

857



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00ML/LBC/2015/0002

Property : 73a, Millers Road, Brighton BN1 5NQ

Applicant : Amy Trainor

Representative :

Respondent : (1) The Estate of Ronald Charles George Merrett
(2) Keith Merrett

Representative :

Type of Application : Breach of covenant in lease

Tribunal Members : Judge D Agnew

Date and venue of Hearing : By paper on 19th May 2015

Date of Decision : 19th May 2015

DETERMINATION

Background

1. On 1st December 2014 the Applicant applied to the Tribunal for a determination under section 168 of the Commonhold and Leasehold Reform Act 2002 ("the Act") that a breach of covenant contained in a lease had occurred. The lease in point was that dated 10th January 1979 between Brian Raymond Addison (1) and Mary Margaret Stephenson (2) whereby the flat known as 73a Millers Road, Brighton BN1 5NQ was demised to the lessee for a term of 99 years from 24th June 1978.
2. Directions were issued on 9th February 2015 whereby the Tribunal stated that it would determine the matter on the basis of written representations without an oral hearing unless any party objected within 28 days. The Directions also provided that the Applicant's application form would stand as her statement of case and provided for the estate of Ronald Charles George Merrett to serve upon the Applicant a statement of case in response to the application.
3. No statement of case was served by or on behalf of the estate of Ronald Charles George Merrett and no objection to a paper determination was received by the Tribunal.

The Applicant's case

4. The Applicant produced office copies of the registered titles of the freehold of 73 Millers Road, Brighton BN1 5NQ ("the Property") and the first floor flat at the Property (number 73a Millers Road aforesaid). The freehold title, registered under title number ESX 13087, shows the Applicant as registered proprietor of the freehold. The leasehold title of 73a Millers Road is registered under title number ESX 41385 and shows Ronald Charles George Merrett as the registered proprietor of the leasehold title to the first floor flat at the Property and details of the lease are given as appear in paragraph 1 of these reasons above.
5. The Applicant's evidence is that Ronald Charles George Merrett died in 2002 but, as is evident from the foregoing, the title to the first floor flat remains in his name.
6. The first floor flat is occupied by Ronald Charles George Merrett's son, Keith Merrett who lives permanently at the flat. However, enquiries have been made of the District Probate Registry and there is no evidence of a grant of probate or letters of administration to the deceased's estate have been taken out.
7. The Applicant says that although the garden at the rear of 73 Millers Road was demised with the first floor flat and despite a covenant in the lease of that flat that the lessee is responsible for maintaining the garden in a good and husbandlike manner, it has been allowed to go untended for a considerable period of time such that it is now completely overgrown. The Applicant produced photographs of the garden to illustrate the situation. She says that the garden is so overgrown that she is prevented from exercising the rights reserved on the grant of the lease entitling her as the owner of the ground floor flat to hang out washing in the garden on any day of the week except Sundays. She says that Leith Merrett has acknowledged that the garden is overgrown but has

refused to do anything to remedy the situation. Instead he has proposed that the garden is surrendered to the Applicant so that she can tend it but as he has not acquired title to the lease he is not in a position legally to surrender part of the demised land to the Applicant.

8. Mr Keith Merrett has taken no part in these proceedings. No evidence has been adduced which contradicts the evidence given by the Applicant.

The lease

9. By paragraph 29 of the Sixth Schedule to the lease it is provided that:
"The lessee shall at all times maintain the back garden shown on the said plan in good and husbandlike manner and properly planted....."

10. By paragraph 4 of the Fifth Schedule to the lease the following is reserved:
"The right for the owners and occupiers for the time being of the said ground Floor Flat to hang washing on one of the lines provided for that purpose in the said Garden edged green on the said Ground Floor Plan on any day of the week except Sunday and to have access to the garden for that purpose."

The Act

11. By section 168(4) of the Act:
"A landlord under a long lease of a dwelling may make an application to a [First-tier Tribunal (Property Chamber)] for a determination that a breach of a covenant or condition in the lease has occurred."

The Tribunal's determination

12. The Tribunal finds the following facts to have been proved:-

a) the garden at the rear of the Property was demised to the lessee of the first floor flat (number 73a Millers Road) together with the flat itself by the lease of 10th January 1979.

b) the Applicant as registered freehold owner of the Property is entitled to the benefit of the covenants contained in the said lease of the first floor flat and is entitled to enforce the covenant requiring the lessee of the first floor flat to maintain the garden in a good and husbandlike manner and to enjoy the rights reserved enabling her access to the garden to hang washing out there on any day of the week except Sunday.

c) the said garden is seriously overgrown with brambles and weeds. Consequently there has been a breach of the covenant to maintain the garden in a good and husbandlike manner.

13. The question arises as to who has breached the covenant and thus who should properly be the Respondent to this application. The Tribunal is satisfied that Ronald Charles George Merrett remains the registered proprietor of the leasehold title to the first floor flat (73a Millers Road) but that he died in 2002 with no grant of probate or letters of administration having been taken out by

anyone. That means that Keith Merrett who is living in his father's flat has no title to the property and has no right (subject perhaps to arguments as to there having been an equitable assignment to him if he has paid ground rent) to occupy it let alone surrender any part of the demised property.

14. The strict legal position is that the property vests in the Public Trustee until such time as a grant is taken out. The Tribunal is aware, however, that the Public Trustee cannot become involved in matters such as this and it is not appropriate for the Public Trustee to be named as a Respondent in such proceedings. On the evidence available to the Tribunal, the Tribunal is satisfied that the deceased's son who is in actual occupation of the flat is the most appropriate person to be a Respondent to these proceedings and he has been notified of the application, has been sent all relevant documentation and has had the opportunity of responding to the application should he have so wished. He has not done so.

15. In all the circumstances the Tribunal is satisfied that a determination should be made under section 168 of the Act that a breach of covenant has occurred and hereby makes such a determination.

Dated the 19th May 2015

D. Agnew (Judge)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.