

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**Southern Rent Assessment Panel
Leasehold Valuation Tribunal
Section 168(4), Commonhold and Leasehold Reform Act 2002**

Case Number: CHI/29UK/LBC/2009/0006

Property: High Treasures, Four Elms, Bough Beech Road, Edenbridge,
Kent TN8 6NE

Applicants: Mr. G.Belcher & Ms. J.Fuller

Respondents: Mr. N.J.Crowhurst & Mrs. C.E.Crowhurst

Appearances

For the Applicants: Mr.S.Clacy

For the Respondents: In person

Date of Directions: 25th March 2009

Date of inspection: 27th July 2009

Date of Hearing: 27th July 2009

Date of Decision: 6th August 2009

Members of the Tribunal

C.H.Harrison Chairman
R.A.Wilkey FRICS FICPD

Background and law

1. The Applicants are the Respondents' landlords under a lease for a term of 99 years from 31st August 1984 of a dwelling, being the first floor flat known as High Treasures, Four Elms, Edenbridge (the premises). The lease is dated 31st August 1984 and was originally made between (1) G.L.Nixon and (2) M.Nixon. The premises demised by the lease include an external staircase from ground level to the first floor entrance to the remainder of the premises.
2. This is an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 by the Applicants concerning their allegation that there have been breaches by the Respondents of covenants in their lease of the premises.
3. Section 168(4) of the 2002 Act enables a landlord under a long lease (which the Respondents' lease is) of a dwelling to apply to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred. The relevance of that provision is that section 168 also provides that such a landlord may not serve a notice under section 146(1) of the Law of Property Act 1925 (as a prelude to forfeiting the lease) in respect of a breach by a tenant of a covenant or condition in the lease unless, among other conditions, it has been finally determined on an application under section 168(4) that the breach has occurred.
4. Clause 2 of the Respondents' lease contains two tenant's covenants which are relevant to this case as follows:
 - (20) *To insure and keep insured at all times during the said term the flat against loss or damage by [various specified risks] normally covered under a comprehensive insurance in some insurance office of repute in the full rebuilding and reinstatement value thereof for the time being and whenever required produce to the Lessor the policy or policies of such insurance and the receipt for the last premium for the same [and the covenant goes on to oblige the tenant to rebuild and reinstate the flat, to the landlord's satisfaction, if it is damaged or destroyed by fire by using the insurance money and, if necessary, the tenant's own money]*
 - (21) *To maintain and renew (without contribution from the [landlord or the tenant of the shop below the premises] the external stairs in a good and tidy state.*

It is clear from the lease that the external stairs referred to in (21) are the external staircase referred to in paragraph 1 above.

Inspection

5. The premises form part of an ageing Victorian building, with brick elevations and a pitch and tile roof, forming a corner property which has a shared side driveway. The outside of the building and the inside of the ground floor shop premises are not in good repair and substantial building work is in progress. The Tribunal was shown the brick wall at the rear of the ground floor shop and current dampness was noted. At the rear of the building there is a metal external staircase including a landing which gives access to the first floor premises. The staircase and landing are, notwithstanding repairs which have been carried out in the past, dilapidated with several corroded parts.

Evidence

Insurance

6. Mr Clay stated on behalf of the Applicants that the Respondents had been asked on five occasions between 17th March 2008 and 8th March 2009 to provide particulars of the insurance of the premises and that, on each occasion, the Respondents had failed to do so. In the belief that the Respondents had not complied with their insurance obligation in clause 2(20) of the lease (there had been some uncertainty whether the insurers had refused to renew the policy or whether it had been cancelled), the Applicants had taken out their own insurance.
7. Mrs Crowhurst gave evidence that the Respondent's former insurance had not been cancelled. She had spoken to the insurers about her concern that the Applicants or their contractors had made alterations to the beams below the premises. She stated that the Respondents had not received a policy renewal reminder from the insurers who, on her telephoning them, told her that they would not renew the insurance. Mrs Crowhurst told the Tribunal that the insurers gave no explanation for their attitude; and she admits that she let the insurance lapse.

The staircase

8. Mr Clacy submitted the staircase is dilapidated and that repair or renewal is needed on two counts. First, the dilapidated staircase is a partial cause of damp to the rear wall of the building below the premises; and, second, third parties, to whom the Applicants may owe a duty of care, may suffer from the dangerous condition.
9. Mr Clacy also confirmed that the Applicants wish to have a constructive dialogue with the Respondents and are willing to work with them towards agreeing a solution for the repair or renewal.
10. Mrs Crowhurst confirmed that she and her husband had sought advice about the damp penetration in March 2008. The Respondents have also sought a quotation for the renewal of the staircase and are advised by the Citizens' Advice Bureau that they may be entitled to a grant towards the cost in the context that Mr Crowhurst is receiving unemployment benefits. Mrs Crowhurst accepts the staircase is dilapidated.

The Tribunal's determination

11. The Tribunal determines that breaches of the tenant's covenants at clauses 2(20) and (21) of the Respondents' lease of the premises have occurred.

Dated 6th August 2009


.....
C.H. Harrison (Chairman)