

LEASEHOLD VALUATION TRIBUNAL

SECTIONS 168 AND 169 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

PROPERTY: 30 Percy Street
Jarrow
Tyne & Wear
NE32 3AX
(‘the Property’)

APPLICANT: CHRISTOPHER MICHAEL HAINE

RESPONDENTS: BRIAN MASON and JUNE MARGARET MASON

TRIBUNAL: B.Wake LL.B FCI Arb.
J.N.Morris FRICS
Mrs. A.R. Paterson

THE DETERMINATION OF THE TRIBUNAL

Preliminary

1. On 11th July 2006 the Applicant, by his solicitors, applied to the Tribunal to determine whether there had been a breach of a covenant or condition in the lease of the Property pursuant to Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 (‘the Act’)
2. Directions were given on 20th July 2006.
3. The Applicant requested that there should be a hearing.
4. The Respondents do not occupy the property nor has it been possible to ascertain their present address. In accordance with Directions given by the Tribunal the Applicant’s solicitors notified known mortgagees of the Property (Barclays Bank plc and South Tyneside Borough Council) of the Application, inviting them to make representations. Neither has done so.

The Lease

5. The lease of the Property (‘the Lease’) is dated 2nd May 1984 and made between Kenneth Roper (1) and the Respondents (2) and demised the property for a term of 99 years from the date of the Lease at a peppercorn rent.
6. Land Registry Register Views showed that as at 8th August 2006 and 7th July 2006 respectively the Applicant was registered as proprietor of the freehold interest and the Respondents as proprietors of the leasehold interest in the Property under the Lease.

7. By Clause 3 of the Lease the lessee covenanted to observe and perform covenants. The relevant covenants, (c) - (g) are reproduced as Schedule 1.
8. The Lease does not contain any arbitration provision.

The Inspection

9. An external and internal inspection was carried out on 2nd October 2006.

The Hearing

10. A hearing was held at 1pm on 2nd October 2006 at Gateshead Central Library, Prince Consort Road, Gateshead.
11. Mrs. Barbara Haine appeared, representing her husband, the Applicant. The Respondents neither appeared nor were represented. Neither of the mortgagees was represented nor had either made any written representations.

Applicant's Case

12. The Applicant alleged breaches of the covenants forming Clause 3 (c) - (g) of the Lease.
13. In support he put in a report by Mr. Peter Charlton FRICS dated 19th May 2006 following an inspection of the Property made by him on 16th May 2006. In it he listed elements which he labelled 'Outstanding Repairs'.
14. In oral evidence Mrs. Haine said that her husband bought the freehold of the Property and of 32 Percy Street (the ground floor flat beneath), which they immediately occupied, in May 2004. Initially they assumed that the builder who had improved No.32 and was their vendor owned the leasehold of the Property and was in the course of improving it. In due course they discovered from neighbours that the Respondents were the leasehold owners of the Property as well as 34 and 36 Percy Street, next door to 30 and 32, which was boarded up. No-one knew where the Respondents could be found. Because of various defects in the Property affecting No.32, including ingress of rainwater, South Tyneside Borough Council at the behest of the Applicant on three occasions effected emergency repairs and, not having been able to trace the Respondents, placed a notice of charge in respect of the cost on the front door of the Property. The Applicant had made all the enquiries possible to trace the Respondents but had failed to do so.

The Law

15. Section 168 (1) of the Act forbids, in the case of a long lease of a dwelling, the service of a notice under Section 146 (1) of the Law of Property Act 1925 (notice prior to forfeiture of a lease and on service of which forfeiture is conditional) unless Section 168 (2) is satisfied. That subsection identifies three possible situations the only relevant one of which for present purposes is:

it has been finally determined on an application under subsection (4) that the breach had occurred
16. Subsection (4) allows a landlord to make an application to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred.
17. Section 169 contains a number of interpretation provisions relating to Section 168.

