

RESIDENTIAL PROPERTY TRIBUNAL SERVICELEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT
PANEL

CASE NUMBER CAM/26UD/LBC/2008/0010

IN THE MATTER OF: 37 COWBRIDGE HERTFORD HERTFORDSHIRE SG14 1PN

IN THE MATTER OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002
SECTION 168(4)Parties: D & M Clayton ApplicantsMr W O L Ajao Respondent

Representations: Mr & Mrs Clayton represented themselves

Mr Ajao took no part in the proceedings

Date of Application: 11 September 2008

Date of Hearing : 10 February 2009

Tribunal Members : Mr A A Dutton Chair
Mr J R Humphrys FRICS
Mr A K Kapur

Date of Decision : 18 February 2009

REASONS/DECISION

A. BACKGROUND:

1. This application under s168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") was made by Mr Miles and Mrs Daniela Clayton who are the freehold owners of the property at 37-39 Cowbridge, Hertford, Hertfordshire. The application which is dated 11 September 2008 indicated that they sought permission to serve a Notice under s146 of the Law of Property Act 1925.
2. The basis of the dispute was that the Respondent, Mr Ajao, had at a meeting with Mr Clayton in May 2008, purportedly agreed to contribute certain monies in connection with the repair of the balcony to the rear of the property and to make payments due under the terms of the lease in connection with the insurance of the building. Further it was alleged that the Respondent had agreed to make regular maintenance payments either of £250 per annum or £20.80 per month. Finally it was alleged that the inside of the flat was "in a terrible condition and that the tenant had breached the repairing covenants of the lease dated 12 January 1987".
3. The matter came before the Tribunal for consideration on the 10th February 2009 and at that time the Tribunal had before it a hearing bundle which had been prepared, it appears by the solicitors originally instructed to act on behalf of Mr & Mrs Clayton, Legalese of Northampton. The bundle produced at the hearing contained various matters including Witness Statements from Mr & Mrs Clayton, the lease, Minutes of the meeting dated 16 May 2008 and correspondence.
4. It is right to record that Mr Ajao took no part in the proceedings. He did not comply with the Directions Order made by the Tribunal on 28 October 2008 and did not attend the hearing on 10 February 2009; further he was not in occupation when the Tribunal attempted to inspect the interior of his property prior to the hearing, although he had been notified both of the hearing and the prior inspection.

B. INSPECTION of 37-39 Cowbridge:

5. We were able to make an external inspection of the property and also an internal inspection of the premises occupied by Mr & Mrs Clayton for their business use.

6. The premises consist of two storeys with residential accommodation on the top floor and the ground floor being taken up by the premises occupied by Mr & Mrs Clayton and an Indian take-away. To the rear, externally, there was a somewhat ramshackle covered area which we were told was to be the subject of development. We were able to see from this inspection that a covered passageway to the rear was the subject of damp ingress to the ceiling and supporting beams, possibly from the Respondent's bathroom. In addition, to the rear, was a balcony come fire escape which ran the length of the double glazed patio doors to the Respondent's living room. This was served by some uneven and slippery steps and was covered with broken tiles through which water appeared to be seeping, as evidenced by the dampness on the underside of the balcony and the damp problems that were apparent on one of the downstairs toilets serving the Applicants office. We noted that the wooden window frames to the rear of the property were in a very poor condition and to the front appeared not to have been decorated for some time. The roof of the property was in need of care and attention and the external rendering required decoration. There was evidence of damp to the front elevation, in particular at ground level which appeared to be caused by a leaking gutter.
7. Within Mr & Mrs Clayton's premises we did see further evidence of water ingress in a small lobby adjacent to the toilets, in addition to the problems we have previously mentioned in respect of the toilet and covered passageway. It is likely that there will also be some damp in an under-stairs cupboard in the front office but we could not access same properly at the time of our inspection.

C. THE LEASE:

8. The lease contains onerous repairing obligations on the Respondent. Although we were not provided with a complete copy of the Respondent's lease we were given a copy of the lease to 39 Cowbridge which was a bed-sit accommodation above the Indian take-away. We were informed that the terms were the same. Assuming that to be the case it appears that the lease provides for the Respondent to externally decorate every three years; internally decorate every seven years; and to be responsible to maintain the roof and provide support and protection for the remainder of the building where that lies below the demised premises. It would seem therefore that the bulk of the roof is the responsibility of the Respondent. In addition it would appear the Respondent has an obligation to pay one-half of the costs of keeping the structure below the demised premises in good and substantial repair. There was also an obligation to pay one-third of the costs for maintaining the shared access. The premises beneath the demised premises would appear to be the whole of the office accommodation occupied by Mr & Mrs Clayton's

business as well as part of the Indian take-away. This appeared to be confirmed by the layout plan attached to the lease.

