



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

Case Reference : LON/OOAE/LBC/2017/0034

Property : 85 Harp Island Close, Neasden, London NW10
oDQ

Applicant : Harp Island Village No.1 Residents Co Ltd

Representative : Mr L Gibson, Solicitor Agent for SLC Solicitors
Mr A Jenner, Managing Director of Hillcrest
Estate Management Ltd

Respondent : Nicholas Eliot Richards-Galliers

Representative : In person together with Mr Peter Chingwaro,
Mr Richards-Galliers Community Nurse

Type of Application : Application under section 168(4) of the
Commonhold and Leasehold Reform Act 2002

Tribunal Members : Tribunal Judge Dutton
Ms S Coughlin
Mrs R Turner JP BA

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR on 26th
July 2017

Date of Decision : 7th August 2017

DECISION

DECISION

The Tribunal determines that there have been breaches of the terms of the Respondent's lease for the reasons set out below.

BACKGROUND

1. This is an application by the Residents Association seeking a determination that Mr Richards-Galliers, the Respondent, has breached a covenant or condition of his lease.
2. In the application made on behalf of the Applicants by SLC Solicitors and dated 18th March 2017, it is alleged that the Respondent has:-
 - Failed to pay service charges. This allegation is no longer proceeded with.
 - Is in breach of clause 2(10) of his lease for failing to keep the property in good decorative condition.
 - Is in breach of covenant 3(1) of the lease for failing to keep the property in good and tenantable repair.
 - Is in breach of clause 3(9) of his lease in that he has created or allowed a nuisance to arise and the allegations of that matter are (a) one of assault against a neighbour, (b) frightening other tenants, (c) smells emanating from his property, (d) rubbish scattered about the estate, (e) leaving the flat unlocked and open for strangers and children to explore, (f) a health risk to neighbours due to insanitary state and an allegation of lighting fires within the flat.
 - Defecating and urinating in the common parts.
 - Damaging the entrance door.

None of these matters are admitted and accompanying the application were a series of photographs taken of the Respondent's flat. In the bundle provided prior to the hearing, we in addition to the application, had copies of the register of title and the Respondent's lease, a statement made on behalf of the Applicants by solicitors, although unsigned, a statement of Mr Arthur Gerald Jenner, the Managing Director of Hillcrest Estate Management Ltd who are the managing agents and some correspondence between the Respondent and the solicitors acting for the Applicants. In addition, and arriving late in the day, were a number of other emails in respect of this matter.

HEARING

3. The hearing was attended by Mr Gibson, Solicitor Agent for SLC Solicitors and Mr Jenner the Hillcrest Managing Director. Mr Richards-Galliers attended together with his Community Nurse, Mr Chingwaro who was of great assistance.
4. Mr Gibson took us to the relevant terms of the lease which he says had been breached and referred to the photographs which he thought had been taken by the Local Authority but could not say when. It may in fact be that they were taken either by the Fire Authority or an Ambulance crew that had attended but Mr

Richards-Galliers, or Mr Richards as he asked us to call him, thought that they had probably been taken in 2016.

5. Mr Gibson referred us to a number of emails relating to the condition. These were dated in March of this year and subsequent dates thereafter speaking to the state of the property and the personal circumstances of Mr Richards. In an email of 11th July 2017 from Shirley Homes of Brent Council, it is recorded that the Care Co-ordinator, Nyela Reid, visited the property and has confirmed that its condition is actually worse than was depicted in the photographs annexed to application. It is also apparent that the Fire Authority are aware of the issues and according to an email in March from Shirley Homes it appears had attended twice. A further email dated 15th June refers to the Fire Brigade attending and there may have been further photographs available but they were not provided to us.
6. One issue raised at this point was the fact that there was an allegation that an open fire had been built in Mr Richards' flat apparently to cook potatoes. This he denied indicating that he might light a candle now and again as he was a Buddhist. We will come on to the comments made by Mr Richards in due course.
7. We then heard from Mr Jenner who had made a witness statement, although he had not been to see the flat. He had relied on third parties for confirmation as to the condition. He had inspected the communal areas but apart from apparently calling at the flat to gain access, which had been unsuccessful, he had no knowledge of the internal state of repair. He told us he had last visited some four to five months ago. Apparently, there is now no estate manager and this matter is now being taken on by Mr Jenner. He confirmed he had had no contact with Brent Environmental Health. That concluded the Applicant's case.
8. Mr Richards disputed the internal state of his flat and as a result we agreed that we might visit to see for ourselves what the position was. He told us that he had problems associated with the loss of loved ones and it is clear from correspondence and indeed from meeting Mr Richards that there are issues relating to his welfare. He denied that he had cooked potatoes on an open fire in his flat and that he had defecated in the grounds. He did not recall leaving the front door open but did accept that he had three to four friends who may call on a regular basis. It was suggested that there had been an attempt to clean the flat in the near past but it was not clear whether that had been completed because Mr Richards alleged that certain items of a personal nature had been taken from his flat whilst the cleaning was being undertaken.
9. At the conclusion of the hearing, Mr Richards confirmed that he would be happy for us to inspect the property and that it was in a better condition than portrayed in the photographs.

