of any of them”.

Paragraph 23.1 of Fourth Schedule

“Not to do anything whereby any policy of insurance on including or in any way relating to the Premises taken out by the Landlord may become void or voidable or whereby the rate of premium thereon may be increased ...”.

Paragraph 23.2 of Fourth Schedule

“In the event of the Premises or any part thereof being destroyed or damaged to give notice thereof to the Landlord as soon as possible after such destruction or damage shall have come to the notice of the Tenant”.

Paragraph 30 of Fourth Schedule

“To observe and conform to the regulations set out in the Eighth Schedule hereto ...”.

Paragraph 2 of Eighth Schedule

“To keep clean the windows of the Premises ...”.

Paragraph 3 of Eighth Schedule

“To protect all water pipes and outlets in or on or exclusively serving the Premises against freezing of water therein”.

Applicant’s case

9. The Applicant’s case consists of the application, a copy of the Lease, office copy title entries, some correspondence, a copy of a court order, a statement of case and a witness statement by Mr Gurvits.
10. The witness statement sets out a basic chronology of events and is self-explanatory. The court order followed a hearing on 4th October 2016 and ordered the Respondent within 48 hours to provide the Applicant and/or its contractors with access to the Property for the purpose of inspection and carrying out any necessary remedial works.
11. The Applicant’s statement of case and Mr Gurvits’ witness statement detail the Applicant’s submissions regarding various alleged breaches of covenant. They refer to the state of the Premises, the inability of the Applicant to gain access until it obtained the court order referred to above, reports of water ingress and the cutting off of utility supplies.

Respondent’s lack of response

12. The Respondent has made no representations or submissions and did not attend the inspection or the hearing.

The statutory provisions

13. The relevant parts of section 168 of the 2002 Act provide 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 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.

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

Tribunal’s analysis

14. We note that neither the Tribunal nor the Applicant has received any communication from the Respondent in connection with these proceedings. This is a concern, as the application can be – and in this case is expressed to be – a prelude to the commencement of forfeiture proceedings. However, communications have not merely been sent to the address of the Property, and we are satisfied that the Applicant has made reasonable efforts to contact the Respondent. In addition, it has written to the Respondent’s mortgagee and has received a written response from the mortgagee, albeit only to state that the mortgagee has written to the Respondent.

15. Paragraph 4 of Fourth Schedule

The first part of this paragraph is a covenant to put and keep the Property in good condition. It was apparent from our inspection that the Property was not in good condition, and no representations have been received from the Respondent. Whilst the ceiling damage itself is unlikely to be the fault of the Respondent, there were several other parts of the Property which were in poor condition, and we are satisfied that the Respondent is in breach of this covenant.

The second part of this paragraph contains covenants to keep the Premises clean and tidy and to clean all windows in the Premises at least once in every month. The Premises are clearly neither clean nor tidy. As regards the windows, whilst by the Applicant’s own admission the outside of the windows have not been cleaned for a while (apparently at the request of other leaseholders in order to reduce the service charge), the interior of the windows were clearly dirty and would not have been cleaned for some considerable time. Therefore the Respondent is also in breach of the covenants contained in the second part of this paragraph.

16. Paragraph 5 of Fourth Schedule

This is a covenant to decorate the Property every third year. The decorative state of the Property was very poor. For example, there were thick cobwebs, the internal window frames and ledges had been badly

neglected and the internal walls needed decorating. Therefore, we are satisfied that the Respondent is in breach of this covenant.

17. Paragraph 6 of Fourth Schedule

This paragraph obliges the tenant to allow the landlord to exercise the "Reserved Rights". These are the rights contained in the Third Schedule and include a right to enter onto the Property at all reasonable times upon prior notice (except in emergency) for viewing and inspection. We are satisfied on the basis of the evidence provided that the Respondent is in breach of this paragraph. There is evidence of the Applicant having written to the Respondent several times requesting access and there is a court order granting the Applicant access within 48 hours of the hearing at which the court order was made. Therefore, the Respondent is in breach of this covenant.

18. Paragraph 23.1 of Fourth Schedule

This is a covenant not to do anything which may cause the building insurance policy to become void or voidable or whereby the rate of premium may be increased. At the hearing the Applicant struggled to explain what concrete actions the Respondent had taken in breach of this covenant, and it would seem that the Applicant is relying on certain omissions on the part of the Respondent, namely his failure to report water damage, failure to permit entry and failure to maintain a heating supply. The failure to permit entry could in appropriate circumstances be an active refusal, but in this case there has simply been no communication. No legal authority has been brought by the Applicant in support of its position on this issue, and on balance our view is that these omissions do not by themselves amount to a breach of this particular covenant. Therefore, the Respondent is not in breach of this covenant.

19. Paragraph 23.2 of Fourth Schedule

This contains a covenant to notify the landlord of damage as soon as the tenant becomes aware of such damage. On the basis of the Applicant's own evidence it would seem that the Respondent has effectively abandoned the Property, and the Applicant has received no communications from him. In the circumstances we are not satisfied that he is aware of the damage and therefore in our view the Respondent is not in breach of this covenant on the basis of the evidence provided.

20. Paragraph 30 of Fourth Schedule and Paragraph 2 of Eighth Schedule

This is a covenant to clean the inside of the windows. As noted above, the Applicant has not cleaned the outside of the windows, but

nevertheless we are satisfied that the Respondent has not cleaned the interior of the windows for some considerable time and that therefore he is in breach of this covenant.

21. Paragraph 30 of Fourth Schedule and Paragraph 3 of Eighth Schedule

This is a covenant to protect water pipes and outlets against freezing of water. The Applicant's case rests on an alleged failure to heat the Property and the apparent general abandonment of the Property by the Respondent. In the absence of more detailed evidence as to the Respondent's failings in this regard and/or evidence of the practical effects on those pipes and outlets we are not persuaded that the Respondent is in breach of this covenant.

Cost applications

22. No cost applications have been made.

Name: Judge P Korn (Chairman) **Date:** 2nd March 2017

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.