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

Case Reference : LON/00BE/LBC/2014/0058

Property : Flat 12, 101-103 Cobourg Road,
Camberwell, London, SE5 0HU

Applicant : Wyndhams Court Properties
Limited

Representative : Mr Steven Newman, Secretary and
in-house solicitor of D & S
Management Services Limited

Respondent : Mrs Jennifer Dion Samuel

Representative : Mr Ewemade Orobator

Type of Application : Determination of an alleged breach
of covenant

Tribunal Members : Mr L Rahman (Barrister)
Mrs S F Redmond BSc (Econ)
MRICS

**Date and venue of
Hearing** : 1st October 2014 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 3.11.14

DECISION

The application

1. The applicant landlord seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"), that the respondent tenant is in breach of various covenants contained in the lease. In particular the applicant asserts that the respondent replaced a window without the applicants consent.

The hearing

2. The applicant was represented by Mr Steven Newman and Mr Rajesh Tankaria (a Director of the applicant company). The respondent attended and was represented by Mr Ewemade Orobator.

The background

3. The respondent accepts the window is part of the main structure of the building and that it is the applicants responsibility under the lease to replace it.
4. The respondent states that her flat is rented out to a single mother with a young child. The flat was burgled on 6th May 2014. The intruder entered the flat through the window next to her front door. The whole window frame was pushed in. No glass was broken. The matter was reported to the police and the police advised, in an email dated 13th May 2014 as follows; *"Miss Kadie Fofanah [the tenant] is still very shaken up after this [burglary] incident and is currently not staying at the address during the night. Her son is also very upset...I noticed that the windows of this ground floor flat are very insecure and it wouldn't take much for a would be burglar to prise them open, this is what happened! I pushed the lower corners of the windows that can be opened and they are not at all secure. They easily come away from the window frame, easy enough for a tool or even fingers to get behind...Please can you look into this as soon as you can."*
5. The respondent obtained a quote to repair the window on 8th May 2014, but it was too expensive. The respondent obtained a second quote on 13th May 2014 and on the same day gave the go ahead for the window to be replaced. The window was replaced on or about 26th June 2014. In the meantime the window was nailed secure. The respondent paid £756.00 to replace the window.
6. The respondent states she felt it was her responsibility to protect her tenant and she did not stop to think whose responsibility it was to replace the window. Furthermore, the respondent states she only became aware of her new landlord and new managing agent between the 14th and 20th of May 2014 as she did not receive anything from the

new landlord at her correspondence address and she did not visit her flat between the end of November 2012 and May 2014. The respondent states she did not think about contacting the applicant, after the 14th-20th of May 2014, because she had become embroiled with dealing with the application made by the applicant to this tribunal for the recovery of service charges. The hearing took place in June 2014.

7. The respondent states the applicant was at fault for failing to notify her, as required under section 3 of the Landlord & Tenant Act 1985, that it was the new landlord. The applicant would have had her correspondence address, which was not Flat 12, as it had been provided with the service charge accounts by the previous managing agents, who had the correct correspondence address. By the time she knew who the landlord was, she had already entered a legal contract on 13th May 2014 for the window to be replaced.
8. The applicant states it does not dispute the standard of the workmanship concerning the replaced window. It takes issue with the matter because had it been consulted, it would have specified a window of its own choice, to match the windows it had already chosen to install in the rest of the building, and for which it had already served the stage one and two consultation notices in January and March 2014 respectively.
9. The applicant stated that if the tribunal agreed that there was a breach of covenant, it would not look to forfeit the lease. It would simply replace the window along with the rest of the windows in the building and recover the cost from all the lessees as a service charge.
10. The applicant states it did not have any alternative address for the respondent other than the flat. It had purchased the freehold title to the property at auction via the administrator. It was provided with a list showing the amount of service charge owed by each flat. It was not provided with any alternative correspondence addresses for the flats by the previous managing agents.
11. The applicant states it served notices, as required under section 3 of the Landlord & Tenant Act 1985, on 29th November 2012. A copy of the relevant notice is on page 123 of the applicants bundle. Given that it did not have any address for the respondent, it checked the official copy of the title at the Land Registry, which gave the respondents address at Flat 12.
12. The applicant further states the lease incorporates section 196 of the Law of Property Act 1925, therefore, the relevant notice is served if it is left at the flat.

13. The applicant states it had done all that it was required to do and cannot be held responsible for the respondents failure to update her correspondence address with the Land Registry or to visit her property between the end of November 2012 and May 2014. Once the respondent had become aware, between the 14th and 20th of May 2014, that the applicant was the new landlord and that it had appointed D&S Property Management, the respondent had plenty of time to inform the applicant about the window. The window was not actually replaced until 26th June 2014.

The issues

14. Whether there has been a breach of covenant.
15. The burden of proof rests with the applicant to prove that the alleged facts constitute a breach of covenant.

The tribunals findings and reasons

16. Both parties agreed the window is part of the main structure of the building and that it is the applicants responsibility under the lease to replace it, therefore, the tribunal was not required to determine whether the lease includes the covenant relied upon.
17. The respondent accepts she replaced the window without the applicants consent.
18. The respondent states there was no breach of covenant as she had to urgently change the window, she had entered a legal contract to replace the window before she was aware the applicant was the landlord, and the applicant had failed to inform her that it was the new landlord. The failure by the applicant to inform her that it was the new landlord was such that there was no actionable breach at all.
19. The tribunal is satisfied, on the balance of probabilities, that the respondent was notified in November 2012, that the applicant was the new landlord.
20. The respondent assumes the applicant would have been provided with her correspondence address. However, there is no evidence before the tribunal that that had occurred. There is no evidence to contradict the evidence from the applicant that it was not provided with any correspondence address for the respondent.
21. The applicant checked the official copy of the title at the Land Registry, which gave the respondents address at Flat 12. The lease incorporates section 196 of the Law of Property Act 1925, subsection (3) of which

states "Any notice required...to be served shall be sufficiently served...in case of a notice required...to be served on a lessee...is fixed or left for him on the land or any house or building comprised in the lease..." The applicant served its notice pursuant to section 3 of the Landlord & Tenant Act 1985 on 29th November 2012, addressed to the respondents flat. The fact the respondent may not have visited the flat between the end of November 2012 and 14th-20th May 2014 is irrelevant. The tribunal is satisfied the applicant had complied with its duty to notify the respondent that it was the new landlord.

22. In any event, between 14th-20th May 2014 the respondent knew the applicant was the landlord. The respondent stated she had to replace the window as it was an emergency. However, the window was not replaced until the end of June 2014 and had only been nailed secure in the meantime. The tribunal found the respondent had adequate time to inform the applicant before the window was actually replaced.
23. The tribunal is satisfied there was a breach of covenant. The tribunal is satisfied the applicant had not behaved in such a way that there is no actionable breach.
24. Whilst the tribunal has noted the applicants reasons for making this application, as set out at paragraphs 8-9 above, this decision does not relate to the applicant's proposed major works to replace the windows in the block. Therefore, the tribunal expresses no views on the applicants proposed works.

Name: L. Rahman

Date: 3.11.14