

CASE NUMBER: MAN/00CK/LBC/2010/0001  
LEASEHOLD VALUATION TRIBUNAL  
OF THE  
NORTHERN RENT ASSESSMENT PANEL  
Commonhold and Leasehold Reform Act 2002  
Section 168(4)

Applicant: Mr Brian Hubbard  
Respondent: Ms Carol Murfin  
The Property: 1 Egremont Place, Whitley Bay, Tyne & Wear NE26 2EL  
Date of Determination: 29<sup>th</sup> July 2010  
The Tribunal: Mr WL Brown LL.B  
Mr JN Morris  
Mrs S Aldred

### Application

1. The Applicant applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant has occurred in the lease dated 24<sup>th</sup> December 1982 relating to 1, Egremont Place, Whitley Bay, Tyne & Wear NE26 2EL (the "Property").

### Preliminary and Inspection

2. The Application was dated 8<sup>th</sup> February 2010. On 19<sup>th</sup> February 2010 directions were issued by the Tribunal which included "It is considered that this matter is one that can be resolved by way of submission of documentary and other written evidence leading to an early determination. The Tribunals' inspection of the subject property will however be necessary".
3. The directions gave opportunity for the parties to request a hearing. No request was made.

4. The Applicant submitted a statement of case, a copy of the Lease and photographs of the Property.
5. The Tribunal inspected the interior and exterior of the Property on 29<sup>th</sup> July 2010 when the Applicant was present and was accompanied for part of the time by her brother.
6. The Tribunal convened on 29<sup>th</sup> July 2010 at Asylum & Immigration Tribunal, Kings Court, Royal Quays, Earl Grey Way, North Shields NE29 6AR without the parties for its determination.

### **Facts and Submissions**

7. The Applicant is the successor to the lessor recorded in the lease of the Property granted on 24<sup>th</sup> December 1982 for a term of 99 years from 1<sup>st</sup> December 1982 and made between Brian and Maria Angela Rafferty (1) and the Respondent (2) (the "Lease").
8. The Applicant submitted that relevant covenants of the lessee within the Lease are as follows:

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 and not to make any structural alterations except as shall be previously sanctioned in writing by the Lessor and to yield up the same in such repair and condition on the determination of the term hereby granted.

.....

(j) To ensure that the demised premises are insured at all times throughout the term in the joint names of the Lessor and the Lessee (and any Mortgagee) against loss or damage by fire flood and other risks and special perils normally insured under the Householders' Comprehensive Policy in some reputable Insurance Office .....

In addition the Tribunal noted within Clause 3 the following covenants:

"(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.

.....

(n) Not to do or permit or suffer anything to be done in or upon the demised premises or any part thereof which may become a nuisance or annoyance or cause inconvenience to the Lessor or the tenants or occupiers of the other flat or neighbouring dwellings.”

9. The Applicant submitted in writing in respect of the Property the following as alleged breaches of covenant:

- i. Severe damp to interior walls.
- ii. Rotten window frames.
- iii. No ceiling to the kitchen.
- iv. Large hole in bathroom ceiling.
- v. Security concern because bathroom window is damaged and held closed by a temporary piece of wood and wire.
- vi. The Applicant is not listed on the property insurance.
- vii. No method of heating the property.

#### **Law**

10. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (the Act) states "A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property act 1925 (c 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied."

11. Section 168(2)(a) states: "This subsection is satisfied if –  
(a) It has been finally determined on an application under subsection (4) that the breach has occurred,"

12. Section 168(4) states: "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."

#### **Tribunal's Determination with Reasons**

13. The Tribunal carefully considered the evidence and submissions provided. Its conclusions are:

The Tribunal determines that there has been a breach of covenant in respect of matters set out in paragraph 9 (i), (ii), (iii) and (iv) as follows:

(i) The Tribunal noted on inspection severe rising dampness to front room and w/c and observed evidence of damp penetration in kitchen and to the doorway adjoining the bedroom - a breach of the covenant in Lease clause 3 (c).

(ii) The wooden window cills are rotten and the wooden window frames are in poor condition and lacked decoration - a breach of the covenant in Lease clause 3 (c) and (e).

(iii) & (iv) There was no ceiling to the kitchen and a significantly large hole in the ceiling of the w/c - a breach of the covenant in Lease clause 3 (c) and (n).

There has been no breach of covenant in respect of matters set out in paragraph 9 (v), (vi) and (vii) as follows:

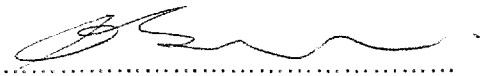
(v) While the Tribunal noted that the window catch was missing, it had a temporary fastening present and there is no lessee covenant to ensure general security of the Property.

(vi) No evidence was before the Tribunal as to whether the Property was insured or whether the Applicant appeared noted upon such a policy or not.

(vii) The Property had night storage radiators, although the Tribunal had no evidence of functionality. However, absence of a method of heating of the Property is not a breach of lessee covenant.

## Order

14. The Tribunal determines that Ms Carol Murfin, the Lessee of the Property is in breach of covenants (c), (e) and (n) contained in paragraph 3 of the Lease.



W L Brown

Dated 29<sup>th</sup> July 2010

Chairman