



707

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

Case Reference : **LON/00AH/LBC/2015/0130**

Property : **25 Farleigh Court, Warham Road,
South Croydon CR2 6LH**

Applicant : **Farleigh Court (Freehold) Limited**

Representative : **Paton Walsh Laundry**

Respondents : **Mr Gnaganesh Gnanasampanthan
Mrs Bhavani Gnanasampanthan**

Representative : **None**

Type of Application : **Section 168(4) Commonhold and
Leasehold Reform Act 2002 – to
determine whether a breach of a
covenant or condition in the lease
has occurred**

Tribunal Members : **Judge John Hewitt
Mr Neil Martindale FRICS**

**Date and venue of
Determination** : **25 January 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **27 January 2016**

DECISION

Decision of the tribunal

1. The tribunal determines that a breach of a covenant set out in clause 3(i) of the lease dated 30 April 1998 has occurred in that the respondents have failed to keep the sanitary and water apparatus serving the demised premises in good and tenable repair and condition.
2. The reasons for our decision are set out below.

Procedural background

3. On 25 May 1994 the applicant was registered at Land Registry as the proprietor of the development known as Farleigh Court registered with title number SY47543.
4. The lease of flat 25 was originally granted on 31 January 1966 for a term of 99 years from 25 March 1965 and that lease was registered at Land Registry with title number SGL21609.
5. By a deed of variation dated 30 April 1998 made between the applicant, as landlord and Peter John Matthews as the then tenant the original lease was varied in a number of respects, including the term which was varied increased to be a term of 999 years from 29 September 1995. By clause 7 of the deed of variation it was recorded that save as varied the terms of the original lease remain in full force and effect.
5. Land Registry (in accordance with its usual practice) treated the deed of variation as effecting a surrender of the original lease and the re-grant of that lease as varied by the deed. Land Registry closed title number SGL21609 and on 3 July 1998 registered the re-granted lease with title number SGL601562.
6. On 28 January 2005 the respondents were registered at Land Registry as the proprietors of the re-granted lease with title number SGL601562.
7. On 26 November 2015 the applicant made an application to the tribunal pursuant to section 168(4) Commonhold and Leasehold Reform Act 2002 seeking a determination that a breach of covenant had occurred. The application form asserted that a breach of clause 3(i) of the original lease had occurred in that the covenant was to keep the demised premises and all drains, pipes etc in good and tenable repair, and that the tenant has failed to repair a leaking overflow pipe despite being asked to do so.
8. Directions were given on 3 December 2015. The parties were notified that the tribunal proposed to determine the application on the papers and without an oral hearing and would do so during week commencing 25 January 2016. The parties were also notified that if an oral hearing was requested it would take place on 27 January 2016. The tribunal has not received a request for an oral hearing from either party.

9. Direction 2 required the respondents to serve on the applicant a statement of case in reply by 21 December 2015. The applicant's solicitors state that they have not received a statement of case from the respondents.
10. Pursuant to direction 3 the applicant has provided the tribunal with a page numbered bundle of documents material to the matters it has to determine. That bundle includes copies of contemporaneous documents and a witness statement made by Shelley Evans which is endorsed with a statement of truth.

Findings of fact

11. From the documents and evidence provided to the tribunal we make the following findings of fact.
12. The original lease demises: "*ALL THAT flat situate on the second floor of the block of flats erected on the land hereinbefore referred to and edged red on the plan annexed hereto and known as Flat No. 25 Farleigh Court ... AND SECONDLY ALL THAT Garage No.25 ... jointly hereinafter referred to as 'the demised premises'...*"
13. Clause 3 of the original lease sets out covenants on the part of the lessee with the landlord and with the owners, lessees of the other flats and garages comprised on the estate that the lessee will at all times during the term perform the various covenants then set out. Sub-clause 3(i) is in the following terms:-

"(i) Keep the demised premises except those parts being the Landlords' responsibility as mentioned in the Fourth Schedule hereto and all walls sewers drains pipes cables wires and appurtenances thereto belonging and the sanitary and water apparatus serving the same and also all party walls and partitions in good and tenantable repair and condition and so that in particular (but without prejudice to the generality of the foregoing) the demised premises shall support shelter and protect the other parts of the block of flats and of the block of garages of which the demised premises form part."