INSPECTION

10. We inspected the subject property after the hearing. The flat is on the ground floor of a three-storey block containing 12 flats. It is in a quite pleasant residential location with a number of similar properties. There is, however, a

certain feeling of neglect concerning the whole estate. Equally, however, there is the potential to turn the development into something quite appealing.

11. Mr Richards was in attendance with Mr Chingwaro and showed us to his flat. The common parts were in an untidy state. The carpet was stained and the decorations were in need of attention. The front door appeared to have been repaired at some stage. There was no particular excess of detritus or other matters in the common parts.
12. An inspection of Mr Richards' flat confirmed that it was in an extremely poor state of repair. It is a bedsit with a kitchen and shower room. The shower room is difficult to access. The shower appeared to be dislodged from the wall. The toilet was in an appalling state as was the remainder of that room. In the living room, there was detritus strewn across the floor and it was impossible to determine whether there was any floor covering. The sofa, which was understood doubled up as a bed, was reasonably clean, but the remainder of the room was in a very poor state. This was made worse by the fact that one large pane of glass in the bay window was broken and another had the exterior element of the double glazing broken. The kitchen was in equally poor condition. It is not wholly clear whether it is possible to cook given the state and Mr Richards did open the grill to reveal a number of potatoes which appeared to be in the process of seeding.

FINDINGS

13. We were not overly impressed with the case presented to us by the Applicant. They seemed to be of the view that this was a tick box exercise and that we would not be seeking to investigate to any great degree the allegations made. The photographs are fairly dated and it is not even clear who took them. We are not satisfied that any compelling evidence was given to us to indicate a breach of clause 3(9) of the lease. This says as follows "*Not at any time to do or suffer anything on the premises or the remainder of the estate which may or grow to be a nuisance, detriment or annoyance to the lessor or the company or the owners or occupiers of other parts of the managed buildings or the estate or which may be illegal or immoral and the rights granted in clause 1 above shall be exercised in a reasonable manner.*" There is little or no evidence to show that Mr Richards has undertaken those matters set out at paragraph 4(a) to (h) in the application. We understand there may be allegation of assault against a neighbour but Mr Richards put forward an explanation as to why that may have happened and we do not need to go into that any further. No statement from the person alleged to have been assaulted was produced
14. At the time of our inspection there was some odour in the common parts but not within the flat, which may be due to the fact that a window was missing. As to other matters, we have no evidence of any small fire being lit other than an email. There is certainly no witness statement. Nor is there any evidence to support the health risk to neighbours due to the insanitary state of the flat, although our inspection indicated that there may be something in that point.
15. Our inspection clearly indicated that the flat was in an appalling condition. Accordingly, we find that there have been breaches of clauses 2(10) and 3(1) of the lease. A copy of the lease was with the papers and is dated 26th June 1987

between an original lessee Dr Teahon, the Applicants and Lang Land Limited and Lang Homes Limited, the sub-lessor. The lease is for a term of 125 years from 1st July 1986 upon payment of a peppercorn ground rent and the obligations contained therein.

16. Clause 2(10) says as follows *"To keep in good decorative condition the interior of the flat contained in the premises and the outside of the flat entrance door."* Clause 3(1) of the lease says *"To repair and keep in good and tenantable repair and condition the premises include non-structural walls, timbers, floors, ceilings, windows, window frames and all other parts of the building so far as included in this demise (other than the external and main structural load bearing parts of the building, the roof and roof structure and communal water tank and system and common areas within the building) and any footpath which exclusively services the premises (but not any parking space or spaces hereby demised)."*
17. Although we have made those findings it does seem to us that thought might have been given as to whether or not some action could have been taken under section 83 of the Public Health Act 1936 as clearly this was what would be termed a "filthy" premises and also under the Environmental Protection Act of 1990. We question also whether or not the Housing Act 2004 could have been invoked to have attended to this issue. The Managing Agents have however appear made no attempt to contact the Environmental Health department of the Local Authority to enrol their help.
18. We have no doubt that Mr Richards is vulnerable. At the time of the hearing and of the inspection he was courteous and helpful. We were satisfied that he understood the importance of the hearing and the potential impact upon him. He made it clear that he did not want to lose his flat. However, history indicates that there have been mental health problems and he has been under the care of the Local Authority. It is sad that the matters have come to this state and even now it may be possible to consider other avenues that are open to the parties involved to try to resolve this matter without forfeiture of the lease and the loss of Mr Richards' home.

Judge: Andrew Dutton
A A Dutton

Date: 7th August 2017

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 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 to 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 (ie 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.