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CAM/38UE/LBC/2012/0017



**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/38UE/LBC/2012/0017**

Property : **Apartment 8 Dean House,
7 Dean Court Road,
Cumnor,
Oxford
OX2 9FF**

Applicant : **Danesdale Land Limited**

Respondent : **Glendon Spence**

Date of Application : **11th December 2012**

Type of Applications : **Application for determination under
s.168(4) Commonhold and Leasehold
Reform Act 2002 that the Respondent is
in breach of a covenant or condition in a
lease**

Date of (Paper) Hearing : **19th April 2013**

Tribunal :

Mrs. Joanne Oxlade **Lawyer Chairman**
Mrs. Helen Bowers BSc. (ECON) MRICS MSc **Valuer Member**

DECISION

For the reasons given below the Respondent ("Lessee") is in breach of the covenant set out in Clause 6 of the Fourth Schedule of the Lease of the property Apartment 8. Dean House, 7 Dean Court Road, Cumnor, Oxford, dated 15th April 2008.

REASONS

Background

1. On 23rd December 2008 Danesdale Land Limited (“the Lessor”) was registered with the land registry, as the freehold owner of premises known as 7 Dean Court Road, Oxford, and on 23rd May 2008 Glendon Spence (“the Lessee”) was registered as the lessee.
2. By clause 6 of the Fourth Schedule, the Lessee covenanted:

“To permit the landlord and its duly authorised surveyors or agents with or without workmen upon giving at least 72 hours’ notice in writing (save in case of emergency when no notice will be required) and at reasonable times to enter into and upon the Property thereof for the purpose of viewing and examining the state of repair thereof or of the Building”.
3. The Lessor says that its agent, Remus Management Limited, was appointed to carry out maintenance and repairing obligations, and to deal with breaches of the lease. The property manager for the building received complaints from other lessees that the Respondent’s flat had been sub-let, that alterations had been made to the flat, and that the occupants had been parking inconsiderately.
4. Accordingly, a letter dated 31st October 2012 was sent to the lessee by recorded delivery advising that the managing agents wished to inspect the premises on 6th November at 12 noon; the letter was sent by registered post, and the Lessee signed an acknowledgement of receipt of the letter on 1st November 2012. That letter referred to the following issues: sub-letting without permission; cars being parked inconsiderately; an extension cable being hung from a window into communal areas.
5. In addition, the property manager said that it was alleged that unauthorised alterations had been made to create an extra bedroom, and in order to clarify this an inspection would take place to the interior of the flat. The letter referred to the obligation to provide access, and it set out in paragraph 6 of the Fourth Schedule.
6. The Lessee responded by telephone on 5th November 2012, refusing access on 6th November 2012, and said the matter was in the hands of his Solicitors who would write within 2 days. Nothing was received from Solicitors.

7. The property manager's supervisor attended for inspection on the date and at the time notified, but could not gain access, despite several attempts. A note was left asking the Lessee to make contact to arrange an alternative appointment, but no contact was made.

Application

8. On 11th December 2012 the Lessor issued an application for a finding of a breach of the covenant under the lease, and Directions were made for the filing of evidence.
9. The Lessor has complied with the Directions, but the Lessee has not done so.
10. The Lessor notified the Tribunal that it had received a telephone call from the Lessee on 18th February 2013 to say that his flat "had been taken over by receivers"; despite correspondence sent to the Lessee and his mortgage company on 21st March 2013 inviting comment, clarification, or for the mortgage company to be made a party, no response has been received.

Jurisdiction

11. The Tribunal has jurisdiction by section 168 of the Leasehold Reform and Commonhold Act 2002 to make a finding as to whether or not there has been a breach of the terms of the lease:

"s168(1) A Landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied:

(2) This subsection is satisfied if –

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach

(c)

(3)

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred".

12. The case of **GHM (Trustees) Limited v Glass and another [LRX/153/2007]** makes it clear that the function of the LVT is simply to determine *whether* a breach of the lease has occurred – not whether or not the breach is continuing, nor whether it is material, nor whether there should be a grant of relief from forfeiture. Those are matters for the County Court to consider once a section 146(1) notice has been served, and once the Lessor issues proceedings there. The County Court will hear any points made by the Lessee or on his behalf and determine whether or not to grant forfeiture, and (if an application is made) the terms on which a relief from forfeiture might be granted.

Evidence*Lessor*

13. The Lessor relies on a witness statement of Karen Chiswell-Williams dated 7th January 2013, a Regional Manager for Remus Managing Agents. This sets out the background of the receipt of complaints, the decision to seek inspection, the notification made to the Lessee, the contact that the Lessee made on 5th November 2012, and the futile attempts to gain entry on 6th November at the appointed time. Exhibited to the witness statement are the following: (i) a copy of the letter dated 31st October 2012, (ii) a copy of the track and trace records showing that the Lessee signed for post on 1st November 2012, (iii) a copy of the letter dated 5th November 2012 sent to the lessee after the conversation in which he declined to give access, and (iv) a copy of the letter sent to the Lessor dated 21st November 2012, reporting the above events and seeking instructions.

Lessee

14. The Lessee has filed no evidence, and has not responded to any correspondence sent to him at the premises.

Decision

15. On the evidence adduced, namely the witness statement of Karen Chiswell-Williams together with attachments, the Tribunal finds that:
- (i) the Lessor's duly authorised agents sought entry to the premises, at 12 noon on 6th November 2012,
 - (ii) the purpose of entry was two fold (a) to establish whether there had been an alteration to the premises, as alleged, by the addition of another bedroom, which could have had implications for the state of repair of the premises and the building, and (b) to establish if the other complaint (as to sub-letting) was true,
 - (iii) the agents wrote a letter dated 31st October 2012 seeking entry to the premises, which notice, being received by the Lessee at 10:44 am on 1st November 2012, amounting to more than 72 hours notice,
 - (iii) the time of the inspection, being 12 noon, was a reasonable time,
 - (iv) that the lessee failed to give access as required under Clause 6 of the Fourth Schedule of the lease.
16. The Tribunal acknowledges that the managing agents purpose of seeking entry was two-fold, as set out in 15(ii) above, but is satisfied

that as one purpose fell within the terms of the lease, the existence of a second reason does not affect enforceability.

Summary Conclusion

17. The Tribunal finds that there has been a breach of the Lessee's covenant to grant entry to the landlord (through its agent) to inspect the premises and building for the purpose of viewing and examining the state repair.

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Joanne Oxlade
Chairman
19th April 2013