



Case Number: CHI/00HE/LBC/2009/0040

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

PROPERTY: 3A Buller Quay, East Looe, Cornwall, PL13 1DX

Applicant: Steven David Thorn

and

Respondent: Mr K O'Kane

In The Matter Of

Section 168(4) Commonhold and Leasehold Reform Act 2002

Tribunal

Mr A Cresswell (Chairman)

Mr W Gater FRICS ACI Arb

Date of Hearing: 4 December 2009

DETERMINATION

The Application

1. On 22 October 2009, Bright LLP made an application on behalf of the Applicant freeholder of the property, to the Leasehold Valuation Tribunal for the determination of whether there has been a breach of covenant by the lessee, the Respondent, Mr K O'Kane.

Preliminary Issues

2. The lease supplied by the Applicant relates to 3A Buller Quay, East Looe, Cornwall a two storey maisonette above commercial premises at 3 Buller Quay. The original lease was between different parties, but it is clear from official copies of the title registry that the Applicant is the landlord/lessor and the Respondent the tenant/lessee of 3A Buller Quay, and that the original lease dated 21 June 1996 is the contract between the parties, and contains the covenants and conditions of that contract. The lease is for a term of 999 years commencing on 21 June 1996.

Inspection and Description of Property

3. The Tribunal inspected the property on 4 December 2009 at 15.30. Present at that time was Mrs Sharon Taylor, the tenant in residence on behalf of the Respondent. We also saw the Applicant, Mr Thorn, at the commercial premises below the property, but merely to introduce ourselves and informed him that we could not discuss the case with him as it was to be dealt with by written representations, which he accepted. The property in question consists of a doorway to the street, a staircase and the first floor and second floor of the building at 3 Buller Quay, which is a self contained flat, and which is more particularly described in the lease and detailed below.
4. We had been supplied with photographs of the outside of the building in a submission by the Applicant, and saw for ourselves the following:

Ground floor

External entrance door: New wood scarfed in to lower sides of door frame but not painted. New wooden threshold .As yet no weather strip installed to door.

First Floor

Kitchen : PVCu Double glazed window in good condition 3 years old.
: old wooden casement window * with condensation damage and poor paint internally. Outside lower ledge rotted in poor condition.

Living Room : PVCu Double glazed window in good condition 3 years old.
: bay window with 3 older sliding sash windows.* Significant rot in external cill. Very poor paintwork and condensation damage. 2 of three windows appear difficult to open.

Second floor:

Double bedroom: PVCu Double glazed window in good condition 2 years old.

Bathroom : Old casement window * with condensation damage and decay .

Single bedroom : PVCu Double glazed window in good condition 2 years old.

: Old wooden casement window* .One frame missing and boarded up. Condensation damage and decay.

5. Mrs Taylor informed the Tribunal that an application has been made to the local council to replace the windows shown above marked with * and an inspection and decision is awaited. Whilst the tribunal was only able to inspect the exterior from road level it is apparent that the windows marked * are poorly maintained and in places suffering from progressive decay. The approximate age of replacement windows is given as described by Mrs Taylor.

Summary Decision

6. This case arises out of the Landlord's application, made on 22 October 2009, for the determination of whether there has been a breach of covenant. The Tribunal has determined that the Landlord has demonstrated that there has been a breach of covenant. The breaches found are in respect of the covenant relating to the Tenant's duty to keep in good repair all parts of the Property and all additions to it which this Lease does not make the Landlord's responsibility.

Directions

7. Directions were issued on 26 October 2009. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation

5 of the Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004.

8. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. It was, in particular, provided that the parties should submit, as well as their Statements of Case, copies of all copy correspondence, witness statements and other documents upon which the Applicant relies and copy correspondence, documents or other papers that the Respondent considered relevant to the matters in issue.
9. This determination is made in the light of the documentation submitted in response to those directions and our inspection.

