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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00BB/LBC/2011/0119
Premises:	Flat B, 50 Dore Avenue, London E12 6JU
Applicant:	Meryon Properties Ltd
Representative:	Circle Residential Management Ltd
Respondent:	Mr S Hafez
Leasehold Valuation Tribunal:	Mr NK Nicol Mr JF Barlow FRICS
Date of decision:	29th February 2012

Decisions of the Tribunal

(1) The Tribunal has determined that the alleged breach of covenant has been made out.

(2) The Tribunal makes no order as to costs.

The application

1. The Applicant sought a determination under s.168 of the Commonhold and Leasehold Reform Act 2002 that the Respondent was in breach of covenant. In particular, it was alleged that the Respondent had failed to paint the exterior parts of the property since the grant of the lease in 2004, contrary to clause 5(c) of the lease:-

> 5. THE TENANT covenants with the Landlord and with the owner of the Other Premises as follows:
>
> (c) Subject to clause 5(**h**) [*covenant against structural alteration*] to keep the interior and exterior of the Property in good and substantial repair and condition (and so yield it up to the Landlord on the determination of this Lease) and if necessary to rebuild any parts that require to be rebuilt and paint with three coats of paint all the exterior parts normally painted every three years in a colour determined by agreement between the Tenant and the owner of the Other Premises after discussion between them and in default of agreement in the same manner and colours as the Building may then bear and to carry out all the work in a good and substantial manner. ...

2. The Respondent replied to the application by letter dated 21st January 2012 asserting that he had installed new double-glazing in 2007 and fully painted the property in September 2011.

3. The Tribunal issued directions for the case to be heard on the papers without a hearing. Neither party requested a hearing. The Tribunal inspected the exterior of the property on the morning of 29th February 2012 (neither party attended the inspection).

The Tribunal's decision

4. The issue is a simple one. The Applicant alleged that the opinion of their Mr Paine who inspected on 24th August 2011 was that the property had not been painted since 2004. No other alleged breach was relied on.

5. The Respondent says he bought the property in 2007 and painted it in September 2011. On inspection, the Tribunal could see that the first-floor flat windows were double-glazed with an appearance which would accord with the

alleged installation in 2007 and the cills, fascia and walls were in a condition consistent with their having been painted in or about September 2011.

6. The covenant is specific in requiring the exterior painting to be done every three years. On the Respondent's own case, he owned the property for four years before painting it. Therefore, he has breached the covenant in clause 5(c).

Costs

7. Paragraph 10 of the Applicant's Statement of Case sought an order for costs. The Tribunal's powers are limited to reimbursement of fees under reg.9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 and an award of up to £500 in the event of frivolous, vexatious, abusive, disruptive or otherwise unreasonable behaviour under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

8. The Tribunal can identify no behaviour by the Respondent which could satisfy the definition in the latter provision, nor is any alleged. The behaviour of the Applicant in incurring the cost of these proceedings by making this application three months after the Respondent had painted the property is the only potentially dubious conduct the Tribunal could see. In the circumstances, the Tribunal refuses to make an order for costs.

Chairman: N.K. Nicol

NK Nicol

Date: 29th February 2012