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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

(Southern Rent Assessment Panel)

In an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (Application for a determination that a breach of covenant has occurred)

Case Number: CHI/45UG/LBC/2012/0036

Property: 28 Western Road, Hurstpierpoint, Hassocks, West Sussex BN6 9TA

Applicant: Mr C Turnbull

Respondent: Mr P Brindley

Tribunal: Mr A G Johns MA (Lawyer Chairman)

Mr J B Tarling MCMI (Lawyer Member)

Mr A O Mackay FRICS (Surveyor Member)

Hearing date: 26 March 2013

SUMMARY OF THE TRIBUNAL'S DECISION

The Tribunal determines that no breach of covenant has occurred

REASONS FOR THE TRIBUNAL'S DECISION

Background and lease

1. This is an application by the landlord, Mr C Turnbull, for a determination that breaches of covenant have occurred. The application is under s.168 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and complains of breaches of covenant arising out of the state of the property, being 28 Western Road, Hurstpierpoint, Hassocks, West Sussex BN6 9TA, as well as failures to pay ground rent and service charge.

2. The lease of the property dated 13 October 1988 contains the following provisions relevant to the Tribunal's decision:

2.1 It records that the property forms part of a building which has been converted into two flats; the property being the ground floor flat and the other flat being on the first floor.

2.2 There is a tenant's covenant at clause 4(1) to keep "the Flat" in good and tenantable repair and condition.

2.3 What is meant by "the Flat" is explained in clause 7(a) and (b). That makes clear that the property includes only the inside of the external walls and excludes any responsibility for painting and decorating the external surfaces of the windows.

2.4 The rights granted with the property include by paragraph 1 of the First Schedule the right, in common with others, to pass along the accessway leading to the entrance to the property from Western Road.

2.5 There is a landlord's covenant at clause 5(d) to maintain the structure of the building, including the external walls and rainwater pipes, and the main entrances and passages enjoyed or used in common.

Procedure

3. Directions were made on 28 January 2013. Those gave a target hearing date of 26 March 2013 and provided for the parties to inform the Tribunal, giving dates to avoid, within 7 days of receipt of the directions if they were unable to attend on that date. The directions also provided for written statements of case from the landlord and tenant. The landlord confirmed that he did not wish to add to statements in or documents submitted with the application. Those documents included an inspection report by a surveyor dated 9 July 2012 which was expressed to be "preliminary" and "in relation to potential breaches of the terms of the lease".

4. By letter dated 9 March 2013 the tenant requested a postponement on the ground that he was now unable to take time off work for the hearing. The Tribunal

refused that request for a postponement. Regulation 15 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 requires the Tribunal not to postpone unless it is reasonable to do so. The Tribunal did not consider it reasonable to do so given (a) the tenant had plenty of notice of the hearing date, (b) the directions provided for him to request a different date. He didn't. (c) the reason for not now being able to attend was not due to some change of circumstances since the directions, (d) he had not yet set out any defence, and (e) regard should be had to the resources of the LVT. This tribunal had already been arranged.

5. The tenant then submitted his statement of case in accordance with the directions on 19 March 2013 and did in fact attend the hearing on 26 March 2013.

Inspection

6. The Tribunal inspected the property prior to the hearing. The inspection was attended by both landlord and tenant. The property is a small ground floor self-contained flat formed from the conversion of a semi-detached house originally built at or about the turn of the last century. The building occupies a corner location on the west side of Western Road at the junction with Nursery Close and close to Cuckfield Road. The area is predominantly residential in character, comprising both older type and more contemporary housing, together with nearby properties which are put to commercial use. The elevations are of brick with a pitched roof covered with interlocking concrete tiles and wooden double hung sash windows. Both the ground and first floor flats are approached from Western Road over a shared concrete driveway. Included in the demise of the property is a small front and rear section of garden which also provides a car standing space.

7. Overall, it was clear that significant work had been done since the inspection report including internal decoration and repair or replacement of the floor in the bedroom. Mr Turnbull pointed out that the reference to neglected joinery in the inspection report was to the outside of the window frames.

Jurisdiction

8. As Mr Turnbull accepted at the hearing, any failures to pay rent or service charge are not the proper subject of an application under s.168 of the 2002 Act. S.168 is concerned with the conditions for service of a notice under s.146 of the Law of Property Act 1925. That section does not apply to breaches of covenant to pay rent (see s.146(11)). And s.169(7) of the 2002 makes clear that s.168 does not affect failures to pay service charge.

9. The Tribunal does have jurisdiction to deal with the remainder of the application. By s.168(4) of the 2002 Act an application may be made to a leasehold valuation tribunal for a determination that a breach of covenant has occurred.

Hearing

10. The hearing followed the inspection. Mr Turnbull and Mr Brindley attended, each being supported in the presentation of their case by a friend.

Landlord's case

11. Mr Turnbull generally relied on the inspection report dated 9th July 2012 prepared by The Earl of Lytton BSc FRICS. In doing so, he made clear that his case was not that the Tribunal should ignore the subsequent work carried out by the tenant. Rather it was that even with such work the property remained in disrepair.

