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

Case Reference : **MAN/30UK/LBC/2014/0002**

Property : **54, Holstein Street, Preston, PR1 1UN**

Applicant : **Mr N Lister & Mr A Lister**

Respondent : **Mrs J Ellin**

Type of Application : **Under section 168(4) of the Commonhold and Leasehold Reform Act 2002**

Tribunal Members : **Mr P W J Millward LL.B (Judge)
Mr L Bennett (Regional Judge)**

Date and venue of Tribunal : **16 June 2014 at Manchester**

Date of Decision : **18 July 2014**

DECISION

THE APPLICATION

1. By the Application dated 28 February 2014 the Applicant seeks a determination that the Respondent is in breach of a covenant in relation to the Property and in particular covenants contained in clauses 5(d) and 5(k) of the Lease
2. On receipt of the Application a Tribunal Member made an Order for Directions (the Directions) on 7 April 2014 which was then served on both parties.
3. The Applicant complied with the Directions and produced an indexed and paginated bundle of documents including a Statement of Case and the information and documents as set out in paragraph 2 of the Directions.
4. The Respondent filed a bundle of documents to which the Applicant filed a Statement in reply.

THE LEASE

5. The Applicant is the leaseholder of the Property under a lease (the Lease) made 1 August 2003 between David Hermone Hodge and Catherine Louise Hodge (1) Justyn Philip Alan Lamber (2) for a term of 125 years from 1 August 2003. The freehold of the Property is now vested in the Respondent.
6. Under clause 9 of the Lease the lessor (that is the Respondent) covenants with the lessee (inter alia) to perform in relation to (the other flat in the building) covenants similar to the covenants of the lessee in the Lease and if so required by the lessee to enforce the covenants on the part of the lessee of that other flat subject to the lessee indemnifying the lessor against all costs and expenses in relation thereto.
7. Under clause 5 of the Lease the lessee covenants (inter alia) to keep the interior and exterior of the Property in repair and to rebuild if necessary and paint the exterior parts normally painted every three years after discussion with the lessor and the owner or occupier of the other flat and to ensure that nothing shall be done on the Property that shall be a nuisance or annoyance or injury to the owners or occupiers of neighbouring property.
8. Under clause 2(e) of the Lease the lessee is given the right to (in common with all others so entitled) to go pass and repass through along and over the common parts, defined in the Lease as "that part of the other flat comprising of the hallway hatched green on the plan attached to the Lease and the ginnel coloured yellow on the said plan.

SUBMISSIONS

9. In their Statements of Case the Applicants stated (inter alia):-
 - 9.1 The Respondent is in breach of covenants set out in clauses 5(c), 5(f) and 5(k) of the Lease. Details of the alleged breaches were provided and included failure to register the change of ownership (5(f)), causing a nuisance (5(k)), failing to allow the lessor to enforce covenants in the lease of the other flat (9(c)) and refusing free access to the common areas (2(e)). The list of alleged breaches is substantial.
 - 9.2 The Respondent's details and that the occupier of the Property was believed to be her son, Damien Williams.
 - 9.3 The contents of the relevant clauses in the Lease the Respondent made no submissions

THE HEARING

11. Neither party requested a hearing.

DECISION

12. The alleged breaches of covenant were set out in paragraph 5 of the Application and additional details were supplied in the Statements of Case. The Tribunal dealt with the allegations in the order they were set out in the Application.
13. The first is that access had been denied to the common areas as required under clause 3(d) of the Lease (in conjunction with clause 2(e)). Although a right of access is granted by the Lease, and there is a history of access by using a key, the clauses referred to are not covenants. The covenants are set out in clause 5 of the Lease. Clause 5 does not contain a covenant to allow access. Therefore there is no breach of a covenant relating to access.
14. The second is that the Respondent has caused a nuisance or annoyance to neighbours through excess noise and threats, in breach of the covenant in that regard set out in clause 5(k) of the Lease. Matters have been reported to the Police and the Tribunal determined that on the balance of probability a nuisance had been caused. The allegation of breach of covenant in that regard is therefore upheld.
15. The third and fourth allege breaches of covenant to repair and decorate externally as set out in clause 5(d) of the Lease. The obligation to redecorate is every 3 years. The Applicant provided no evidence of the last date upon which the Property was decorated externally or when the period of 3 years commenced. The Tribunal therefore had insufficient evidence to find that the Respondent was in breach of the covenant to redecorate externally. Other work has been carried out to rectify the very small repairs alleged to be required. Accordingly the Tribunal determined that the allegation of breach of covenant to repair had not been proved.
16. The fifth alleges nuisance as a result of threats of violence to the freeholder in breach of covenants set out in clause 5(k) of the Lease. The Tribunal accepted the evidence of Mr Lister which is consistent. The Respondent made no effort to contradict that evidence. The Tribunal therefore determined that the Respondent was in breach of the covenant in that regard.
17. The sixth alleges breach of covenant due to water damage (clause 5(k)) which may have potentially invalidated the building insurance. The Tribunal accepts the Applicant's evidence that the water damage occurred. However no evidence was provided that the damage was intentional. The Applicant has therefore failed to prove that there was a breach of covenant in that regard.
18. Finally the Applicant has alleged a breach of the covenant (clause 5(F)) requiring the Respondent to serve notice of transfer upon the Applicant. The Applicant's evidence in that regard is accepted by the Tribunal, although it may have been difficult to serve notice due to lack of information. The Tribunal therefore found that there was a breach of covenant in that regard.

ORDER

The Respondent has breached covenants in paragraphs 5(k) and 5(F) of the lease of the property as determined in paragraphs 14, 16 and 18 above.