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

Case Reference : **CHI/CHI/29UN/LBC/2014/0028**

Property : **Flat 5 Paragon Court, Fort Paragon,
Margate, Kent CT9 1JB**

Applicant : **Paragonowners Ltd**

Representative : **Mr D Thistle - counsel**

Respondent : **Mr P J Lambert**

Representative : **None**

Type of Application : **Section 168(4) Commonhold and
Leasehold Reform Act 2002
Breach of Covenant**

Tribunal Members : **R T Athow FRICS MIRPM (Valuer
Chair)**
P A Gammon MBE BA (Lay member)

**Date and venue of
Hearing** : **20th February 2015
Margate Magistrates Court**

Date of Decision : **24th February 2015**

DECISION

INTRODUCTION

1. An application was made on 19th October 2014 under Commonhold & Leasehold Reform Act 2002 (the Act) s.168(4) for a determination that a breach of a covenant in the Lease has occurred at Flat 5 Paragon Court, Fort Paragon, Margate, Kent CT9 1JB. The Applicant is the freehold owner of the property and the Respondent is the lessee.
2. The alleged breaches are:
 - (1) the lessee has failed to keep the Flat in good and substantial repair (Clause 3(3) and
 - (2) has allowed water to escape from the Flat into the flat below Clause 3(16).
3. On 31st October 2014 the Tribunal directed that the matter should be listed for a case management hearing but on 14th November 2014 further directions were made stating that the Tribunal now decided there was no gain to be had from a case management hearing and that the matter should proceed to a full hearing.
4. The directions set out a timetable for submissions from both sides and the applicant was directed to prepare a bundle including Statements of Case and supporting documents and the matters were listed for hearing on 20th February 2015.
5. On that date, the Tribunal carried out an inspection of the premises. The Applicant was represented by Mr Martin Karp, a director of the Applicants. He is also the managing agent of the block. Also present was Mr Dean Thistle, counsel for the Applicant. The Respondent did not attend the inspection.
6. The Tribunal had written to the Respondent on 31st October 2014 and 4th November 2014 informing him of the application, but both letters had been returned "Return to Sender".
7. The Tribunal was made aware of a mortgagee's interest by letter from the Applicant's solicitor dated 13th November. The Tribunal then wrote to the mortgagee on 28th January 2015, but no response has been received.
8. After the inspection a Hearing was held and Mr Thistle and Mr Karp were in attendance. There was no representation on behalf of the Respondent.

THE LEASE

9. By a lease dated 23rd July 1987, the premises were demised by J. L. G. Investments Ltd to P. J. Lambert (the Respondent) for a term of 99 years from 25 December 1975. The material covenants on the part of the lessee are as follows:

“ 3 – The Lessee hereby covenants.....

(3)to renew repair uphold support maintain cleanse amend and keep in good and substantial repair and condition the Flat including keeping in repair and replacing where necessary all water sanitary and heating apparatus and all other the Landlords fixtures and fittings and also the tank cylinder and cistern and fittings and all conduits pipes and any other things installed for the purpose of supplying water (hot and cold) PROVIDED ALWAYS that the lessee of any other flat shall not do any work of repairs or renewal to the floor thereof without giving notice to the occupier of the Flat immediately below the Flat of his intention so to do stating the details of the work intended to be done so that the occupier of such lower flat may take such precautions as he may consider necessary for the protection of the ceilings of such lower flat and if any damage shall be caused to such lower flat in the execution of any such work the Lessee shall at his own expense make good the same to the reasonable satisfaction of the lessee or occupier of such lower flat.

(8) To permit the Lessors to enter the Flat to view the state of repair and condition and of all defects decays and wants of reparation and decoration found and which the Lessee shall be liable to make good under the covenants herein contained to give or leave upon the Flat notice in writing to the Lessee and that the Lessee will within the period of two calendar months after such notice (or sooner if requisite) repair and make good the same according to such notice and the covenants herein contained and will permit the Lessors to enter and inspect the same on completion thereof.