12. The inspection report listed many matters said to amount to disrepair for which the tenant was responsible. They included the following:

12.1 Untidiness and uncleanliness.

12.2 Damp to walls in the kitchen and living room.

12.3 Poor internal decoration.

12.4 Neglected exterior joinery.

12.5 Floor coverings not extending right up to the skirting and a kitchen worktop not being flush with the wall.

12.6 The chipboard floor in the bedroom had failed in places.

12.7 The electrical system should be tested and the heating installation was dated.

12.8 The concrete driveway was cracked.

12.9 Japanese Knotweed in the garden.

13. But Mr Turnbull conceded at the hearing that both the neglected exterior joinery and the shared driveway were the landlord's responsibility under the lease. Having regard to the terms of the lease already set out in this decision, the Tribunal considers he was right to make those concessions.

14. There was also a complaint about fencing. Mr Turnbull made clear he relied in that regard on a separate covenant in the lease to maintain fences. He was unable to direct the Tribunal to that covenant.

Tenant's case

15. Mr Brindley's case was that, certainly with the work carried out since the inspection report, the property was in an acceptable state. He regarded the report as one designed to find fault. He gave as an example the fact that a hairline crack in a wall socket plate featured in the report. He said that complaints about his kitchen and floor coverings, and the remaining complaints about decoration, were really requests to improve or update the property and that such was a matter for his choice. He pointed to a letter from Staffordshire County Council dated 12 March 2013 as an indicator that the inspection report had overstated things. That letter referred to a visit to the property by a social worker and family support worker on 6 August 2012 for

the purposes of assessing its suitability for Mr Brindley's daughter to stay in. It recorded that they considered it to be in "good order" and "clean and tidy".

Determination

16. The Tribunal is not satisfied that any breach of covenant has occurred.

17. The Tribunal has considered carefully the detailed complaints in the inspection report. But those do not establish a breach of covenant:

17.1 Complaints about the cleanliness and tidiness of the property are simply not questions of repair. And there was, rightly, no suggestion that the wording of the tenant's covenant meant that it was wider than the usual repairing obligation. On the contrary, the report listed the matters as disrepair. In any event, having inspected the Tribunal did not regard the property as unclean or untidy.

17.2 Some other criticisms made in the inspection report are simply requests for updating. The points made about the kitchen fixtures are in this category. No deterioration is identified, as would be necessary to show disrepair. Indeed, the way Mr Turnbull put his case at the hearing was that the property "needs updating". The Tribunal accepts Mr Brindley's case that whether to update is a choice for him, not an obligation under the tenant's covenant to repair. This is also the answer to the criticisms about the floor coverings, quite apart from the fact that they would not, in the Tribunal's view, be within the repairing obligation at all.

17.3 Any damp in the walls is not the responsibility of the tenant. The structure including the external walls is within the landlord's repairing obligation. In any event, having inspected after the tenant's works which included sealing previously damp areas before decorating, the Tribunal was not satisfied of any disrepair.

17.4 Requests for investigation are not equivalent to establishing breaches of covenant. The inspection report makes adverse observations about the electrical system but recommends testing by a qualified electrician. Particularly given that the surveyor then goes on to indicate that the state of the electrical system lies outside his professional skills, the Tribunal is not satisfied that there is disrepair. This is also the answer to Mr Turnbull's case on the bedroom floor. The tenant has carried out works which seem to have remedied the problem. Mr Turnbull's case was that he wished to investigate those works further.

17.5 Even if the garden can be regarded as part of the tenant's repairing obligation (about which there is some doubt) the Tribunal does not consider that the presence of Japanese Knotweed is disrepair. There was no evidence of an environmental requirement to remediate the land and even if there had been that is different to an obligation to repair.

17.6 That the feed to the hot water system has been disconnected is likewise not disrepair. In any event, the Tribunal was not satisfied the answer to this even lay in the property. Both Mr Turnbull and Mr Brindley gave an account of a disconnection in the first floor flat which affected the supply to the property, being the ground floor flat.

17.7 The living room floor did show deterioration apparently due to furniture beetle. But the Tribunal was not satisfied on inspection that such was other than historic. The Tribunal is firmly of the view that this deterioration is not disrepair. This is a Victorian property. Imperfections in the wood floor would not be unacceptable to a reasonably minded tenant of the class likely to take the property on a tenancy.

17.8 Indeed overall, the Tribunal saw nothing at the inspection that would be unacceptable to a reasonably minded tenant of the class likely to take the property. That includes the cracks to the driveway and any remaining imperfections in the internal decoration. It is not therefore satisfied that there is any breach of the repairing obligation.

18. For the reasons set out above above the Tribunal makes a determination that no breach of covenant has occurred.

19. The Tribunal wishes to make clear it has not been assisted in reaching its decision by the further correspondence received from the landlord and his surveyor since the hearing. Parties should bring forward their case at the hearing, not after. In any event, it will be apparent from the above that the Tribunal has reached its view on disrepair using its own expertise, knowledge and experience and following an inspection of the property. It has not treated the letter from Staffordshire County Council as a surveyor's report. It plainly was not.

20. Finally, Mr Brindley volunteered that until these recent complaints his relations with Mr Turnbull had been good. The Tribunal expresses the hope that the parties can both move on from this failed attempt to forfeit the lease and get back to their previous good relations.

Signed .....

Alan Johns (Lawyer Chairman)

Dated 8 April 2013