

S31



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

Case Reference : CHI/00HA/LBC/2013/0016

Property : 94 Marsden Road, Kingsway, Bath,
Avon, BA2 2LQ

Applicant : G and O Securities Limited

Representative : Mr James Davies (Counsel)

Respondent : Ms Tracey Ruth Anderson

Representative : No representative

Type of Application : Application under Section 168(4) of
the Commonhold and Leasehold
Reform Act 2002 for a determination
that a breach of a covenant or
condition in a lease has occurred

Tribunal Members : Judge D Archer (Chairman)
Mr M Ayres (Chartered Surveyor)
Judge JG Orme (Lawyer member)

**Date and venue of
Hearing** : 11 June 2013, Holiday Inn Bath

Date of Decision : 22 July 2013

DECISION

For the reasons set out below, the Tribunal finds that the Respondent, Tracey Ruth Anderson has breached the terms of her lease dated 22 September 1972 of 94 Marsden Road, Kingsway, Bath, Avon, BA2 2LQ in that there has been a breach of clause 2(j) of the lease because the Respondent has failed to keep the garden of the demised premises properly cultivated and in good heart and condition and free from weeds.

REASONS

Background

1. The Applicant, G and O Securities Limited, is the current proprietor of the freehold reversion of the house and plot at 94 Marsden Road, Kingsway, Bath, Avon, BA2 2LQ (the Property). The Respondent, Ms Tracey Ruth Anderson, is the leasehold owner of the Property. The Respondent purchased the leasehold interest in the Property created by the lease on or about 25 November 2002 for £134,950. The Respondent was registered as proprietor on 11 December 2002.
2. On 4 March 2013 the Applicant applied to the Tribunal for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent had acted in breach of the terms of her lease of the Property. The application alleged breaches of the following covenants in the lease of the Property;
 - 1) Clause 2(j) – to keep the garden of the demised property properly cultivated and stocked and in good heart and condition and free from weeds.
 - 2) Clause 2(t) – not to do or permit to be done upon the demised premises anything which may be or become a nuisance, annoyance or cause damage or inconvenience to the Lessor or its tenants or the occupiers of any adjoining or neighbouring property.
 - 3) The Applicant alleged that the Respondent has failed to maintain the garden and keep it free from weeds, has permitted or suffered the garden to be a source of nuisance to her neighbours and has permitted or suffered the garden to be a

source of nuisance to the Applicant as Lessor through exposing it to the risk of enforcement proceedings.

3. The application was accompanied by a copy of the lease of the Property, photographs of the garden and copy correspondence. The Tribunal issued directions on 14 March 2013. The Applicant was to file and serve copies of the letters of 19 November 2012, 27 November 2012 and 5 November 2012 referred to in paragraphs 3-5 of the Grounds of the Application by 15 April 2013. The application plus the further documents would form the Applicant's case. The Respondent was to either write to the Tribunal by 13 May 2013 if she accepted that there had been a breach of covenant as alleged by the Applicant or to send a statement to the Tribunal by 13 May 2013 in response to the Application together with an indexed bundle of evidence if she wished to oppose the Application.
4. The Respondent did not respond to the directions or to a further letter from the Applicant dated 22 March 2013 which enclosed copies of the letters referred to in paragraph 3 above and summarised the directions. The application was listed for hearing on 11 June 2013. The Respondent was notified of the date, time and venue of the hearing by letter from the Tribunal which was sent out on 25 April 2013.

The Law

5. Section 168 of the Act provides:
 - 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 (c20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.*
 - 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 in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.*
 - 3) *But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.*
 - 4) *A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*
 - 5) *But a landlord may not make an application under subsection (4) in respect of a matter which-*

- a. *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
- b. *has been the subject of a determination by a court, or*

The Lease

6. The Tribunal had before it a copy of the lease dated 22 September 1972 made between CH Beazor (Mortimor) Limited as lessor and Andrzej Marek Palak and Jennifer Anne Palak as lessees ("the Lease"). By the Lease the lessor demised the Property for a term of 999 years from 24 June 1972 at a yearly rent of fifteen pounds. The demise includes plot 26 on the lessor's Kingsway Building Estate Phase V Part III together with the dwellinghouse known as 94 Marsden Road and a separate lock up garage.
7. The covenants on which the Applicant relies are set out in full at paragraph 2 above.