9. The only obligations that appeared to rest with the Landlord was to observe a covenant for quiet enjoyment, insure the premises and to keep in good repair the structure of the building which support the demised premises and also the entrance halls, stairs and landing leading to the demised premises; it would not appear to include the balcony, the windows or the roof.

D. HEARING:

10. At the hearing Mr & Mrs Clayton attended. Mr Ajao, as we have indicated, did not. They attempted to include in their claim recovery of monies relating to ground rent which is not within our jurisdiction. Further they sought to recover advance payments to contribute towards a maintenance fund, a contribution from Mr Ajao in respect of the alleged problems with the balcony and costs. The building insurance contributions were in the sum of £81.36 for the year April - September 2008 and £162.78 for the year October 2008 – September 2009. They told us that in respect of the insurance they used brokers who went to the market each year to obtain the best price available. They also confirmed they had not complied with s21(B) of the Landlord and Tenant Act 1985 when they sent out demands for insurance.
11. They did tell us that they had tried to resolve matters with Mr Ajao. The meeting had taken place in May 2008 which had not resulted in any payments and despite a number of communications sent to him he had not responded. It was with reluctance therefore that they had instructed solicitors to take the matter further.
12. On the question of costs they confirmed they had not incurred any personal liability but they did have a bill to the solicitors of £1,169 including VAT based on an hourly rate of £140 and asked us to make some allowance for that.

E. THE LAW:

13. The law relating to forfeiture of dwellings is found in s167 and s168 of the Commonhold and Leasehold Reform Act 2004. Section 167 imposes a restriction on the right to exercise a right of re-entry where the sums owing in respect of rent, service charges or administration charges fail to exceed the sum of £500 which is the case in this matter.
14. Under s168 of the Act no Notice under s146 (1) of the Law and Property Act 1925 can be served unless by reason of sub-section (2) it has been determined under sub-section (4)

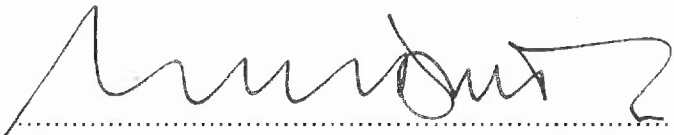
that a breach has occurred or the tenant has admitted the breach or a court or an arbitral tribunal has made a decision that a breach has occurred.

15. Under sub-section (4) of s168 an application can be made to the Leasehold Valuation Tribunal for a determination that a breach of covenant or condition of the lease has occurred.

F. DECISION:

16. We will firstly address those issues for which we do not have jurisdiction or which we find is not covered under the terms of the lease. Although the original application made no mention of ground rent the Applicants did seek to add that as arrears. As we explained to the Applicants we have no jurisdiction to deal with ground rent payments.
17. In addition to ground rent payments the Applicants had attempted to set up a form of Reserve Fund for which they had asked the Respondent to contribute. There is no provision in the lease for such Reserve Fund and whilst it may be good estate management to have monies on account they are not entitled to claim same under the lease and in those circumstances therefore we must dismiss that element of the application.
18. The third matter they asked us to deal with was a contribution towards the making good of the balcony which was, on inspection, in a somewhat unsafe and certainly decrepit condition. Apparently Mr Ajao had agreed to contribute a one-third payment towards making good but he had not done so. We find there is no obligation on Mr Ajao to make this contribution. Instead he appears to have an outright obligation to maintain the balcony and there is not therefore a service charge issue that we can deal with. The Applicants will need to refer the matter to the County Court if they decide to take that element further.
19. Insofar as the building insurance is concerned we were satisfied from the evidence given to us that the premiums payable are reasonable and that the manner by which the Applicants establish the insurance cost through brokers is also reasonable. In those circumstances therefore we find that there are payments due from the Respondent to the Applicant in the sum of £81.36 for the insurance to September 2008 and £162.78 for the insurance to the year September 2009. However, they will need to comply with section 21B of the Act before they can recover the sums due.

20. We turn then to the question of breaches of the lease. Although we were not able to obtain access to the interior of the Respondent's property it was quite clear from an external inspection that the Respondent was not complying with the repairing obligations contained in his lease. The windows to the front of the property, which were exclusive to his premises, had not been decorated for some time. The windows to the rear were in a very poor state of repair and probably in need of complete replacement. The balcony which was within the demise was in poor condition and was clearly leaking water and on the balance of probabilities appeared to be causing damage to the Applicants property. Furthermore inspection of the covered passageway indicated that there was water ingress from above which looking at the plans for the lease would appear to indicate comes from the Respondent's shower room. We can only speculate but it is clear there is water damage and that it coincides with that part of the property within the demise of the Respondent.
21. On that basis we find there are breaches of the lease and that the provisions of s168(2) have been satisfied.
22. It will be for the Applicants to obtain advice as to what steps are now taken to preserve the integrity of the property.
23. We make no order as to costs. The Respondent cannot be said to have acted in a manner provided for in the Act.



Chairman

Dated 18 February 2009.....2009