



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

Case Reference : CHI/00HG/LBC/2013/0028

Property : 33 Bridwell Road Weston Mill Plymouth PL5
1AA

Applicant : Ray Robins

Representative : Louise Dickinson Fursdon Knapper (Solicitors)

Respondent : Simon Trevorrow

Type of Application : Section 168(4) Commonhold and Leasehold
Reform Act (CLARA)

Determination as to whether there has been a
breach of a covenant or condition in a lease

Tribunal Members : Judge Cindy A Rai (Chairman)

Michael C Woodrow MRICS Chartered
Surveyor

**Date and venue of
Hearing** : 5 November 2013

Plymouth Magistrates Court St Andrews Street
Plymouth

Date of Decision : 29 November 2013

DECISION

1. The Tribunal determined that the Respondent is in breach of certain covenants in a Lease dated 18 March 1985 and referred to below.
2. The reasons for its decision are set out below.

Background

3. An application was made by the Applicant on the 10 May 2013 for a determination that the Respondent was in breach of certain identified covenants in the Lease dated 18 March 1985 made between John Russell David Stone (1) Leonard Henry Sleeman and Joyce Edna Sleeman (2) of 33 Bridwell Road Weston Mill Plymouth PL5 1AA, (the Property), by which the Property was demised to the tenant for a term of 999 years from 25 December 1984. That leasehold interest in the Property is now owned by the Respondent.
4. The Applicant is the owner of the freehold interest in the Property and also the owner of the leasehold interest in 33A Bridwell Road Weston Mill Plymouth PL5 1AA, (the Other Flat). The Respondent is the owner of the freehold interest in the Other Flat.
5. Directions were issued by the Tribunal dated the 13 May 2013 requiring that the Respondent, if he wished to oppose the Application, reply to it by providing a written statement and any other supporting documentation and evidence to explain his reasons; alternatively he was invited to admit the alleged breach. A date was proposed for the Hearing. The Directions contained time limits within which the reply was required to be submitted.
6. Subsequently correspondence was received from a representative of the Respondent requesting more time; medical evidence was supplied in support of the Respondent's request and an extension of time was granted. Although a further extension of time was sought by or on behalf of the Respondent and granted by the Tribunal no further contact or other correspondence was received from the Respondent in response to letters from the Tribunal office dated 11 and 24 September 2013. A further call was made by the Tribunal office on 1 October 2013 to the person who it believed to be acting for the Respondent but this did not produce any response either.
7. At approximately 10 o'clock on the morning of the Hearing but before it the Tribunal inspected the external parts of the Property.
8. Each flat comprises part of the ground floor with the whole of the first floor forming the remainder of the Property and the whole of the basement including the extension referred to below forming the remainder of the Other Flat. Access to both the Property and the Other Flat is through the communal front door into a small shared hallway with a door to left hand side leading to the Property and a second door in front leading to the Other Flat. There is a small single storey extension with a flat roof at basement level which is part of the Other Flat.

9. One of the members of the Tribunal knocked loudly on the front door of the Property but there was no response. The Tribunal inspected the rear elevation of the Property by entering the Other Flat and descending the staircase leading to the garden. It was accompanied by the Applicant's tenant and Miss Dickinson.
10. The Tribunal also entered the kitchen of the Other Flat, which is on part of the ground floor to enable it to look at the top of the flat roof of the extension which its members were able to do by leaning out of the kitchen window.
11. When it became apparent prior to its commencement of the formal Hearing, that the Respondent might not attend, a telephone call was made to the Tribunal office to ascertain if any calls had been received from the Respondent that day. The office had no telephone number for the Respondent on its file so it was not possible for the office to try to call him.
12. A chronology setting out the times and dates of contact between the Respondent and the Tribunal office following the receipt of the Application had been supplied to the Tribunal with its papers. It was apparent that the office had contacted him several times prior to the Hearing to remind him that he had not responded to its directions and that the Tribunal were expecting him to submit a response to it. However he did not and neither did anyone representing him do so nor did anyone contact the Tribunal to indicate that the Respondent would not be attending the Hearing.
13. Having considered Rule 34 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 [SI 1169] the Tribunal concluded that it had done all that was reasonable to encourage the Respondent to comply with the Directions; it was also satisfied that he had been informed about the date and venue of the Hearing and that it was in the interests of justice to proceed with the Hearing without him.

The Applicant's case

14. Miss Dickinson presented the Applicant's case. She said that the Application had been made on the grounds which she had set out in the Application and that all of the breaches to which she had referred were cross referenced to the relevant covenants contained in the Lease.
15. In clause **4(i)(a)** of the Lease the tenant covenants to "repair and when necessary renew the roof and the supporting structure thereof and chimneys and stacks over the Dwellinghouse" and in **4(i)(b)** to "repair clean decorate and when necessary renew the rainwater gutters and downpipes of the Dwellinghouse (whether any of the same shall form part of the Demised Premises or not).
16. Dwellinghouse is defined as being the whole of the dwellinghouse formerly known as 33 Bridwell Road. Demised Premises are defined as being the property demised by the Lease.

17. Miss Dickinson referred the Tribunal to a previous decision made by the Leasehold Valuation Tribunal dated 18 January 2013 Case Reference CHI/00HG/LSC/2012/0066, (the Previous Decision), which was in respect of a case between the same parties, which related to the Property and which was an application for determination of the reasonableness of service charges.
18. Miss Dickinson alleged that the Previous Decision gave proper meaning to the terms of the Lease. In December 2011 the Applicant had obtained a report from a Chartered Surveyor, (the 2011 Report), which listed certain defects to the Property and the Other Flat. It is the Applicant's case that none of those identified defects has subsequently been repaired or remedied. The report refers, amongst other things to:-
 - a. Vegetation growth on the main chimney stack
 - b. Leaking gutter joints caused by vegetation growth
 - c. Deterioration on the render of the rear elevation
 - d. Decay to the timber fascia board
 - e. Cracked glazing at the front of the Property
 - f. A boarded up window at the rear of the Property
 - g. That the flat felt roof to the rear extension (which is part of the Applicant's flat) was leaking and needed replacement
19. It was not clear from the written evidence if the Applicant had given a copy of the 2011 Report to the Respondent. It is assumed that he must be aware of its content, whether or not he agreed with its findings, as there is reference to it in the Previous Decision.
20. The Applicant alleges that:-
 - a. the Respondent's failure to renew the roof and the supporting structure; the chimney and the stacks and to clean and decorate and when necessary renew the rainwater gutters and downpipes is a clear breach of lease and
 - b. No repairs have been carried out to the chimney and neither has the vegetation growth been removed
21. In the Previous Decision another Tribunal determined that the responsibility for this work was the Respondents and that any breach of covenant as a result of his failure to do this work would be enforceable by the Applicant by way of proceedings for breach of lease. See paragraph 24 of the Previous Decision.
22. Miss Dickinson stated that there has been a failure to paint the Property every three years as is required by clause **4(b)(1)** of the Lease. In paragraph 30 of the Previous Decision Judge Cresswell found

that each party has a responsibility to maintain the external walls of its own flat.

23. At the conclusion of the presentation of his case the Applicant said, and this was consistent with the written statement submitted by or on his behalf, that the Property had fallen into disrepair. He had believed that the Respondent had accepted, following the last hearing and the Previous Decision, that works of repair needed to be undertaken by him.
24. The Applicant also claimed that his right to "quiet enjoyment" of the Other Flat had been breached and that he was entitled to peaceful existence at his property. He had carried out repairs to the Other Flat but the Respondent's behaviour at the Property had made this so difficult that the police were called to the Property. Previously he had lost tenants and he attributed this to the Respondents behaviour at the Property.

The Law

25. A determination by a Leasehold Valuation Tribunal under section 168 of CLARA is a pre-requisite for service of notice by a Landlord under section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or a condition in its lease
26. The Leasehold Valuation Tribunal is asked to determine pursuant to this application made under section 168 (4) of CLARA that a breach of lease has occurred. Part of section 168 is set out below:-

S. 168(1)

"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"

168(2)

"This subsection is satisfied if--

- (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
- (b) the tenant has admitted the breach, or
- (c) a court.....has finally determined that the breach has occurred"

Reasons for the Decision

27. Various breaches of covenants in the Lease have been alleged by the Applicant. These mostly relate to breaches of repairing and maintenance obligations by the Respondent relating to the Property.
28. The Applicant has also alleged breach of the covenant for quiet enjoyment. Such an alleged breach is not a breach by a tenant of a "tenant" covenant in the Respondent's lease. It is an alleged breach of covenant by the landlord in the Applicant's lease and is not within the jurisdiction conferred upon the Tribunal under section 168 of CLARA. Therefore the Tribunal cannot determine that the Respondent has

breached this covenant as such a breach is not a breach by a tenant of a covenant and within section 168 of CLARA.

29. In relation to the other alleged breaches of the Lease the Tribunal finds that:-
- a. From its own inspection whilst there was evidence that the flat roof of the extension forming part of the Other Flat had leaked at some time, neither the 2011 Report or what it was able to see on inspection was sufficient to lead it to conclude that a total roof replacement was required. The wording of the Previous Decision indicated only that Judge Cresswell recorded that the Respondent had accepted that some repairs were necessary and this Tribunal accepts that this remains so. Water has previously ingress into the extension but the cause of the leak could not be conclusively determined by this Tribunal. It was unable to rely upon the content of the 2011 Report as it was written, following an inspection which took place nearly two years ago. Whilst it finds that there is a breach of covenant in clause **4(i)(a)** of the Lease, it does not find that sufficient evidence has been put forward to substantiate the Applicant's claim that the only remedy for such breach is a full replacement of the extension roof.
 - b. It accepts that the fascia board beneath the main roof needs repairing and that no works appear to have been carried out to it since the Previous Decision. The disrepair is evidence of a breach of the same covenant referred to in sub clause **4(i)(a)** above.
 - c. The Tribunal saw no evidence that the external parts of the Property have been recently decorated and noted that the window at the front of the Property remains cracked and the window at the rear is still boarded up. This is a breach of clauses **4(a)** of the Lease which requires that the Respondent keep the Property in good and substantial repair decoration and condition and **4(b)(1)** which refers to it being decorated externally every three years of the term.
30. Although it was noted by Judge Cresswell in paragraph 26 of the Previous Decision that the Respondent accepted that some works were required that does not provide the Applicant with justification for all the assumptions referred to in its application. In fact Judge Cresswell stated in paragraph 22 of the Previous Decision that that tribunal considered the 2011 Report to be sparse and singularly lacking in detail.
31. Whilst it has received no statement or submissions from the Respondent the Tribunal concludes that he had previously been made aware of the obligations as to repair and decoration in the Lease and has chosen not to refute the allegation that he is in breach of those specified repairing and decorating obligations.

32. The Tribunal would encourage the parties to jointly undertake a current and more detailed survey of the Property to ascertain what works are actually required to remedy the identified breaches of covenant.

Judge Cindy A Rai

(Chairman)

Appeals

1. **A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.**
2. **The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.**
3. **If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.**
4. **The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.**