



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

Case reference : **LON/00AH/LBC/2015/0066**

Property : **95 Friars Wood, Pixton Way,
Croydon, CR0 9JP**

Applicant : **Cyril Freedman Limited**

Representative : **N/A**

Respondent : **Mr W R De Silva**

Representative : **N/A**

Type of application : **Application for an determination
that a breach of covenant has
occurred (Commonhold and
Leasehold Reform Act 2002, s
168(4))**

Tribunal members : **Tribunal Judge R Percival**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **17 September 2015**

DECISION

Background

1. The Respondent is the leaseholder of a first and second floor maisonette. No other details of the property are available. He holds a lease of 99 years from 1968. He acquired the property in 2005.
2. The Applicant applied for an order under Commonhold and Leasehold Reform Act 2002, section 168(4) that the Respondent had breached a covenant in his lease. On 24 July 2015, the Procedural Judge gave directions that the application be heard on the papers.

The issue

3. The lease requires the lessee to insure the property jointly in the names of the lessor and lessee against “loss or damage by fire and aircraft and such other risks as the Lessor shall from time to time specify in writing” (clause 5(ix)(a)). By clause 5(ix)(b), the lease requires that the “insurance shall be effected through such agency as the Lessor may require in the Cornhill Insurance Company Limited or such other office as the Lessor shall from time to time specify in writing ...”. Provision is made for the Lessor to pay insurance premiums if not paid by the lessor (clause 5(ix)(d)). Other supplementary provisions are made in clause 5(ix)(c) to (e). There is no express obligation to provide evidence that the insurance has been taken out.
4. The Applicant has supplied the Tribunal with two copies of invoices sent by Lorica, an insurance broker, in respect of what is described as a property owners policy, one dated 19 November 2014, the other 15 June 2015, relating to the renewal of the policy on 11 December 2014. The invoices are addressed to “Ms H Waller & Mr D E Silver”. Also provided is a copy of an email from a representative of the insurance company to the Respondent stating that the invoices were not paid. The Respondent states that the premiums were paid by them (letter to the tribunal dated 30 July 2015).
5. The Applicant submits that there can be no problem with service, as the Respondent’s managing agent’s records (a print-out is provided) show that they have paid ground rent as demanded. The Respondent also states that the Respondent has paid insurance premiums in the past, although does not provide documentary material to support that assertion.
6. Finally, the Applicant produces copies of two letters from themselves to the Respondent. The first, dated 5 May 2015, sets out the failure to pay the insurance premium and seeks payment. The second, of 15 May, advises the Respondent of these proceedings.

Determination

7. The burden of proving breach of covenant lies with the landlord.
8. The directions made on 24 July 2015 make provision for the Respondent to provide a bundle setting out his case. Nothing has been received. The Respondent is recorded as being present in person at the case management conference.
9. In the absence of any contrary evidence or submissions from the Respondent, the Applicant has discharged the burden upon it. I accept the invoices from Lorica, supported by a copied email, and the letters from the Applicant to the Respondent, as evidence that the insurance premium had not been paid. It is true that the invoices wrongly rendered the Respondent's name, but not in such a manner as to produce any misunderstanding.
10. I am also prepared to accept that Lorica must be the agent specified by the lessor as provided for in clause 5(ix)(b). However, even if that is not the case, the fact that the insurance has been procured through them and the premium paid by the Applicant is in any event evidence that the insurance has not been paid by the Respondent, in the absence of any assertion by him to the contrary.
11. The Tribunal accordingly determines that the Respondent has breached the covenant contained in clause 5(ix) of the lease.
12. I add that the Tribunal has not been able to contact the company which, it appears, provided the Respondent's mortgage. It is likely to be in the Respondent's interests that they be made aware of these proceedings now.

Name: Tribunal Judge Richard Percival **Date:** 17 September 2015