



**Residential
Property**
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/43UD/LBC/2010/0009

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD &
LEASEHOLD REFORM ACT 2002**

Address: Flat 2, Ferndown Court, Stocton Close, Guildford, Surrey, GU1
1HS

Applicant: Ferndown Court Management Ltd.

Respondent: Mr Richard Bergman

Application: 24 April 2010

Inspection: 23 July 2010

Hearing: 23 July 2010

Appearances

Applicant

Mrs Avon Director

Respondent

Mr Bergman Leaseholder

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr R A Potter FRICS

Miss J Dalal

DECISION

Introduction

1. This is an application made by the Applicant company under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for an order that the Respondent has breached one or more covenants or conditions in his lease.

2. The Respondent is the present lessee of the premises known as Flats 2, Ferndown Court, Stocton Close, Guildford, Surrey, GU1 1HS pursuant to a lease dated 24 October 1986 made between Silverdene Homes Ltd and Roger Paul Wade for a term of 99 years from 1 July 1986 ("the lease"). It appears that there was a surrender of the lease and re-grant for an extended term of 150 years from 13 February 2007 on the same terms, including the covenants and conditions, of the lease.

3. By clauses 2 and 3 of the lease, the lessee entered into various covenants with the lessor and with the lessees of the other flats forming part of the estate. By clause 3.7, the lessee also covenanted to observe and comply with the regulations contained in the Fifth Schedule. The alleged breach of covenants on the part of the Respondent are particularised below.

Inspection

4. The Tribunal internally inspected the subject flat and the estate on 23 July 2010. Ferndown Court is a small two-storey development circa 1960 constructed in brick under a tiled roof with limited common grounds of lawn and shrub borders with a gravel drive leading to a turnaround/parking area. Internal inspection of the subject flat was cursory from within the front door only due to a completed key relation of paper, furniture and other articles.

Decision

5. The hearing in this matter also took place on 23 July 2010. The Applicant was represented by Mrs Avon, a Director. The Respondent and appeared in

person. Until this time, the Respondent had not participated in these proceedings and had not filed or served any evidence.

6. The various covenants and regulations the Applicant alleges that the Respondent has breached as follows:

Paragraph 2 of the Recitals

By allowing his belongings to occupy various car parking bays thereby preventing the own from exercising the right to park their vehicle.

Fifth Schedule

Paragraph 1

(a) The Respondent's hobby of collecting things to repair and the quantity of unfinished projects, both inside and outside his flat, is causing inconvenience to other occupiers of the building thereby prejudicing the character and value of the building.

(b) By leaving his belongings lying on the grass lawn for over five days in April 2010, having thrown them from his window, thereby causing inconvenience to the other occupiers.

Paragraph 2(b)

By strewing extensive litter throughout the estate in November 2009.

Paragraph 2(f)

By leaving the main front door and his own flat door ajar as a consequence of losing his keys over many years.

Paragraph 4(c)

By depositing many broken and dilapidated items, debris and litter around the building and the estate.

Paragraph 4(d)

By hanging his washing on the garden shrubs and trees even though a washing line is available for use and by using the shrubs as tables for his activities in April 2010.

Second Schedule

Paragraph 1.2

By preventing the other lessees from having clear and unobstructed internal and external access to and from their premises as a result of leaving his belongings strewn over the landing, staircase, a hallway and external footpaths.

Paragraph 1.1

By placing his belongings in an allocated parking space and across access points to pathways thereby preventing reasonable access to other owners.

Clause 2.5

The cluttered nature of the Respondent's bathroom, bedroom and living room prevent an inspection from being carried out for any defect or want of repair to the demised premises.

Clauses 3.1, 3.2 and 3.3.1

By refusing entry to his premises by an environmental health officer on or about 24 December 2009.

By failing to repair and/or maintain the soffits outside the windows of his flat.

The clutter in his bedroom is so extensive that it is not possible for either him or the Applicant to carry out maintenance until it is cleared.

By monopolising the use of the garden shed by storing his belongings there.

Clause 3.5

The Respondent's hobby of repairing broken things is causing nuisance and/or annoyance to every other lessee. The storage of these items has now spilt over into the communal areas. This has also resulted in a musty damp mouldy aroma emanating from his flat when the front door is frequently open. This state of affairs has continued for approximately 2 years and is ongoing.

Clause 3.6

By obstructing the windows of other flats for most of April 2010 by erecting rudimentary homemade scaffolding.

By obstructing the Respondent's living-room window with a bookcase and a large quantity of belongings.

First Schedule

By drilling holes into the exterior building wall in April 2010 without notice to any of the other owners and which does not form part of the demised premises.

7. At the hearing, the Respondent admitted all of the allegations made by the Applicant. However, it appeared to the Tribunal that the Respondent, as a lay person, did not have a full appreciation of the nature of the proceedings or the allegations made against him. The Tribunal was also mindful of the fact that Mrs Avon, for the Applicant, also at conduct in this matter and appeared in a lay capacity. Nevertheless, it was incumbent on the Tribunal to deal with the application as it had been argued by the Applicant. The Tribunal had the benefit of having inspected the premises and had been provided with photographic evidence of historic breaches alleged against the Respondent.
8. Having carefully considered the evidence in this matter, the Tribunal found that the Respondent had breached all of the alleged covenants and/or or regulations save for the following.
9. The Tribunal found that the Respondent was not in breach of paragraph 2 of the Recitals because the clause simply demises one of the parking spaces and

by leaving his belongings in a parking space could not amount to a breach of this clause. This is a grant made by the lessor and not a covenant made with the Respondent. Therefore, he cannot be in breach.

10. The Tribunal found that the Respondent was not in breach of paragraph 1.1 of the Second Schedule because this schedule was only concerned with the appurtenant rights granted to the lessees. Paragraph 1.1 simply granted the right to pass and repass with or without vehicles over and along the drives and forecourts fronting and giving access to the building or the demised premises. Again, this is a right granted by the lessor and not a covenant made with the Respondent and cannot be breached by him.
11. The Tribunal found that the Respondent was not in breach of either clause 3.1 or 3.2 because the allegation of failure to repair and/or maintain appears to relate to areas outside the demised premises and, therefore, outside the Respondent's repairing obligation. Similarly, the use of the garden shed by the Respondent is not caught by either of these clauses because it does not form part of the demise. In addition, there was no evidence that the clutter of belongings in the Respondent's flat had caused any disrepair. The obligation to carry out internal redecoration appears to be entirely at the lessee's discretion and is an entirely subjective test.
12. The Tribunal also found that the Respondent had not breached the First Schedule because the schedule simply defined in the demised premises and the Respondent had given no covenant in this regard. Therefore, he could not be in breach.

Dated the 30 day of September 2010

Signed

CHAIRMAN

Mr I Mohabir LLB (Hons)