[For the sake of good order we record here that there is nothing in the Fourth Schedule which is material to the application before us.]
14. The landlord has appointed CECPM Limited (CECPM) to be its managing agents.
15. Ms Shelley Evans is employed by CEPCM as a property manager and she has had the responsibility to manage Farleigh Court.
16. On 16 July 2015 Ms Evans spoke by telephone to the first respondent and drew to his attention an overflow pipe serving flat 25 which was leaking and which had stained the external brickwork of the block. She requested that the leak be repaired immediately. Ms Evans also informed the first respondent that steps would be taken for the stained

brickwork to be cleaned professionally. On the same day Ms Evans sent to the first respondent an email confirming the gist of the telephone call to which was attached a video clip showing the leak from the overflow pipe. By an email dated 23 July 2015 Ms Evans requested an update.

17. By an email dated 30 July 2015 from the first respondent to Ms Evans, the first respondent said that he had been away and that *"I hopefully I'll provide you with the proofs later on today."*
18. By an email dated 11 August 2015 Ms Evans sent to the first respondent a further video clip showing that as of the previous day the overflow pipe was still leaking.
19. By letter dated 3 September 2015 sent (by both mail and email) by Ms Evans to the first respondent, Ms Evans noted that the first respondent had not responded to her earlier email, informed him that the overflow was still leaking intermittently and suggested that the problem might be connected with the water tank. Ms Evans informed the first respondent that he had seven days to attend to the repair failing which the matter would be taken forward in a more formal way and reference was made to section 146 Law of Property Act 1925.
20. By letter dated 7 October 2015 sent by the applicant's solicitors, Paton Walsh Laundry, to the respondents, the solicitors gave to them notice that if the leak has not been fixed by 15 October 2015 they had instructions to make an application to the tribunal for a determination that they were in breach of their covenant to keep the premises in good repair. They also gave notice that if such a determination is made they have instructions to *"take the appropriate measures to forfeit their lease."*
21. On 14 October 2015 Universal Estates wrote to Paton Walsh Laundry to say:

"Re: 25 Farleigh Court ...

We are writing on behalf of Mr Gnanasampanthan for whom we manage the above property.

Please note that we were made aware of this leak on 12th October 2015 and are looking into this matter.

Should you have any further queries please do not hesitate to contact us.

Yours etc"

Universal Estates letterhead states that:

*"*Residential Lettings, Management and Sales
Financial, Mortgages & Legal Services

Property Portfolio Building

22. By letter dated 21 October 2015 Paton Walsh Laundry wrote to Universal Estates seeking information on what remedial works had been undertaken and stating that if they had not received a reply by close of business on 23 October 2015, proceedings would be commenced the following week.
23. Ms Evans witness statement is dated 7 January 2016. There is not reference to any reply to the letter dated 23 October 2015 and we infer that none was received.
24. Ms Evans has exhibited to her witness statement an email dated 24 November 2015 from a person, Mr Neil Johnson, evidently occupying the flat below flat 25, in which he recorded a conversation he had had with the persons occupying flat 25 in connection with a different leak from a boiler and in the course of conversation about the first leak (the subject leak) the occupants of flat 25 said that they were not aware of their landlord – the respondents – attending to repair that leak.

Conclusions

25. In the light of that evidence we are satisfied that leaks from the overflow have occurred, the respondents have been put on notice of the leaks, the respondents have had a reasonable period of time to carry out such repairs as may be required, the respondents have failed to carry out any such repairs and that in consequence the respondents have not kept the sanitary and water apparatus in the demised premises in good and tenantable repair and condition.
26. We are satisfied that a breach of the covenant set out in clause 3(i) of the original lease has occurred and we have therefore made a determination as sought in the application.

Judge John Hewitt
27 January 2016.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.