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**H M COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 33 Meredith Road, Clacton-on-Sea, Essex
CO15 3AG

Applicant : James Crispin Melville Roberts

Respondent : Jacqueline Shelley

Case Number : CAM/22UN/LBC/2012/0006

Date of Application : 1st May 2012

Dates of Hearing : 15th August 2012

Tribunal Members : Graham Wilson (Chairman)
Mr R Thomas MRICS
Mr D Cox

DETERMINATION

Decision

The Tribunal determined that a breach of Clause 4(p) of a lease dated 22nd May 1987 (“the Lease”) had occurred in the circumstances and for the reasons described below.

Application

This was an Application by the Applicant for a determination under section 168(4) of the 2002 Act that a breach of covenant had occurred. In particular, the breach alleged was of section 4(p) of the Lease, the material part of which read:-

Not to do or permit to be done on the said flat or any part or parts thereof any act or thing which shall or may cause or become a nuisance or annoyance to the occupants of the other flat of the said building or to the neighbourhood generally...

The Law

Section 168 prevents the Landlord from serving a notice under section 146 of the Law of Property Act 1925 without a determination that a breach of covenant has occurred.

Inspection

The Tribunal inspected the property. It was a nineteenth century end-terrace house converted into two flats: 33 Meredith Road, being the ground floor flat, and 33A Meredith Road the first and second floor flat ("33" and "33A" respectively). The building was thus not originally constructed as flats. The property had a small front garden (belonging to 33A), and a rear garden (divided between 33A and 33). The Tribunal established that the freehold and two leasehold titles were registered at Land Registry in the names of the Applicant and Respondent respectively. The Applicant was the registered proprietor of the freehold title and of the leasehold title of 33A and the Respondent the proprietor of the leasehold title of 33.

Hearing

Both parties attended the Hearing in person and both called witnesses in support of their case. The Tribunal established, and the Applicant agreed, that his allegations of breach could be categorised as follows:

- (1) storage of rubbish by the Respondent's former tenant in such a way as to cause a "nuisance or annoyance".
- (2) behaviour on the part of the Respondent's former tenant causing "nuisance and annoyance".
- (3) lack of repair by the Respondent as to cause water ingress into 33 and, consequently, "nuisance and annoyance".

There was a fourth category of breach, but this was abandoned by the Applicant at the Hearing. The Tribunal dealt with each category in turn, hearing from each party's witnesses separately in relation to each category.

Storage of Rubbish – Landlord's Case

There was common ground – though evidenced by photographs in the Hearing Bundle and on inspection - that rubbish was stored in black

sacks, now in a wooden box, but formerly in the open, in the small front garden. The rubbish, the photographs showed, had once been stored under the window of 33. The rubbish should have been stored at the rear of the property – on what the Landlord admitted was land not within any of the registered titles but an evidently disused rear accessway to neighbouring properties, or, alternatively, in that part of the rear garden belonging to 33A.

Storage of Rubbish – Tenant’s Case

The Respondent asserted that the storage of rubbish in the front garden was something that her Tenant had been driven to because access to the part of the rear garden belonging to 33A had been obstructed by the construction of a fence, the presence of a dog, and the construction of a shed on part of the garden belonging to 33A.

Storage of Rubbish – Tribunal Findings

The front garden of 33A could lawfully be used under the terms of the Lease to store rubbish but it would almost certainly cause, and did in fact cause, “nuisance and annoyance” to the occupiers of 33. There were two options, one “practical” and one lawful, one of which the Respondent’s Tenant should have chosen instead. The Tribunal determined that a breach of 4(p) had occurred.

Behaviour of Respondent’s former Tenant – Landlord’s Case

This was contained in the Applicant’s son’s Statement dated 13th June 2012. It chronicled the noise of fights, slamming doors and loud arguments coming from 33A on dozens of occasions between July 2011 and June 2012. Mr Paul Roberts’ Statement was supported by a Miss Merriman, who was a regular visitor to 33.

Behaviour of Respondent’s former Tenant – Respondent’s Case

The Respondent indicated that she could not personally contradict the Applicant’s evidence. However, she called the former Tenant, a Ms Goode. Ms Goode claimed that she had been away from 33A, and 33A had been empty on some of the occasions that Mr Paul Roberts had recorded noise of various kinds. She said that she did have two young children, which spoke for itself, and her partner, a university student, spent time at 33A from time to time. She agreed, however, that she and

her partner did argue on occasions, argued loudly and did use “foul language”.

Behaviour of Respondent’s former Tenant – Tribunal Findings

The Tribunal did not hear evidence about each allegation. While the number of allegations made by Mr Paul Roberts may have spoken at first of obsessive record-keeping, the Tribunal was persuaded by his evidence and that of Miss Merriman that “nuisance and annoyance” had occurred and that their accounts were not fabricated and were not substantially undermined by Ms Goode’s evidence. Ms Goode had frankly agreed that life with her partner was tempestuous.

Water Ingress – Landlord’s Case

The Landlord claimed that leaks from 33A caused occasional water ingress into 33. The cause could not be other than defective plumbing in 33A, which the Respondent should have acknowledged and remedied. She had not done so and was thus in breach of clause 4(p).

Water Ingress – Tenant’s Case

The Respondent denied that the plumbing in 33A was defective. Contained in the Hearing Bundle was a report dated 2nd July 2012 from “Andrew Sexton Plumbing and Heating” who pronounced the bathroom suite, plumbing, pipes, taps, sealants and heating system all free of defect. The Applicant did not seek to challenge this report. Ms Goode gave evidence to the effect that the shower and bath were both used on a daily basis.

Water Ingress – Tribunal Findings

At the inspection, the Tribunal were shown where water was alleged to have leaked into 33. While this *was* below the bathroom of 33A, it did not necessarily follow that the bathroom was the source of the leak. Indeed, given that the bathroom was used daily and the leaks were occasional, that was unlikely. In the view of the surveyor member of the Tribunal, the source of the water was at least likely to emanate from a poorly designed roof intersection and/or roof drainage. It was possible that responsibility may lie with the Respondent, whose Lease imposed liability for the roof on her. However, it was also possible, depending on the terms of the Applicant’s Lease (which the Tribunal had not seen) that

liability was shared with the Respondent. It could not with certainty be said whose responsibility any want of repair was and further whether it was the cause of the water ingress. The Tribunal could not determine even on the balance of probability whether a breach by the Respondent had in fact occurred.

Conclusion

The Tribunal determined that breaches of clause 4(p) of the Lease had occurred by reason of the Respondent's former Tenant's treatment of the rubbish and by her, or rather her former Tenant's behaviour as summarised above.

The Tribunal hoped that further litigation could be avoided by a co-operative approach to the storage of rubbish and the proper division of the garden area by both 33A and 33, so to speak acknowledging that conversions of former single dwellings presented special challenges to their occupiers.

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GRAHAM WILSON
Chairman

Date: 15th August 2012