18. Section 168 (5) prevents a landlord making a subsection (4) application where the matter in question:

- a) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party.*
- b) *has been the subject of a determination by a Court, or*
- c) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

Facts found by the Tribunal

19. The Applicant is the reversioner and the Respondents are the leaseholders under the Lease which is a long lease of a dwelling within the meaning of Section 168 (1).
20. The Respondents cannot be found.
21. There is not and has not been any reference to any arbitration, arbitral tribunal or Court.
22. The Respondents have been sent notice of the Application by placing it through the letter box of the Property and the Tribunal considered that to be effective service.
23. The Property is a first floor flat in a terrace with access at the front directly onto the pavement and at the back via a small yard to a back street. Stairs lead up from the front door into a living room and down at the back from a lobby between the kitchen and bathroom. It is clear from vertical breaks in the plaster where walls formerly fitted in that there was at one time a small landing at the top of the main stairs leading to a small bedroom and a living room. Those walls have been removed to make a large living room entered directly from the stairs. The plan on the Lease shows this to have been the position prior to the grant of the Lease in 1984. In addition to the living room there is one double and one single bedroom at the front of the Property. A kitchen leads off the living room and thence into a lobby from which lead the back stairs and the bathroom. The kitchen, lobby and bathroom are in a flat roofed extension to the original building. Opposite the rear stairs across a narrow yard is a door leading to the back street.
24. In general, the Tribunal felt able to adopt Mr. Charlton's list of what was needed by way of repair and impliedly represented breaches of the covenants at clause 3 (c) (e) and (g). The Tribunal did not find evidence that there had been any breach of covenants 3 (d) or (f).
25. There were some elements which the Tribunal did not consider were accurately recorded or did not comprise a breach of covenant. They are:
 - There was no wet rot in the window frames.
 - Failure to decorate plaster was not a breach of covenant. There is no specific obligation to decorate internally - whether to paint or paper walls is a matter of choice.
 - The section of gutter on the front elevation said to be distorted was deliberately created to achieve the necessary fall and was not a disrepair.
 - The exposed pipework in the kitchen was only exposed because the kitchen fittings had been removed - a matter dealt with elsewhere.
 - The party wall to the yard had been adequately, if unaesthetically, repaired.
26. There were elements of disrepair not noted by Mr. Charlton.
27. The elements of disrepair found by the Tribunal based on Mr. Charlton's list but adjusted as required by paragraphs 25 and 26 above are listed in Schedule 2.

The Determination

28. The Applicant contends that the Respondents are in breach of covenants contained in Clause 3 (c), (d), (e) (f) and (g), of the Lease.
29. Covenant 3 (c) is an obligation to keep the Property in good and tenable repair. The Tribunal finds that the Respondents are in breach of that obligation by virtue of the facts set out or referred to at paragraph 27 and Schedule 2. The Tribunal considers that the number, extent and nature of the elements of disrepair found show that the Respondents have not kept the Property in good and tenable repair as there defined.
30. Covenant 3 (d) relates to contributions to the cost of repair of party structures and installations. However there is no evidence before the Tribunal of any request for such contributions and consequently no basis or justification for the allegation. The Tribunal does not find the Respondents to be in breach of Covenant 3 (d).
31. Covenant (e) requires the lessee to paint externally at least every four years. The term commenced in 1984. The relevant external elements should therefore have been painted at least four times. From their appearance it is doubtful whether they have been painted more than once during that time and certainly not in the last five years. The relevant elements of breach are specified at 1.1, 1.2, 9.3, 11.2, and 12.1 of Schedule 2. The Tribunal finds the Respondents to be in breach of Covenant 3 (e).
32. Covenant 3 (f) relates to chimney sweeping. There was no evidence either documentary or on inspection of any breach of this covenant and the Tribunal does not find the Respondents to be in breach of it.
33. Covenant (g) relates to gas, electricity and hot and cold water equipment and equipment for draining away water and soil. This clearly includes the rainwater goods. The relevant elements of breach are specified at 2.1, 3.3, 3.5, 4.5, 5.7, 5.9, 6.2, 6.3, 7.5, 7.6, 8.3, 8.4, 11.1, 12.2 and 12.3 of Schedule 2. The Tribunal finds the Respondents to be in breach of covenant 3 (g).

Summary of breaches of covenant

34. The Tribunal determines that the Respondents are in breach of covenants (c), (e) and (g) of Clause 3 to the Lease.

SCHEDULE 1

(Relevant extracts from the Lease)

Clause 3 The Lessee hereby covenants with the Lessor as follows:

- c) To keep the demised premises in good and tenable repair and condition throughout the term and if necessary to rebuild any parts that require to be rebuilt*
- d) To pay one half of the cost of repairing or renewing any party structure or installation.*
- e) To paint such parts of the exterior of the demised premises as are usually or ought to be painted in the same colours as previously painted or such other colours as shall be agreed by the Lessor and Lessee at least every fourth year.*
- f) To sweep and thoroughly cleanse the chimneys of the demised premises (if any) at such time as may be necessary.*