

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL**

Case number : CAM/42UH/LBC/2008/0009

- Property** : Flat 1B, Wedgwood Court, 1-2 North Parade, Lowestoft, Suffolk NR32 4PB
- Application** : For determination that the Respondent is in breach of a covenant or condition in a lease between the parties [Commonhold and Leasehold Reform Act 2002, s.168(4)]
- Applicant** : Wedgwood Court Residents Association Ltd, c/o Debenhams Ottoway, solicitors, of Ivy House, 107 St Peter's Street, St Albans, Hertfordshire AL1 3EW
- Respondent** : Timothy Lewis, of Flat 1B, Wedgwood Court, above

DECISION

following a paper determination

Handed down 28th October 2008

Tribunal : G K Sinclair, E A Pennington FRICS, R S Rehahn

Summary

1. This application concerns premises which have been unoccupied for approximately 18 years. The only known address for the tenant is that of the demised premises. He has therefore been served at the address of the mortgagee appearing in the charges register to the registered leasehold title to the flat.
2. For the reasons which follow the tribunal determines that the Respondent is in breach of the various covenants relied upon in the lease dated 12th May 1983, namely by failing
 - a. To keep the interior of the demised premises, namely Flat 1B Wedgwood Court, above well and substantially repaired etc, and
 - b. To pay ground rent and service charges in respect of the flat for each of the lease years commencing 1st April 2003, and continuing.

The law

3. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides :
 - (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 a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
 - (5) ...
4. Section 169 contains supplementary provisions which this decision need not record.
5. The question whether a lease is forfeit therefore remains one for the court, as is the exercise of its discretion to grant relief against forfeiture; an issue which in the context of a long lease is likely to be of considerable concern to any mortgagee of the tenant's leasehold interest.

The lease

6. As noted above, the relevant lease is dated 12th May 1983. The original parties were Colin Lewis-Chapman (as landlord) and Linda Kay Proctor (as tenant). The term granted is a period of 999 years from 1st June 1981, at a yearly rent of £25 payable in advance on 25th March and by way of further and additional rent a specified contribution towards the Service Charge.
7. The tenant's principal covenants appear in clause 2; those material to this enquiry being
- (1) to pay the reserved rent at the times and manner stated and without deduction
 - (2) to pay without deduction by way of further or additional rent a proportionate part of the expenses and outgoings incurred by the landlord in the repair, maintenance, renewal and insurance of the building and provision of services, etc as set out in the 4th Schedule
 - (6) to pay the landlord's costs charges and expenses incidental to the preparation of a section 146 notice
 - (7) to decorate the flat internally
 - (8) to keep the flat well and substantially repaired cleansed maintained and renewed
 - (23) to make good all damage caused through the act or default of the tenant
 - (a) to any part of the building
 - (b) to any other occupier or tenant of the building.

Manner of determination

8. As the tribunal office has received no response to the application and directions from the Respondent (who was served at the address of the demised premises), and the evidence provided – including the various surveyor's schedules of condition and dilapidation – disclosed that a further inspection by the tribunal would be unnecessary, none was arranged. The tribunal received no request for an oral hearing and so elected to deal with the application by way of a determination on the papers provided.

9. The tribunal notified Barclays plc (trading as The Woolwich), Meridian House, Anchor Boulevard, Crossways Business Park, Dartford, Kent DA2 6QU (named in the registered leasehold title to the flat as mortgagee of the Respondent tenant's interest in these premises) of the making of this application to the tribunal. Despite that, there has been no response from the mortgagee.
10. However, in response to earlier correspondence from the landlord's managing agent in 2004, demanding payment of outstanding service charges, the mortgagee by letter dated 18th November 2004 had observed that :
- In view of our customer's right to have any service charges assessed under sections 81 & 82 of the Housing Act 1996, we do not intend to take any action at this stage.
- ...
- If you do take any legal action at any time please advise us immediately and send copies of the relevant documents.
11. In making its determination the tribunal had before it, in addition to the application form and a copy of the lease, a witness statement dated 29th September 2008 by Keith Moore of GEM Estate Management Ltd, the Applicants' managing agent. This confirmed that for the periods up to 31st March 2003 the tenant's mortgagee had paid the outstanding ground rent and service charges, but that thereafter this stopped. Mr Moore exhibited to his statement (at KM5) a statement of account showing the accumulating balance at 31st March 2003, 2004, 2005, 2006 & 2007, including debt recovery costs and court references and judgment dates. As at 22nd January 2008 (the last judgment obtained) the total outstanding was £6,033.75. Also exhibited were copies of the various judgments, all entered in default. It seems to the tribunal that these judgments are sufficient to satisfy section 81 of the Housing Act 1996.
12. Mr Moore's statement also referred to inspections of the flat which had been undertaken by the landlord's surveyor. The surveyor's schedules of condition and dilapidation dated November 2000 and April 2001 respectively, plus an Addendum to the latter produced in about March 2007, are exhibited. Much of the deterioration – such as mould growth, staining to wallpaper and corrosion to boiler, radiator and stainless steel sink – would appear to have been caused by the effects of damp, inevitable if the premises have been left unoccupied and unheated for around 18 years. In addition some ceiling and other damage has been caused by leaking from within the ceiling. Whether this particular aspect is the fault of the tenant is uncertain, but with premises not in use it can only have gone undetected for much longer than would otherwise have been the case.

Determination

13. Based upon the evidence produced by the Applicant, and with a complete lack of interest in these proceedings shown by either the tenant or his mortgagee, the tribunal has no hesitation in finding that the tenant is indeed in breach of various covenants in the lease relating both to the condition of the flat and to the obligation to make payment to the landlord as and when and in the amounts required, viz
- a. To keep the interior of the demised premises, namely Flat 1B Wedgwood Court, above well and substantially repaired etc, and
 - b. To pay ground rent and service charges in respect of the flat for each of the lease

years commencing 1st April 2003, for which judgments have been entered on 29th December 2004 (Newcastle upon Tyne County Court), 4th October 2005, 19th April 2007 and 22nd January 2008 (all Hitchin County Court), such sums totalling £6,033.75 so far.

Dated 28th October 2008



Graham Sinclair – Chairman
for the Leasehold Valuation Tribunal