(9) That if the Lessee shall make default in the performance of the covenants on the part of the Lessee herein contained for or relating to the repair and decoration of the Flat the Lessee will permit the Lessors to enter the Flat and repair and decorate the same at the Lessee's expense in accordance with the said covenants and the expenses of such repairs and decorations shall be paid by the Lessee to the Lessors

(10) To permit the Lessors and the owners lessees or occupiers of the Building and their respective agents and workmen at reasonable hours in the daytime but only

after due notice (except in the case of emergency) to enter the Flat to execute repairs or alterations to or upon the Flat such persons as aforesaid making good or making full compensation to the Lessee for all damage thereby done to the Flat

(16) That the Lessee will at all times during the said term take all steps reasonably necessary to prevent the bursting any tank cylinder cistern bath water closet basin pipe drain in the flat and in particular on any occasions when the Flat may be left unoccupied or untenanted and that....the Lessee will at the Lessee's expense make good any damage or loss caused to the Flat or any other flat in or part of the Building by reason of any bursting overflowing or stopping up of any such water apparatus as aforesaid and indemnify the Lessors against the cost of making good any such damage or loss as aforesaid and against any claims made by the lessee or occupier of any other part of the Building in respect of any such damage or loss”

STATUTORY PROVISIONS

10. The Commonhold and Leasehold Reform Act 2002 restricts forfeiture of residential leases as follows:

“168. No forfeiture notice before determination of breach

(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 (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.”

INSPECTION

11. The Building as defined in the lease is of Georgian style and age and construction typical of that era.
12. The flat is situated on the top floor of a block of flats on Margate seafront, having panoramic views over Margate Roads to the West and the English Channel to the East. It is set on two levels and is fully self-contained, with access via the communal hall and stairs.
13. It comprises a kitchen and bathroom/WC on the lower level, whilst on the upper level is a hallway, lounge and three other rooms.
14. The Tribunal inspected the flat internally. Because the inspection is material to the decisions reached in respect of the alleged breaches of covenant, it is necessary to go into the details of what was observed by the Tribunal in the course of the inspection.
15. The hallway has many floorboards that have been lifted and there are two areas of ceiling which are missing.
16. In the living room a large portion of the ceiling has been removed. Where it has been removed the Tribunal saw that there was a secret gutter running from the front to the rear of the flat but it is situated within the roof space which is not within the demise of the flat. It had modern timber framework. There was a leak towards the Western end of the secret gutter run, which was leaking into this room.
17. The rear room adjacent to the living room had some areas of ceiling missing. There was a timber stud wall dividing the living room and this room and in this room the vertical wall stud immediately under the secret gutter has been exposed and showed substantial signs of wet rot. Some electric power points were not screwed to the wall fixing plates. The main gas supply to the flat was in this room but the meter had been removed.
18. The small West (front) room had some floorboards which had been lifted.
19. The large rear room situated just inside the flat entrance door had several floor boards lifted.

20. The bathroom ceiling was missing in one area, whilst another area showed signs of a previous water leak from the roof above; however this was dry at the time of the inspection but bulging. There was mould on the ceiling. There was a broken window pane.
21. The kitchen had some floor boards which had been lifted. The kitchen units were not all fitted to the walls. Most cupboard doors were present, but not fitted. The ceiling lights were installed, but not fitted into their fixing holes. There were several cracked panes of glass to the windows.
22. The decorative condition of the whole of the flat is very poor and is in urgent need of repainting.
23. The whole flat had the appearance of being "improvement work in progress" which has been abandoned. There was a large amount of debris scattered throughout the flat, including rubble, plaster, timber and insulation materials. The bath and WC pan were filled with debris.

SUBMISSIONS AND EVIDENCE

24. The Applicant referred to its Statement of Case and supporting documents. At the hearing counsel and Mr Karp supplemented these with oral submissions.
25. The claim is based upon the failure of the lessee to comply with his obligations under the Lease, specifically clauses 3(3) (failure to keep in repair) and 3(16) (leak of water).
26. Mr Karp stated that he had taken over the management of the block about 4 years ago and the outgoing managing agent had handed over keys to the communal areas of the block and the keys to the subject flat. Mr Karp inspected the flat at that time and found it to be in a state of disrepair, similar to the condition noted by the Tribunal at its inspection. He had never met the Respondent and had been into the flat occasionally since he took over. He had never seen evidence of any work being undertaken during this time.
27. The property has been kept secure and, as far as he is aware, he is the only person to hold a key but assumes the Respondent has a key to the flat.
28. He has no communication address for the Respondent other than the subject flat.

29. Over the years he has needed to write to the Respondent but has never received a reply, nor has he received any ground rent or service charge.

30. For example, on 1st May 2012 he wrote to the Respondent chasing up the outstanding ground rent and service charges, in that letter he also stated

“We also note that the property has been abandoned, and is in an advanced state of dilapidation, which is specifically disallowed in the lease. We will be taking legal action against you.”

