



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

Case reference : **LON/00BH/LBC/2017/0109**

Property : **108 Coppermill Lane,
Walthamstow, London E17 7HE**

Applicant : **Mr P Grove**

Representative : **Mr V Zaiwalla of counsel**

Respondent : **Ms A Chaloner**

Representative : **In person**

Type of application : **Determination as to whether there
has been a breach of covenant**

Tribunal member(s) : **Judge S Brilliant
Mr L Jarero BSc FRICS**

**Date and venue of
hearing** : **21 February 2018, 10 Alfred Place,
London WC1E 7LR**

Date of decision : **12 March 2018**

DECISION

Decision of the tribunal

The tribunal determines that the respondent is in breach of the following covenants in her lease:

- (1) clause 2(6) requiring her to repair the premises;
- (2) clause 2(9)(a) requiring her to permit the applicant to enter the premises on reasonable notice.

The application

1. The applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 that breaches of covenant in the lease have occurred.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. 108 Coppermill Lane, Walthamstow, London E17 7HE ("the premises") consist of a ground floor maisonette in a terraced block.
4. The respondent is the long lessee under a lease of the premises dated 25 March 1992 ("the lease"). The lease is for a term of 99 years from 24 June 1986. The respondent took an assignment of the term of the lease on 7 August 1992. The specific provisions of the lease will be referred to below, where appropriate.
5. The applicant acquired the freehold reversion of the premises in 2012. He is also the long lessee of the upstairs maisonette at 108A Coppermill Lane ("number 108A"), which he lets out to tenants.

The issues

6. The issues to be determined according to the application notice are whether the respondent has:
 - (1) failed to maintain and keep the premises in good and substantial repair and condition and proper order in breach of clause 2(6) of the lease;
 - (2) failed to permit the applicant to enter the premises in order to examine the state of repair and condition of the premises in

breach of clause 2(9)(a) of the lease.¹

The lease

7. The respondent covenanted in clause 2(6) of the lease:

*At the expense of the Lessee throughout the said term where and as often as need or occasion shall require well and substantially to repair renew uphold support maintain drain point pave cleanse **paint** (our emphasis) grain varnish enamel whiten colour strip and repaper **glaze** (our emphasis) and mend and keep in good and substantial repair and condition and in proper order the demised premises and all erections and buildings that shall for the time being be erected or built upon the site thereof and any additions thereto...*

8. The respondent covenanted in clause 2(9)(a) of the lease:

To permit the Lessor or its agents at all reasonable times at any time during the said term with or without workmen or others to enter on reasonable prior notice the demised premises and examine the state of repair and condition thereof and of such breaches of covenant and decays defects and wants of repair or decoration then and there found for which the Lessee is liable to give or leave on the demised premises notice in writing to the Lessee to repair and make good the same according to such notice and the covenants in that behalf hereinbefore contained

The applicant's case

9. In his witness statement dated 12 January 2018 at page 91 of the trial bundle the applicant said as follows:

5. *When I purchased the Property, I noticed that the external condition of 108 Coppermill Lane was in a very poor state of repair. Please find at Exhibit PG1 a copy of the Estate Agent's particulars issued to me in 2012. I noticed specifically that the wooden front bay window and stone sill can be seen to have peeling paint. Nevertheless, the property appeared to be structurally integral and weatherproof so I did not take action immediately.*

6. *In or around the end of 2015, I noticed that the condition of the Property was substantially deteriorating. Namely, the condition of the front bay window worsened when the left-hand*

¹ The application notice also alleged a failure to pay ground rent for the years 2013 – 2017, but at the directions hearing on 18 December 2017 it was held that the tribunal did not have jurisdiction in respect of this matter

window pane was replaced by a piece of corrugated metal. In January 2017 the middle pane disappeared and was replaced by a sheet of cardboard which is the state in which it exists today. I have inspected the Property from the outside and have found that the net curtains are mouldy. Please find at Exhibit PG2 a photograph taken by me a short time ago.

10. The applicant also explained that he had sent the respondent various letters requesting a meeting to discuss the maintenance of the premises. In particular, his solicitors sent a letter dated 14 September 2016 at pages 44 to 45 in the trial bundle requesting that the respondent allow the applicant access to the premises for the purposes of an inspection.
11. The respondent replied on 4 October 2016 in a very long document at pages 46 – 84 of the trial bundle but did not in that document or at any later time agree to the applicant having access to inspect the premises.
12. We were also informed that some years ago the ceiling of the respondent's bathroom collapsed, destroying the respondent's bath. The applicant had endeavoured to carry out repairs, but there came a time when the respondent refused his contractors any further access.
13. Mr Zaiwalla submitted on behalf of the applicant that there was clear evidence of breaches of both clauses 2(6) and 2(9)(a) of the lease.

The respondent's case

14. The respondent told us that she had suffered continuing difficulties from the behaviour of the various tenants living above her in number 108A.
15. In particular, the children would repeatedly throw objects down into her front garden which would damage the paint work on the front bay window frames and sill.
16. The respondent accepted that three of the windowpanes in her front bay window had been replaced with either corrugated metal or cardboard. But she explained that the window had originally been broken by the Police, who had occasion to break into the premises when they became concerned about the well-being of the respondent. It was this which had led to the corrugated metal being installed.
17. The respondent said she was justified in refusing any further access to the applicant's contractors to complete the bathroom works.

Our findings

18. We found the applicant to be a credible witness who was doing his best to manage the premises without any engagement or cooperation from the respondent.
19. The photograph of the front bay window of the premises referred to by the applicant in his witness statement at Exhibit PG2, which is at page 99 of the trial bundle, is very strong evidence of want of repair. The paintwork on the sash windows has peeled away to a considerable extent leaving the woodwork underneath exposed and unprotected. Three large panes of glass are missing. Instead corrugated metal and cardboard has been used to block up the spaces.
20. The condition of the paintwork is such that it cannot be solely attributable to damage incurred by objects thrown from number 108A.
21. The fact that the Police may have broken one of the windowpanes is irrelevant. It is the responsibility of the respondent to keep the glazing in good repair. Patching up broken panes with corrugated metal or cardboard is not an acceptable way of carrying out a repair.
22. It is unnecessary for us to make any findings as to the reason why the bathroom works not been completed in the premises as the applicant does not rely upon the state of the bathroom in his application.
23. No good reason has been put forward by the respondent as to why she has failed to give the applicant access to the premises in order that he can determine the state of repair.

Name: Simon Brilliant

Date: 12 March 2018

Appendix of relevant legislation

Section 168(4) of the Commonhold and Leasehold Reform Act 2002:

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 a covenant or condition in the lease has occurred.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).