



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

Case Reference : **LON/OOAL/LBC/2017/0033**

Property : **Top Floor Flat, 197B Plumstead
High Street, London SE18 1HE**

Applicant : **Mrs Lisa Rose Gonzi**

Representative : **PainSmith Solicitors**

Respondent : **Ms Maxine Joy Page**

Representative : **In person**

Type of Application : **For the determination of an alleged
breach of covenant**

Tribunal Members : **Mrs S O'Sullivan
Mr T Sennett MA FCIEH**

**Date and venue of
Hearing** : **25 May 2017 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **25 May 2017**

DECISION

Decision of the tribunal

The Tribunal determines pursuant to section 168(4) of the Commonhold and Leasehold Act 2002 that the Respondent has breached the various covenants of the lease as set out below.

The application

1. The Applicant seeks a determination pursuant to s. 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent tenant is in breach of various covenants contained in the lease.
2. Section 168(4) provides that;

“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 covenant or condition in the lease has occurred.”
3. The property which is the subject of this application is known as Top Floor Flat, 197B Plumstead High Road, London SE18 1HE (the “Flat”).
4. Directions were made dated 27 March 2017 which set out the steps to be taken by the parties and provided for this matter to be considered at an oral hearing.
5. In accordance with those directions both parties lodged bundles of documents.

The inspection

6. The tribunal carried out an inspection at 10am on 25 May 2017. As the tenants objected to the landlord inspecting we carried out the inspection without the attendance of the parties.
7. The subject premises is a one bedroom flat on the first floor of a three storey late Victorian inner terraced house that has been converted into three flats, one per floor. The Flat comprises living room, bedroom, back addition bathroom and kitchen. The Flat is in reasonable repair and decorative order with dated bathroom fittings. Windows are uPVC in working order. There was no evidence of water penetration or leakage from installations or appliances. The main room, corridors and stairs to the Flat are carpeted. The building containing the Flat is in need of repair to entrance steps, handrail and rendering which is cracked to the front elevation. There is an original slated roof over the back addition bathroom which is in poor order with slipped or broken slates but no evidence of any water penetration.

8. We also inspected the ground floor flat. The Applicant pointed out slight water staining to the entrance passageway and to the bathroom and kitchen. There was no evidence of active water penetration. She also pointed to cracking to the party wall and ceiling with the stairs and beneath the first floor kitchen however this appeared to the tribunal to be superficial and of no significance. Whilst inspecting the Applicant's flat we noted that conversations and background noise from the upper flat were audible.

The hearing

9. A hearing took place on 25 May 2017. Both the Applicant and Respondent appeared in person.
10. The Applicant relied on a bundle of documents and the witness statement of Lisa Rose Gonzi dated 19 April 2017. She appeared at the hearing to give oral evidence. The Applicant further relies on a statement made by Painsmith Solicitors dated 19 April 2017 together with the application form.
11. Ms Gonzi is the freeholder and we heard that she purchased the freehold in August 2007. She is also the leaseholder of the ground floor flat at the property which she lets.
12. The Flat is contained in a building known as 197 Plumstead High Road which comprises a terraced house divided into three flats. The Respondent is the leasehold owner of the top floor flat known as 197B Plumstead High Road (the "Property") pursuant to a lease dated 16 August 1987 made between Vera Gladys Banks (1) and Josephine Hughes (2) (the "Lease"). The Respondent acquired the Property on 1 September 1998.
13. The Respondent made a witness statement setting out why she challenged the application and appeared at the hearing to give oral evidence.

The Alleged breaches of covenant

14. The relevant clauses of the Lease said to have been breached are set out below together with a summary of each party's position and the tribunal's decision.

Clauses 4(6), 4(7) and 4(8) - failure to keep property in good repair

15. The Applicant says that the Respondent is failing with her obligations to keep the Property in good repair, well maintained and decorated. The relevant clauses are set out below.

By clause 4(6) the Respondent covenants;

“To paint in a proper and workmanlike manner all the inside wood iron and other parts heretofore or usually painted of the flat with three coats at least of good oil paint and after every internal painting to repaper with paper of a quality at least to that hung at the date hereof such parts of the flats as are now papered and to stain varnish distemper stop whiten and colour such parts of the flats as have been previously so treated at least once in every seven years calculated from the 25th March 1976”

By clause 4(7) the Respondent covenanted

“To keep the interior of the premises in good and substantial repair”.

By clause 4(8) the Respondent covenanted to;

“To keep in repair and replace when necessary all cisterns pipes wires ducts and any other thing installed for the purpose of supplying water (cold or hot) gas or electricity or for the purpose of draining away water and soil or for allowing the escape of steam or other deleterious matter from the flat in so far as such pipes wires ducts or other things are solely installed or used only for the purpose of the flat and for the purpose of such repair the Lessee and her workmen shall access to such pipes wires ducts or other things where they are in upon or over the other flats of the parts of the building and in common by the lessee ad the Lessees of the other flats upon proper notice to the other Lessee being given”.