31. There was no response to this letter from the Respondent.

32. Early in March 2013 he received a report of water coming into Flat 3 from the flat above (Flat 5) and he inspected the flat. It was in the same condition as his earlier visits. He arranged emergency works to deal with the water ingress. The source of the leak was a burst pipe in flat 5 which was within the demise and liability of Flat 5. In view of the fact that he had not got any response from previous attempts to communicate with the Respondent Mr Karp felt it was imperative to reinstate the damage to flat 3. An invoice for the work was included in the bundle. It was from Enver & Co Property Maintenance. There were two elements; the first was for the repair to the burst pipe in the sum of £30.00; the second part was for making good to flat 3 in the sum of £130.00.

33. Mr Karp has not been able to recover the cost of this from the Respondent in spite of a letter dated 11th March 2013.

34. A further repair to flat 3 was required in 2014 to fully deal with subsequent damage caused by this leak. The cost of this was £277.00 and a copy of this invoice from R Dryden was included in the bundle. The cost of this has not been recovered from the Respondent.

35. Mr Karp stated that he had received a telephone call from the mortgagees in the past few days and they have arranged to send down a surveyor to inspect the property on 26th February at 10.00 a.m. He confirmed they had been kept informed of the situation with copies of correspondence and the many County Court Judgements which had been made in respect of the Respondent and the subject property.

COSTS

36. The Applicant made an application for costs in the sum of £150 for the application fee to this Tribunal and a further £150 for the cost of this Hearing.
37. The Applicant made a claim for costs under Schedule 12 Clause 10(2)(b) of the Act in the sum of £500 being part of a larger bill of legal costs for bringing this action, amounting to £1,656 including VAT.
38. The Applicants were of the opinion that the Respondent, by failing to engage in this matter, had acted unreasonably.

TRIBUNALS CONSIDERATION

39. Firstly, the Tribunal considered the extent of the disrepair to the flat.
40. It was concerned that the secret gutter which is over the living room and adjacent rear room may have been the cause of some areas of ceiling being removed in these rooms. The gutter does not form part of the demise of the subject flat and therefore is within the liability of the landlord. The landlord has an obligation to maintain the structure of the block and any failure which causes damage to a lessee's flat is the responsibility of the landlord to repair.
41. As a result the Tribunal finds that although there is an element of disrepair in this part of the flat, it is the landlord's responsibility to reinstate this at his own cost or through the service charge account. Consequently this area is not an item for which the Respondent is liable and, therefore, there has not been a breach of his lease obligations in this part.
42. The Tribunal then looked at the other items and the responsibility of the Respondent under clause 3(3) of the lease which states;
 "... to keep in good and substantial repair..."
43. Based upon the submissions made, the Tribunal reaches a conclusion that the flat has been abandoned in a state of disrepair, and this appears to have happened many years ago.
44. The Tribunal was concerned that the Applicant might not have complied fully with Clause 3(8) in that a notice of the list of wants of repair had not been served properly. This clause requires the Landlord "...to give or leave upon the Flat notice.....", but the serving of a letter may be construed as the giving of such notice. The Tribunal considered

this matter but decided that it is not for this Tribunal to make a decision on this point, but rather it should be a matter for a County Court or similar to decide.

45. The application for costs was then considered. The Tribunal's powers in this respect are set out in The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 section (1) of which states;

*“The Tribunal may make an order in respect of costs **only**- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs in applying for such costs; (b) **if a person has acted unreasonably in bringing, defending or conducting proceedings** in (i) an agricultural land and drainage case, (ii) a residential property case, or (iii) a leasehold case (the Tribunal's emphasis)”*

46. The Respondent has for whatever reasons played no part in these proceedings and his conduct cannot therefore satisfy the conditions set out in Section 13(1)(b). The application for costs is therefore refused

DECISION

47. Based upon the inspection and the evidence given by the Applicants the Tribunal finds there have been breaches of the Respondent's obligations under the terms of the lease.

48. Breaches of Clause 3(3)

(1) the floorboards throughout the flat have been lifted. This makes the flat uninhabitable.

(2) the incomplete state of the kitchen is a failure to keep the property in substantial repair and condition.

(3) the missing ceilings to various parts of the flat (excluding the living room and adjacent rear room for the reasons stated above) makes the flat uninhabitable.

49. The claim for breach of clause 3(16) is upheld based on the evidence given.

R T Athow FRICS MIRPM (Chairman)

24th February 2015

Appeals

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.

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.

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