Inspection

8. The Tribunal inspected the Property on 11 June 2013. The Applicant was represented by Mr Davies of counsel. The Respondent did not attend and there was no response to knocking the front door of the Property. The Property did not appear to be inhabited although there was no visible build-up of mail. The small front garden was poorly maintained although there were signs of a recent attempt to cut the grass. The rear garden was inspected from a path to the rear of the Property. The rear garden was in extremely poor condition. All of the plants were heavily overgrown and the garden was infested with weeds. At least one plant had penetrated the rear glass door and was growing inside the Property.
9. The photographs at pages 26-28 of the Applicant's accurately reflect the state of the rear garden as at the date of the inspection. By contrast, neighbouring properties and gardens are generally well maintained and one of the adjacent properties has a patio area with a table and chairs.

The Hearing

10. The hearing took place at the Holiday Inn Express Hotel, Bath on 11 June 2013. The Applicant was represented by Mr Davies. The Respondent was not represented and did not attend. Neither party had submitted any witness statements and the Applicant did not seek to call any oral evidence.

The Evidence

11. The evidence submitted by the Applicant included the following;

- 1) The application form signed by a Director of G and O Securities Limited.
- 2) A letter dated 19 November 2012 from Planning Services at Bath and North East Somerset Council ("the Council") to the Applicant stating that concerns have been raised regarding the condition of the land and attaching photographs taken during a site visit. The Applicant was asked to confirm by 3 December 2012 how they intended to rectify the matter.
- 3) A letter dated 27 November 2012 from Urbanpoint Property Management Limited ("Urbanpoint") to the Respondent attaching the 19 November 2012 letter and requesting the Respondent to comply with the provisions of Clause 2(j) and Clause 2(t) of the Lease.
- 4) A letter dated 5 December 2012 from the Council to Urbanpoint stating that failure to tidy the land would leave the Council with no option but to consider issuing a Section 215 notice for untidy land.
- 5) A letter dated 28 November 2012 from Urbanpoint to HSBC Bank asking for assistance to ensure that the Respondent communicates with the Council and Urbanpoint.
- 6) A letter dated 7 December 2012 from HSBC Bank to Urbanpoint confirming that the Respondent is a customer but also that they were no longer in contact with the Respondent regarding the mortgage.
- 7) A letter dated 9 May 2013 from GSL Administration to the Council confirming that nothing had been heard from the leaseholder and that a date had been fixed for the inspection and hearing.

The Submissions

12. Mr Davies accepted there has been some attempt to cut the grass at the front of the Property but it was unclear who had done that. The rear garden is a jungle and there has been no improvement since the photographs were taken. There is well advanced ivy growth within the Property. There has been no attempt to maintain the rear garden for many years. The property cannot even be seen from the rear gate. There is a clear breach of Clause 2(j).

13. The property on the right is well kept. The Property looks abandoned and the appearance of lack of care is likely to cause annoyance. There is very limited privacy from the fence between the gardens and neighbours cannot avoid seeing the overgrown garden. The problem is also likely to reduce the value of surrounding properties. The estate is otherwise well kept. The overgrown garden is likely to be a deterrent to any prospective purchaser. There has been no attempt to rectify the problems with the rear garden which are not new.
14. The Respondent has permitted or suffered the rear garden to get to that state. Mr Davies conceded that there is a possible legal issue as to whether a person needs to be involved in order to breach Clause 2(t). However, the phrase "to be done" is apt to cover the natural growth of vegetation.

Conclusions

15. **Clause 2(j).** The Tribunal finds that there has been a breach of Clause 2(j) in that the Respondent has failed to keep the gardens of the demised Property properly cultivated and in good heart and condition and free from weeds. The rear garden, in particular, is in extremely poor condition. All of the plants are heavily overgrown and the garden is infested with weeds. There has been no attempt at maintenance for an extended period.
16. **Clause 2(t).** The Tribunal rejects the submissions made by Mr Davies in relation to Clause 2(t). This clause requires positive conduct by a person and cannot encompass mere neglect of plants. That is because of the express inclusion of the words "Not to do or permit or suffer to be done" at the beginning of the clause. The Tribunal finds that there has not been a breach of Clause 2(t).

Appeals

17. 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. 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.
18. 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.

19. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the ground of appeal, and state the result the party making the application is seeking.

Judge D Archer (Chairman)
Dated: 22 July 2013

© CROWN COPYRIGHT 2013