

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

**THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SECTION
168(4)**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

| | |
|---------------------------------|---------------------------------------------------------------------------------------------------|
| Case No: | CHI/29UN/LBC/2010/0021 |
| Property: | Top Flat 25A Willsons Road Ramsgate Kent CT11 9LX |
| Applicants: | Mr. Colin Stokes and Ms Ellen Harris |
| Respondent: | Ms Jennifer Maunton as Personal Representative of Ms Doris Hilda Thompson deceased |
| Date of Consideration: | 6th October 2010 |
| Members of the Tribunal: | Mr. R. Norman Mr. R. Athow FRICS MIRPM |
| Date decision issued: | 22nd October 2010 |

RE: TOP FLAT, 25A WILLSONS ROAD, RAMSGATE, KENT, CT11 9LX

Decision

1. The Tribunal found that there had been a breach of the covenant contained in clause 4(12) of the lease.

Background

2. The Top Flat, 25A Willsons Road, Ramsgate, Kent CT11 9LX ("The Top Flat") is the subject property. The application before the Tribunal is under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 and has been made by Mr. Colin Stokes and Ms Ellen Harris ("the Applicants") who are the freeholders of 25 Willsons Road ("the building") which includes The Top Flat. The Applicants are represented by Messrs. Girlings, Solicitors who have informed the Tribunal that Ms Doris Hilda

Thompson who was the lessee of The Top Flat died on 15th January 2008 and that her Personal Representative is Ms Jennifer Maunton (“the Respondent”).

3. The application is for a determination that a breach of a covenant or condition in the lease in respect of The Top Flat has occurred so that Section 168 (2) of the Commonhold and Leasehold Reform Act 2002 can be satisfied and the Applicants may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease.

4. On 12th August 2010 directions were issued and with those directions the Tribunal gave notice to the parties under 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, that the Tribunal intended to proceed to determine the matter on the basis only of written representations and without an oral hearing. The parties were given the opportunity to object to that procedure by writing to the Tribunal no later than 28 days from the 12th August 2010. No written objection has been received and the matter is being dealt with on the basis only of written representations and without an oral hearing.

Evidence

5. Messrs. Girlings have provided, on behalf of the Applicants as part of the application, a copy of the lease of The Top Flat and the address of the Respondent and have alleged breaches of covenants contained in clauses (1)(5)(a), (4), (9) and (12) of the lease. However, from an examination of the lease the clauses concerned are in fact clauses 1.(5)(5)(a), 4 (4), 4 (9) and 4(12) of the lease. Messrs. Girlings have stated that there is clear evidence of a number of breaches of the lease but have not provided clear evidence of giving notice to the Respondent to enter The top Flat to view its state and condition and to carry out necessary works as required by clause 1.(5)(5)(a). Neither have they provided clear evidence of giving notice to the Respondent as required by clause 4 (9) to repair defects. There is a reference to the Applicants writing to Ms Thompson’s family and personal representative on 5th May 2010 informing them of the breaches of the lease and notifying them of the damage being caused to the building and that no action has been taken to remedy the situation. A copy of that letter has not been produced but it appears from a reading of the application as a whole that the main concern is not so much with wants of repair as with the works undertaken on behalf of Ms Thompson or her personal representative without the consent of the Applicants; suggesting a breach of clause 4(12).

6. In the application it is stated that:

- (a) Around the time of Ms Thompson’s death, her family had arranged for building works to take place in the roof space of The Top Flat. The works included stripping and recladding the pitched roofs, valley, parapet and felt covered bay roof.
- (b) No permission has been sought from the Applicants by Ms Thompson or anyone acting on her behalf to carry out those works and no permission has been granted.

(c) The works are incomplete and as a result a substantial amount of water has been leaking into The Top Flat through openings in the roof space. The leaking water continues to cause further damage to the building.

(d) A report of Pearsons Gore, Chartered Surveyors dated 2nd March 2010 sets out the outstanding works that require completion. The Applicants have obtained quotations in the region of £5,500 to remedy the defects.

(e) On 5th May 2010, the Applicants wrote to Ms Thompson's family and personal representative informing them of the breaches of the lease and notifying them of the damage being caused to the building and no action has been taken to remedy the situation.

7. Nothing has been received from the Respondent or anybody on her behalf in response to the application.

Inspection

8. On 6th October 2010 the Tribunal in the presence of Mr. Stokes inspected 25 Willsons Road; a middle terraced house which has been converted into two self contained flats. The Top Flat is on the ground and first floors. There were cracks to the front elevation of the building. We did not go onto the roof but we could see on the edge of the parapet at the front of the building a tarpaulin and on the first floor a number of buckets which were collecting water which appeared to be leaking through such roofing as there was. We could also see that the ceiling joists appeared to have been removed in order to incorporate the roof space into the first floor rooms. In the absence of any explanation from the Respondent to persuade us that the allegations made in the application were incorrect, our inspection confirmed that at least part of the roof had been stripped, that ceiling joists had been removed and that work had been left uncompleted.

Reasons

9. Our inspection confirmed the allegation contained in the application that works involving the structure of the building had been carried out and had not been completed and that damage had been caused to the building of which The Top Flat forms part. In fact we considered that the structural integrity of the building had been compromised and that appeared to have been brought about by those works. In the absence of any information from the Respondent or anybody on her behalf we accepted that the work had been carried out by Ms Thompson or on her behalf and that there had been no request made to the Applicants for consent. Consequently, we found that there had been a breach of clause 4(12) of the lease. There may have been breaches of other covenants contained in the lease but insufficient evidence of, for example, the service of a notice to enter and view or of a notice of disrepair, resulted in the Tribunal being unable to make a determination in respect of other covenants.

Signed
R. Norman
Chairman