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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SECTION 168(4)**

Case Reference: LON/00BH/LBC/2012/0129

Premises: FLAT C, 147-149 HOE STREET,
WALTHAMSTOW
LONDON E17 3AL

Applicant: MUHAMMED SADIQ

Representative: HEXAGON PROPERTY COMPANY

Respondent(s): ROSEMARY MCCARTHY

Representative:

Date of Directions 25th November 2012

Date of Application 15th November 2012

Appearance for Applicant: No Appearances (paper determination)

Appearance for Respondent: No Appearances (paper determination)

Date of Paper Determination 26th February 2013

Leasehold Valuation Tribunal: Mr S. Shaw LLB (Hons) MCI Arb
Mr D Jagger MRICS

DECISION

Introduction

1. This case involves an application by Muhammed Sadiq ("the Applicant") in respect of the property situate and known as Flat C, 147-149 Hoe Street, Walthamstow, London E17 3AL ("the Property"). The application is made pursuant to the Commonhold and Leasehold Reform Act 2002, Section 168(4) ("the Act") and is for an order to the effect that there has been a breach of covenant or condition in the lease relating to the property. The leaseholder of the flat is Rosemary McCarthy ("the Respondent").
2. Directions were given in the case on the 25th November 2012. Those Directions required the Applicant to prepare a bundle of documents which documents were to include a Statement of Case identifying, amongst other things, the particular clause or clauses of the lease in respect of which allegations of breach were made, and a copy of the evidence together with photographic evidence upon which the Applicant proposed to rely, for the purpose of demonstrating that the breach or breaches had taken place. That bundle was to be submitted to the Tribunal and the Respondent by no later than the 14th December 2012. In the usual way the Respondent was given the opportunity of replying to the allegations made in the Applicant's case, by the 14th January 2013, and it was directed that unless either party requested an oral hearing, the matter would be dealt with on paper, by way of paper determination and without the need for either party to attend. In the event, neither party requested an oral hearing and accordingly this Tribunal is dealing with the matter on the basis of the papers

submitted to it. As will become apparent later in this Decision, the Respondent supplied no papers or any Statement of Case to the Applicant or the Tribunal, and accordingly the Tribunal has had only the Applicant's evidence to consider.

Applicant's Case

3. The Applicant's case, in accordance with the Directions, has been helpfully set out in a statement made by the Applicant dated 13th December 2012 and appearing at pages 9-12 of the bundle supplied on behalf of the Applicant. That statement confirms that a lease was granted in respect of the property dated 9th September 2004, to the Respondent's predecessor in title. It was a 99 year lease running from the 24th June 2004 and a copy of the lease has been supplied. The Applicant has been the freehold owner of the building of which the property forms part since January 1999, and an extract from the Land Registry confirming that title has been supplied to the Tribunal. The property is subject to a mortgage and the mortgagee has been given notice of this application. There is the standard forfeiture provision in the lease at Clause 4 which has been set out in the Applicant's Statement of Case.

4. The relevant covenant in respect of which a breach or breaches are alleged is Clause 2. Clause 2(3) of the lease imposes an obligation on the Lessee:

“(iii) To keep and substantially repair at all times during the said term the demised premises.”

5. There are further provisions at Clause 2(5) and (6) enabling the Lessor to enter upon the demised premises to view the state and condition of the premises and to give notice of any failure to repair in accordance with the repairing covenant.

Clause 3(6) requires the works in that notice to be carried out within a period of three months.

6. In this case, Mr A Bilby FRICS of David Cunningham Associates, Chartered Building Surveyors, conducted a survey of the property on 9th August 2012. A report was carried out which highlighted various aspects of disrepair and maintenance and on 15th August 2012 a notice was served upon the Respondent requiring her to remedy the breaches of the repairing covenant therein alleged by 14th November 2012. A copy of both the report and the notice has been exhibited to the Applicant's statement.
7. In the event the Respondent failed in any way to respond to the notice, or the report, and none of the repairs required have been carried out. Indeed it appears that the Respondent has abandoned the property and it is noteworthy that in the Charges Register which has been exhibited by the Applicant, there is a Bankruptcy Notice which was registered against the Respondent's interest towards the end of 2010.
8. The report of Mr Bilby is, as indicated, exhibited to the Applicant's statement. At paragraph 5 on page 43 of the bundle of documents supplied there is a summary of the construction and current condition of the property. A number of items of disrepair within the interior are noted in that section of the report and they have been condensed into 11 items of repair work required to remedy the disrepair, which schedule is listed or appears at page 49 in the bundle. In particular, the small kitchen unit has been vandalised with the cupboards

ripped off, and the doors all require replacement. In addition, the stainless steel sink and taps require replacement. Various pipe-work has been exposed and left bare, and requires boxing in, and the front door has also apparently been damaged together with the door-step, and these require repair too. The flat requires complete internal redecoration (in fact it is a small bedsit) and there is some graffiti which has been daubed upon the interior wall or walls, which is illustrated by a photograph together with other photographs in Mr Bilby's report. No purpose would be served by going through and mentioning in turn each of the items of repair. Suffice it to say that they appear clearly set out at page 49 in the bundle and the Respondent was given clear notice of the allegations made.

9. As indicated above, there has been no response from the Respondent at all. It appears that she is no longer residing in the bedsit, and she has produced no evidence to the Tribunal challenging these allegations of disrepair, or making any proposals for remedying the breaches alleged.

Findings of the Tribunal

10. In the light of the foregoing, the Tribunal has no difficulty in coming to the conclusion that there have indeed been breaches of repairing covenant of the kind set out at page 43 and 44 of Mr Bilby's report and further itemised in the schedule of essential repairs appearing at page 49 in the bundle and which is Appendix A of the expert's report.

11. It is right to say that the items of disrepair are perhaps not of the worst kind in the range of disrepair with which the Tribunal is familiar, and indeed Mr Bilby himself indicates at paragraph 7 of his report in the section headed "Summary" that the property is generally in good internal structural condition, but has been left in a state which needs general refurbishment by way of complete redecoration and replacement of the small kitchenette fixtures, together with some fittings, and also testing of the main services. He suggests that the work could be carried out within a budget of £1,500 to £2,000 exclusive of VAT. However, as noted by the Tribunal; in fact nothing has been done in response to the schedule of disrepair served upon the Respondent.

Conclusion

12. For the reasons set out above, the Tribunal is satisfied that there has been a breach of Clauses 2(3) and 2(6) of the lease and that this constitutes a breach within the meaning of Section 168(4) of the Act. The breaches would have been capable of remedy in the way indicated in Mr Bilby's report and at, in relative terms, fairly modest cost, but in fact no such repairs have been carried out. In all the circumstances therefore the Tribunal finds that the Applicant has made out his case and that the breaches alleged under the Act have indeed occurred.

Dated: 26th February 2013

Legal Chairman: S. Shaw

