

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00MS/LBC/2010/0012

REASONS

Application : Section 168(4) Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)

Applicant/Landlord : Peverel Limited

Respondent/Leaseholder : Ms L Rawlins

Property : 18, Asturias Way, Alexandra Quay, Ocean Village, Southampton, SO14 3HT

Lease : the lease of the Property dated 18 December 1990 and made between Pelham Homes Limited (1) Alexandra Quay Management Company Limited (2) and Stephen Paul Eddis (2)

Date of Application : 7 May 2010

Data of Directions : 12 May 2010

Date of Hearing : considered by the Tribunal on 23 July 2010 without a hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, and in accordance with directions given by the Tribunal

Members of the Leasehold Valuation Tribunal : Mr P R Boardman JP MA LLB (Chairman), and Mr A J Mellery-Pratt FRICS

Date of Tribunal’s Reasons : 23 July 2010

Introduction

1. This Application by the Applicant/Landlord is under section 168(4) of the 2002 Act, namely for a determination that a breach of a covenant or condition in the lease has occurred
2. The grounds of the application were that the Property had a leaking overflow pipe which the Respondent/Leaseholder had failed to remedy, in breach of causes 5(iii) and 5(x) of the lease

Documents

3. The documents before the Tribunal are those referred to in these reasons

Inspection

4. The Tribunal inspected the exterior of the Property on the morning of 23 July 2010. Neither of the parties attended. The Tribunal was unable to gain access to the interior of the Property
5. The Property was part of a four-storey, brick faced building, with car parking underneath the building at ground floor level, and with flats above. There was a pathway along the rear wall of the building, looking from Asturias Way. There was an overflow pipe for each storey, apparently for each flat, along the rear wall. The overflow pipe from the Property was leaking continuously during the Tribunal's inspection. Underneath the overflow pipe, damp was rising five brick courses up the wall, and halfway across the path. There was mildew staining on the wall and on the pavements

The Lease

6. For the purposes of these proceedings the material parts of the Lease are as follows :

Definitions

<i>"the Property"</i>	<i>the flat hitherto known as plot 55 which flat is on the first floor of the building of which it forms part and more particularly described in part one of the third schedule to this lease</i>
<i>"Projections"</i>	<i>the eaves balconies bay windows gutters spouts downpipes and similar structures (if any)</i>

Clause 5 (lessee's covenants)

(iii) to keep the Property and everything attached thereto and used solely in connection therewith in good and substantial repair and condition and to deliver up the same to the lessor at the expiration or sooner determination of the term

(x) to cooperate at all times during the term with the Management Company and with the persons interested in the other dwellings below above or beside the Property in all measures necessary for repairing and maintaining renewing rebuilding and upholding the Building of which the Property forms part and forthwith to comply with any directions given by the Surveyor to the lessor or the Management Company, specifying works which are in his opinion necessary for the purposes mentioned in this sub clause

Second schedule

Definition of Main Structures

The whole of the building including the main walls foundations timber and roofs of the

building comprising flats..... but excluding therefrom those parts of the interior which consist of separate flats such flats being taken to include..... the glass in the windows the window frames..... and the pipes wires and drains solely serving each individual flat.....

Third schedule

Part 1

Extent of the Property

The flat indicated by red edging on the plan..... including..... the window frames glass in the windows.....and all pipes wires ducts and drains solely serving the said flat.....

Part 3

Rights granted

10. The right to retain the Projections which overhang or protrude above any adjoining Property on the Estate

Fourth schedule

Management Company's covenants

2. That the management company will keep the Main Structures properly repaired supported maintained reconstructed and cleansed

Applicant/Landlord's statement of case

7. The Applicant/Landlord stated that the Respondent/Leaseholder had failed adequately to repair a problem with the plumbing system in the Property which had resulted in a leaking overflow pipe
8. The overflow pipe had leaked constantly for about 10 months from May 2009 to April 2010. Since about the beginning of April 2010 it was leaking intermittently. The leaking overflow would eventually cause damage to the fabric of the building. In the winter months it was a health and safety hazard as it formed a puddle of water on the footpath below which froze over causing a slip hazard
9. The Applicant/Landlord had tried to contact the Respondent/Leaseholder by way of telephone, text messages, and letters to draw her attention to the problem and for her to remedy it, but with no response
10. The problem had been discussed at board meetings of the management company. Concern was expressed at a meeting on 13 November 2009 that the leaking overflow could constitute a health and safety hazard. As a result the management company went to the expense of closing the footpath immediately below the dripping overflow pipe. Photographs attached showed the closed path and the frozen overflow pipe
11. Correspondence, photographs, and inspection reports were attached

Letters to Respondent/Leaseholder

12. Letters drawing attention to the leaking overflow and requiring it to be remedied were dated 21 May 2009, 8 June 2009, 21 July 2009, 7 September 2009, and 19 November 2009

Minutes of meetings of the board of directors of Alexandra Quay Management Company Limited

13. Minutes dated 11 September 2009 included, at 6.2 : “it was considered that action must be taken regarding [the Property] non-action to repair their leaking overflow pipe. DMA to review the lease to consider whether [Alexandra Quay Management Company Limited] can affect entry to carry out the repair itself and to invoice the cost to [the Property]”
14. Minutes dated 13 November 2009 included, at 6.2 : “it was agreed that the approved processes should be followed re the overflow at [the Property]. In addition it may be necessary to tape off the path below the overflow as it could constitute a H&S hazard”
15. Minutes dated 15 April 2010 included, at 10.0 : “[the Property] it was noted that the overflow pipe continues to cause problems. It was agreed that DMA should submit the application to the [Tribunal]

Photographs

16. Two photographs showed, respectively, tape across the path, and an icicle at the end of an overflow pipe

Property inspection reports

17. A report dated 30 March 2010 headed “Asturias Way” included a report that overflows were dripping from flats 13 and 18
18. A report dated 27 April 2010 headed “Asturias Way” included a report that the overflow pipe at 18 was dripping again
19. An e-mail dated 6 July 2010 stated that the overflow at the Property was running continually again

The Tribunal's findings

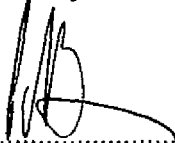
20. The Tribunal finds that :

- a. the Respondent/Leaseholder is liable under clause 5(iii) of the lease to keep the Property in good condition
- b. the Property includes, by virtue of the third schedule to the lease, pipes and drains solely serving the Property
- c. the Respondent/Leaseholder's liability to keep the Property in good condition includes, by the natural meaning of the wording of clause 5(iii) and the third schedule, a liability to keep in good condition and working order the plumbing in the Property
- d. the provisions in the lease relating to "projections" and "main structures" do not affect or in any way lessen the Respondent/Leaseholder's liability to keep in good condition and working order the plumbing in the Property
- e. the flow of water from the overflow pipe can only, to the Tribunal's collective knowledge and expertise in these matters, be the result of a failure to keep in good condition and working order the plumbing in the Property
- f. there is before the Tribunal no evidence to the contrary from the Respondent/Leaseholder
- g. the Respondent/Leaseholder is accordingly in breach of clause 5(iii) of the lease

Tribunal's decision

21. On the evidence before the Tribunal, there has been a breach of a covenant or condition in the Lease for the purposes of section 168(4) of the 2002 Act

Dated 23 July 2010



P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor