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**HM Courts  
& Tribunals  
Service**

**LEASEHOLD VALUATION TRIBUNAL**

**Section 168(4) of the Commonhold and Leasehold Reform Act 2002  
("the Act")**

<b>Case Number:</b>	<b>CHI/21UH/LBC/2013/0014</b>
<b>Property:</b>	<b>Flat 23, Belmont Court, Lindfield Drive, Hailsham, East Sussex BN27 2DQ</b>
<b>Date of Application:</b>	<b>21 February 2013</b>
<b>Applicant:</b>	<b>Mr E A V Thompson</b>
<b>Respondent:</b>	<b>Mr D Ripley</b>
<b>Appearances for Applicants:</b>	<b>None</b>
<b>Appearances for Respondent:</b>	<b>None</b>
<b>Date of hearing:</b>	<b>10 May 2013</b>
<b>Tribunal:</b>	<b>Ms E Morrison LLB JD (Lawyer Chair) Mr J N Cleverton FRICS (Valuer Member) Miss J Dalal (Lay Member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>21 May 2013</b>

## The Application

1. Under the application dated 21 February 2013 the Applicant freeholder applied under section 168(4) of the Act for a determination that the Respondent leaseholder had breached covenants or conditions in the lease.

## Summary of Decision

2. There has been a breach of clause 4(1) of the lease insofar as the leaseholder has failed to repair and maintain the windows of the flat. There has been a breach of paragraph 15 of the Sixth Schedule of the lease insofar as the kitchen window is not furnished with curtains. However, it is not possible to determine whether the Respondent has any responsibility for these breaches as there was no evidence before the Tribunal that the Respondent is the leaseholder of the flat.

## The Lease

3. The Tribunal had before it a copy of the lease for Flat 23 dated 5 January 1984. The lease is for a term of 99 years from 29 September 1983 at a yearly ground rent of £35.00 for the first 25 years and rising thereafter (currently £70.00).
4. The relevant provisions in the lease may be summarised as follows:
  - (a) In clause 4 (1) the tenant covenants with the landlord that during the term he will "...well and substantially repair cleanse maintain amend and keep well and substantially repaired cleansed maintained and amended the interior of the Premises including the windows and window frames thereof ...".
  - (b) In clause 4 (3) the tenant covenants to clean the windows of the flat at least once in every month.
  - (c) The Landlord's repairing covenants are set out in clause 5 and relate to the Reserved Property, which is defined in the Second Schedule as the common parts and "the main structural parts of the Building including the roofs ...exterior walls and foundations ... The Landlord is also responsible for the decoration of the wood on the exterior of the building.
  - (d) In clause 2 the tenant covenants to observe the regulations set out in the Sixth Schedule, which includes the following paragraphs:
    6. Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance of any flat in the Estate or which may cause an increased premium to be payable in respect thereof
    10. Not to use the car parking space or the visitors' car parking spaces other than for the accommodation of private motor vehicles ...
    15. .... [T]o furnish all windows with curtains made of some suitable material

## **The Inspection**

5. The Tribunal inspected the subject property on the morning of Friday 10 May 2013, immediately before the hearing. No-one attended on behalf of the Applicant and the Respondent was not present. Belmont Court is a purpose-built development constructed around 1984, and Flat 23 is one of four flats with a common entrance serving two floors. It is self-contained, and likely to have one bedroom, living room, kitchen and separate bathroom/wc, all at ground floor level. The construction is of pitched roof covered with concrete tiles under cavity brick walls part ship lap hung to the front elevation.
  
6. There was no response to the bell or our knock at the front door of the flat, and so no access to the inside of the flat was possible. Inspection of the interior was therefore limited to what could be seen through the windows. The two windows at the front of the property were fully covered by old roughly-hung curtaining. At the side of the property the bathroom window was of opaque glass. The kitchen window had a broken pane of glass which had not been patched and was open to the elements, and through the window, which was uncurtained, a large quantity of rubbish and food materials could be seen in addition to the usual kitchen fittings and some clothes. Several small canisters were on the counter-top by the window. A "Butane Gas" label on one canister could be seen. At the rear of the property was a patio door. One half of the door was covered by an old curtain, around which piles of rubbish were visible. The other half of the door had no glass and was roughly covered by an ill-fitting piece of chipboard. It was not possible to ascertain whether the flat was inhabited.