The Law

10. The relevant law is set out in section 168 Commonhold and Leasehold Reform Act 2002.
11. Section 168(1) and (2) Commonhold and Leasehold Reform Act 2002 provide that a landlord may not serve a notice under Section 146 Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined, on an application to the Leasehold Valuation Tribunal under Section 168(4) of the 2002 Act that the breach has occurred.
12. A determination under Section 168(4) does not require the Tribunal to consider any issue relating to the forfeiture other than the question of whether a breach has occurred. The Tribunal's jurisdiction is limited to that question and cannot encompass claims outside that question, nor can it encompass a counterclaim by the Respondent; an application under Section 168(4) can be made only by a landlord.

The Lease

13. The following are relevant Clauses of the Lease dated 21 June 1996. Shown in bold are the clauses relied upon by the Applicant. The Sixth Schedule sets out the landlord's responsibilities:

Clause 3: *THE Tenant AGREES with the Landlord:*

3.6: To keep in good repair all parts of the Property and all additions to it which this Lease does not make the Landlord's responsibility.

FIRST SCHEDULE

The Property

*ALL THAT maisonette being situate on the first floor and second floors of and forming part of the Building which is shown coloured blue on the Plan Number 1 annexed hereto Together With **the external door at ground level the door frame** and the stairs leading to the maisonette from Buller Quay aforesaid. The maisonette includes one-half in depth of the floor joists between the first floor of the Building and the ceilings of the ground floor shop premises and the roof of the Building and the interior (including the plaster) of the external walls between the ceilings of the ground floor shop premises and the roof and all interior walls **and also includes the glass in the windows and the window frames** and Together With all cisterns drains pipes wires ducts and conduits used solely for the purpose of the Property but no others and also Together With all fixtures and fittings in about the Property and not hereinafter expressly excluded from this demise*

SIXTH SCHEDULE

Services to be provided

- (1) Repairing the roof outside main structure and foundations of the Building*
- (2) Contributing a fair proportion of the cost of repairing maintaining and cleaning any of the Building Property or sewers drains pipes wires and cables of which the benefit is shared by occupiers of the Building and occupiers of other property*
- (3) Decorating the outside of the Building once every 3 years*
- (4) Repairing and whenever necessary decorating the common parts*
- (5) Repairing and maintaining those services in the Building which serve both the Property and other parts of the Building*

The Applicant's Case

14. In or around November 2008, the Applicant noticed what he believed to be a failure by the Respondent to comply with the repairing covenant in the lease. Specifically, he noticed that:

On the second floor to the side of the property, the bottom frame of the window was rotten and in an extreme state of disrepair.

On the first floor to the side of the property, the bottom frame of the window was rotten and in an extreme state of disrepair.

The front door, at the side of the property, was rotten at the right hand side of the frame, and the bottom of the frame was missing.

On the second floor, a window glass was missing and the window was boarded up. The window next to that window was rotten and in a state of disrepair.

There was water coming from above and staining the ceiling of the property below the maisonette.

The Applicant communicated with the Respondent's solicitors, and on 26 November 2008 wrote to them regarding the top bay window. On 18 May 2009, the Applicant wrote to the Respondent directly seeking compliance with the lease. On 23 June 2009, the Applicant's solicitors Bright LLP wrote to the Respondent seeking compliance with the lease. The Respondent had failed to respond to the Applicant at all. On 5 October 2009, the Applicant visited the property and took photographs of the windows and frames, which photographs are included with the statement of case. The Applicant believes that the property has remained in the same state between 26 November 2008 and to date.

The Respondent's Case

15. No submissions were received from the Respondent.

Consideration and Determination

Repair

16. The Tribunal finds it clear from examination of the lease that the Respondent is required to keep in good repair all parts of the Property and all additions to it which this Lease does not make the Landlord's responsibility. Explicitly covered are the external door at ground level, the door frame and the glass in the windows and the window frames. As we have noted from our inspection,

the details of which we have recorded above, the windows marked * in our paragraph 4 above are poorly maintained and in places suffering from progressive decay. We accept the unchallenged evidence of the Applicant as to his own findings and the measures he has taken to date to persuade the Respondent to comply with the tenant's covenant of repair in the lease. That being the case, and on the basis of our own observations, we have concluded that there has been a breach by the Respondent of the covenant to repair in Clause 3.6 of the lease.



Andrew Cresswell (Chairman)

Date 6 December 2009

A member of the Southern Leasehold Valuation Tribunal

Appointed by the Lord Chancellor