16. The Applicant accepts that she does not in fact know the condition of the interior of the Flat as she has not been given access to it. However she owns the leasehold of the flat below and says she has suffered numerous water leaks causing ongoing issues relating to damp penetration. She attached various undated photographs to her statement which she says shows the water damage. She complains of continuing water damage.
17. The Respondent accepted that there has been a leak as a result from the flat roof at the Flat but that this had been repaired and that she had borne the cost, a copy of the invoice in the sum of £2458.80 was included in the bundle and this was not contested by the Applicant. She otherwise denies that the Flat is not in good repair and says that it was decorated in 2013 when letting to the current tenants. As far as maintaining the various installations was concerned she confirmed a new combination boiler had been installed in 2013 and that a homecare agreement with British Gas was in place. The boiler and central heating are serviced annually. Copies of the agreements were in the bundle to

evidence this. A home insurance plan is in place which also covers plumbing and electricity.

18. As set out above on our inspection we found the Flat to be in a reasonable condition. We did not see any defects in relation to the heating, plumbing or electrical installations which all appeared to be in good working order. There was no evidence of any active water penetration and the slight water staining we saw did not appear active. Accordingly we found there had been no breach of Section 168(4).

Clause 4(15) – nuisance

19. By clause 4(15) the Respondent covenanted as follows.

“Not to do or permit or suffer to be done in or upon the Flat anything which may be or become a nuisance or cause damage or inconvenience to the Lessor or the Lessees of the Lessor or neighbouring owners or occupiers or whereby any insurance for the time being effected on the flat may be rendered void or voidable or whereby the rate of premium may be increased”.

20. The Applicant says that the occupiers of the Flat which comprise a family of 2 adults and 3 small children cause a nuisance. She also says they have been abusive to her tenant. We were informed that her previous tenants had left due to the excessive noise and that the new tenants as from March 2017 were also complaining of problems. She relies on a log entitled “mydlink Home” which itemised times when a movement or noise had been identified. It was not clear where this sensor had been placed and whether the movements came from within the Applicant’s flat. The noises were not categorised in any way so we were unable to see how loud they might be. The Respondent acknowledges the Property is small for a family and confirmed she has served the preliminary notice under section 21 for taking possession. She has not yet issued proceedings for possession but accepts it may be necessary for the tenants to be rehomed.
21. We found there was no evidence that the tenants had been abusive. We had no direct evidence from the Applicant’s tenants in this regard. As far as the alleged noise nuisance was concerned we did not find the printouts from “mydlink Home” to be useful as they did not provide any evidence on the level of noise. We had also noted on inspection that the sounds of everyday conversation could be heard from the downstairs flat which in our view evidenced poor insulation. We also noted that although there had been some initial contact with the local Environmental Health Team they had not taken any action. We therefore concluded that there was no evidence of noise nuisance.

Clause 4(16)/Schedule paragraph 1

22. In accordance with clause 4(16) the Respondent covenanted as follows;

“During the said term to perform and observe all and singular restrictions stipulations and conditions set forth in the Schedule hereto”.

23. Paragraph 1 of the Schedule provides:

“To use and occupy the flat as a private dwelling house only for the sole occupation of the Lessee and her family and members of her household”.

24. The Respondent accepted that the Flat had been sublet and therefore was not used as a private dwelling house for the sole occupation of the Respondent and her family. We therefore found that there had been a breach of section 168(4) in respect of clause 4(16) and paragraph 1 of the Schedule.

Clause 4(19) – notice of assignment

25. In accordance with clause 4(19) the Respondent covenanted as follows

“Within one month after every assignment assent transfer mortgage or underlease of the flat to give notice thereof in writing with particulars thereof to the Lessors solicitors and to produce such assignment assent transfer mortgage or underlease to the Lessors solicitors and...to pay a registration fee of £4.20 in respect of such assignment assent transfer mortgage underlease”.

26. The Respondent accepted that she had not served the requisite notice when she sublet the Flat to her current tenants in 2013. We therefore found that there had been a breach of section 168(4) in respect of clause 4(19).

Conclusion

27. As set out above we found that there had been two technical breaches of the Lease. However given the landlord has invoiced and accepted rent for the period 2014 after the tenants were clearly in occupation there may have been a waiver by the landlord of the relevant covenants. The issue of waiver is a matter for the County Court on any application for relief from forfeiture.

28. We spent some time with the parties discussing the problems and trying to identify a way forward. We discussed the possibility of a managing agent being appointed. We suggested that the parties arrange

an early inspection of the Flat at a time convenient to the tenants so that the landlord may see the Flat for herself. After that the parties should endeavour to work together to agree a plan to remedy the various works required at the building.

Name: S O'Sullivan

Date: 25 May 2017