## **Representation and Evidence at the Hearing**

6. The application was submitted by a property manager at Countrywide, Eastbourne, on behalf of the freeholder, and was accompanied by some photographs said to be taken on 16 January 2013. No statement of case or further evidence was submitted despite the Tribunal's Directions dated 27 February 2013 which called for this. The Respondent had made no response whatsoever to the application. When no-one attended the hearing a telephone call was made to Countrywide by the Chairman, who was told that the individual who had submitted the application no longer worked there. The person who was now responsible for this property had no knowledge of the hearing. The Respondent could not be contacted as no telephone number had been provided by the Applicant. The Tribunal was satisfied that notice of the hearing had been given to both parties in accordance with the Leasehold Valuation Tribunals (Procedure) Regulations 2003 and therefore proceeded to deal with the application in the absence of the parties

## **The Law and Jurisdiction**

7. Section 168(1) and (2) of the Act provide that a landlord under a long lease of a dwelling may not serve a notice under section 146 of the Law of Property Act 1925

In respect of a breach of covenant unless either the tenant has admitted the breach, or a court or leasehold valuation tribunal has finally determined that a breach has occurred.

8. Section 168(4) permits a landlord to apply to a leasehold valuation tribunal for such a determination.

### **The Determination**

9. In the application, it was alleged that four separate breaches of covenants in the lease had occurred. The Tribunal considered each of these.
10. It was alleged that the broken glass in the kitchen window and the missing pane of glass in the patio door constituted a breach of clause 4(1) of the lease. The Tribunal's inspection confirmed the lack of repair to the glass in these locations. Although the lease makes no specific reference to glass, the Tribunal is satisfied, construing the repairing obligations in the lease as a whole, that "windows" in clause 4(1) must include the glass, and therefore the failure to repair or replace the damaged glass is a breach of this clause.
11. It was alleged that the leaseholder was in breach of paragraph 10 of the Sixth Schedule by parking his car outside his designated parking space. As there was no evidence to substantiate either the leaseholder's actions or that such actions constituted a breach, no finding of breach is made on this ground,
12. It was alleged that lack of "suitable curtains" at the windows was a breach of paragraph 15 of the Sixth Schedule. However this paragraph does not require "suitable curtains"; it requires "curtains of some suitable material". There were fabric curtains, albeit old and dirty, at the front windows and the visible side of the patio window. It was not possible to see whether there were curtains in the bathroom. However insofar as there were no curtains in the kitchen, the Tribunal finds there is a breach of this requirement of the lease.
13. Finally, it was alleged that "the leaseholder is reported to have gas bottles in the property which can be seen in the kitchen" and that this was a breach of paragraph 6 of the Sixth Schedule. However, as there was no evidence as to the terms of the relevant insurance policy or whether the presence of gas bottles might render this void or voidable, or increase the premium, no determination of breach is made.
14. It is important to note that there was no documentation or other evidence before the Tribunal which identified the current leaseholder of the flat. Accordingly, the Tribunal cannot say whether the named Respondent, Mr D Ripley, has any responsibility for the breaches which have occurred. Nor did the Tribunal have any specific information as to what attempts have been made by the Applicant or his managing agents to notify the leaseholder about the matters complained of or to seek their rectification.

## Concluding Remarks

15. The lack of attention to the conduct of this matter by the Applicant's representatives is a matter of regret. Furthermore, the state of the flat clearly raises questions as to the capacity of the leaseholder to deal with the issues arising. Enquiries might usefully be made of Social Services.

Signed:

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E Morrison  
Chairman

Dated: 21 May 2013