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Residential
Property
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Case reference: LON/00BB'LBC/2011/0031

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Property:	12 Woodhatch Close, London E6 5SU
Applicant:	East Homes Part of the East Thames Group Limited
Represented by:	Ms C White
Respondent:	Anthony Frederick Sell
Interested Persons:	Santander Plc, National Westminster Bank Plc Kings Hill (No 1) Limited Ms Omand
Date of Hearing :	2 June 2011
Date of Decision:	14 June 2011
Tribunal:	Mr S Carrott LLB Mr I Thompson BSc FRICS

Introduction

1. This is an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant or condition of the lease has occurred.

2. The subject property is 12 Woodhatch Close, London E6 5SU. The property was let under the terms of a shared ownership lease dated 29 June 1984 for a period of 99 years from 1 January 1984.

3. The Applicant landlord is East Homes and the Respondent is Mr Anthony Frederick Sell. Mr Sell does not reside at the subject property.

4. At the hearing of the application on 2 June 2011, the Applicant was represented by Ms Christina White. There was no appearance by the Respondent.

Notice of the Proceedings

5. Notice of the application was given to Santander Plc, National Westminster Plc, Kings Hill (No 1) Limited and also to the Respondent's ex-wife all of whom are interested parties.

6. The Tribunal was also satisfied that the Respondent had been given notice of the proceedings in accordance with paragraph 5(1) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 notwithstanding that he does not reside at the subject property. The Tribunal was given the address of the Respondent's employers, which employers also confirmed to the Tribunal that the Respondent was in their employment and that they would pass on any documents to the Respondent. Notice of the proceedings (including a copy of the Directions) was sent to the Respondent's employers by post on 17 April 2011.

7.

The Applicant's Case

7. The Applicant's case is that the subject property has been left unoccupied for some four years and that as a result of the non-occupation of the premises the subject property has deteriorated and has caused nuisance to adjacent properties and to neighbours generally.

8. The Applicant relied upon the written and oral evidence of Mr Colin Teagle Surveyor and Mr John Lonegan, Area Manager, Resident Services.

9. Mr Teagle visited the subject property in April 2011 and took photographs which were before the Tribunal. His evidence was that front and rear gardens were overgrown blocking the entrance to the front door and preventing the opening of a window and that the service media connections, namely gas and electricity had been terminated. Full access to the property was prevented by a collapsed ceiling to the entrance hall which meant that the front door could only be partially opened. He considered that it was too dangerous to enter the property given the condition of the hallway.

10. He found that the rear garden was littered with rubbish due in part to fly tipping and that rear garden fence was missing in part leaving the property accessible to trespassers.

11. He told the Tribunal that the garden was so overgrown as to interfere with access along and adjacent alleyway. He estimated that the cost of reinstating the subject property based upon his partial view of the internal and his inspection of the external including rubbish clearance would be some £8000.

12. Mr Lonegan gave evidence as to how the Respondent's place of employment was ascertained, the fact that in the past the property had been squatted due to being vacant and that complaints had been received by the London Borough of Newham concerning the state of

the subject property and the London Borough of Newham was in particular concerned about the fly tipping.

13. Ms White on behalf of the Applicant submitted amongst other things that there were breaches of the following covenants

(1) Clause 3(3) –

The leaseholder hereby covenants with the landlord to keep from time to time and at all times during the term the Premises clean and well and substantially repaired and maintained (damage by fire and other risks insured under Clause 4(2) excepted ...

(2) Clause 3(4)

As often as is reasonably necessary and in the last month of the term however determined except where the Leaseholder purchases the freehold in accordance with the terms of the Fourth Schedule in a proper and workman like manner (and in the last month of the term in colours approved by the landlord) to paint paper treat and generally decorate in style appropriate to property of a like character all the insider and outside of the Premises previously or unusually so painted papered treated and decorated.

(3) Clause 3(7) -

The Leaseholder hereby covenants with the Landlord to execute and do at the expense of the leaseholder all such works and things whatever as may at any time during the terms be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Premises or any part thereof.

(4) Clause 3(8)

The Leaseholder hereby covenants with the landlord promptly to serve on the landlord a copy of any notice order or proposal relating to the Premises and served on the Leaseholder by any national local or other public authority.

(4) Clause 3(11) –

The Leaseholder covenants with the Landlord to permit the landlord and his surveyor or agent at all reasonable times on notice to enter the Premises to visit the condition thereof and to make good all defects and wants of repair of which notice in writing is given by the landlord to the Leaseholder and for which

the Leaseholder is liable under this Lease within three months after the giving of such notice.

(5) Clause 3(19) –

Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on the Premises.

14. Ms White also relied upon other breaches of covenant which after discussion with the Tribunal she did not seriously pursue. In the event because the determination we make in this case it is unnecessary to rehearse these other breaches of covenant.

15. There was considerable discussion at the hearing about the extent of the demise because no lease plan had been provided at the hearing. Mr Lonegan who was familiar with properties in the locality having worked with the Applicant since 1993 informed the Tribunal that there was no access to the rear garden other than through the subject property itself and that although the front garden did not contain a boundary fence, that it was in his experience part of demise.

16. Following the hearing a copy of the lease plan was provided but it did not assist beyond the oral evidence that was given by Mr Lonegan on this issue.

Determination

17. The Tribunal found that the Respondent was in breach of clauses 3(3), 3(4) and 3(19) of the lease. As to the allegation that the Respondent was in breach of clauses 3(7) and 3(8) of the lease the only evidence adduced was from a single email from the London Borough of Newham dated 3 May 2011 where the local authority stated that it had been aware of the subject property since 2008 and had received numerous complaints from members of the public. There was no evidence of requests to the Respondent by the London Borough of Newham to carry out works and no evidence of any notices served by the London Borough of Newham.

18. Likewise no evidence was placed before the Tribunal to show that the Applicant had requested access to the property and the Respondent had refused such access. It may well have been that such requests were made in the past – however no evidence was placed before the Tribunal and it could therefore not second guess as to what had transpired in the past.

19. It was clear however from the evidence of both Mr Teagle and Mr Lonegon and the photographs that the property was in a dilapidated condition and had caused real nuisance to members of the public and that there was a considerable risk that the insurance policy for the property may be vitiated owing to the condition of the property.

20. As to the extent of the demise it was clear that the rear garden was part of the demise. Given however that that the front of the property was so overgrown so as to affect the building itself, whether the front garden was indeed part of the demise did not appear to be material because the gravamen of the complaint was the condition of the property.

Decision

21. The Tribunal determines that the Respondent is in breach of clauses 3(3), 3(4) and 3(19) of the lease dated 29 June 1984.

Chairman: S Carrott LLB

Date: 14 June 2011