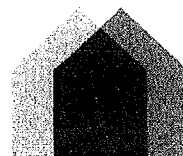


496



**Residential
Property**
TRIBUNAL SERVICE

**HM COURTS AND TRIBUNALS SERVICE
LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AZ/LBC/2012/0131

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

**Premises: Ground and first floor flats , 204 Brownhill Road London SE6
1AT**

Applicants: FTZ Ltd (Landlords)

Respondents: Mr D Inkins (Tenant)

Third party : Mortgage Express (Mortgagee)

Date of paper determination : 9 April 2013

Date of Decision: 9 April 2013

**Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM
Mrs E Flint FRICS**

DECISION

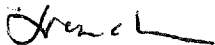
The Tribunal declares that there is insufficient evidence to demonstrate that the Respondent Tenant has been in breach of the covenants contained in Clauses 3(6) and 3 (11) of the respective leases under which the flats are held.

REASONS

- 1 The Applicant is the landlord and freeholder of the premises known as **Ground and first floor flats , 204 Brownhill Road London SE6 1AT**. The Respondent Tenant is the leaseholder of the ground floor flat under a lease dated 11 December 2007 and the first floor flat (together referred to as the property) under a lease dated 11 December 2007 (the leases) each made between R S Jain of the one part and the Respondent of the other part.
- 2 By applications dated 20 and 22 November 2012 the Applicant sought a declaration from the Tribunal that the Respondent has been in breach of covenant in relation to the provisions contained in clauses 3(6) and 3(11) of the leases. The wording of the two leases is for these purposes identical .
- 3 Directions were issued by the Tribunal on 22 November 2012 which required (inter alia) the Respondents to file a statement of case and legal submissions by 22 March 2013. No response has been received from the Respondent .
- 4 The Directions also stated that Mortgage Express, the Respondent's lender, should be joined as a party to the proceedings. The latter's solicitors communicated with the Tribunal but no documentation has been filed on their behalf.
- 5 No application for an oral hearing having been made the paper determination of this matter took place on 9 April 2013.
- 6 The Respondent had not prepared or filed a statement of case neither were any witness statements provided on his behalf.
- 7 The Tribunal did not consider it necessary to inspect the property which it understands to comprise a ground and first floor flat in a converted house. A photograph of the exterior of the property contained in the Applicants' bundle showed it to be boarded up. Photographs of the interior contained in the same bundle suggested that the property was unoccupied.
- 8 The Applicant had submitted a bundle of documents which the Tribunal took into consideration in reaching its decision.
- 9 By clause 3(6) of the leases the tenant covenants : ' to keep the interior and exterior of the Property in good and substantial repair and condition....and paint with three coats of paint all the exterior parts normally painted every three years in a colour determined by agreement between the tenant and the owner of the Other Premises after discussion between them and in default of agreement in the same manner and colours as the Building may then bear and to carry out all the work in a good and substantial manner....'
- 10 Clause 3(11) of the leases contains a covenant by the tenant 'not to make any alterations to the Property or to carry out any building works on the Property unless the landlord has agreed in writing to the relevant works'.
- 11 The Applicant complained that the tenant was in breach of Clause 3(6) of the respective leases in that 'the tenant had failed to decorate' (quoted from the Applicant's application). However, the only evidence in support of this contention was a schedule of dilapidations in which only one of the 17 items (ground floor) referred to external painting . Some 9 of the remaining items related to internal redecoration but in the context of

restorative work after a minor repair, mainly caused by water damage . It is noted that the lease covenant as worded only relates to the painting of the exterior, not to internal redecoration. In relation to the first floor flat the schedule of dilapidations itemised 12 matters of concern only two of which could be described as relevant only to external decoration rather than to repair.

- 12 The schedules of dilapidations were accompanied by a series of photographs none of which in the Tribunal's opinion substantiated the Applicant's assertion that the tenant was in breach of a covenant to redecorate either externally. The photographs were of poor quality and failed to show any patent defects in the decorative state of the property.
- 13 The Applicant also asserted that the Respondent was in breach of Clause 3(11) of the respective leases in that he had altered the property without consent. The only evidence of this supplied by the Applicant was a hand written marking on a plan of the property. In the Tribunal's view this is inadequate to substantiate the allegation that a breach has occurred. The Applicant did not provide photographs to illustrate the difference in the present lay out to that shown on the lease plans nor a witness statement made by a person who had inspected the property and who had first hand knowledge of the alleged alterations.
- 14 For the above reasons the Tribunal finds that the Applicants have failed to substantiate their case in respect of both of the allegations of breach of covenant for both flats and declines to make a declaration in their favour.



Frances Silverman
Chairman

9 April 2013