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

Case reference : **LON/00AP/2014/0093**

Property : **Ground Floor Flat, 3 Heybourne
Road, London N17 0SR**

Applicant : **Gluck Properties Ltd**

Representative : **Churchills, solicitors**

Respondent : **Mr Muhammad Musaddaq**

Representative : **N/A**

Type of application : **An application under section 168
(4) of the Commonhold and
Leasehold Reform Act 2002**

Tribunal members : **1. Mr A Vance, Tribunal Judge
2. Mr M Cartwright, FRICS**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR**

Date of decision : **26 February 2015**

DECISION

Decisions of the tribunal

1. The tribunal determines that the respondent is in breach of the covenants set out at clauses 3(3); 3(4); and 3(5) of his lease in respect of the condition of the front bay window of the subject flat.

The application

2. This is an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that there has been a breach of covenant by the Respondent in respect of in his lease of Ground Floor Flat, 3 Heybourne Road, London N17 0SR (“the Flat”). The Flat forms part of a two-storey converted Victorian mid-terraced house (the “Building”).
3. Numbers in square brackets below refer to the hearing bundle provided by the applicant.

Introduction

4. The applicant is the freehold owner of the Building whose title was registered at HM Land Registry under Title Number MX208211 on 9 April 2013 [5].
5. The respondent is the lessee of the Flat. His leasehold interest was registered at H. M. Land Registry on 8 June 2006 under title number EGL180429 [7].
6. The Flat is managed by Mr Mark Reed, property manager, of ABC Lettings (“ABC”) on behalf of the applicant.
7. The relevant lease is dated 26 November 1985 and is made between Meritbrook Limited and Michael John O’Brien for a term of 99 years commencing 1 June 1985.
8. A case management hearing took place on 22 January 2015 attended by Mr Meyers on behalf of the applicant. The respondent did not attend. Directions were issued by the tribunal on the same day.
9. The applicant alleges that the following covenants under the lease have been breached

Clause 3(3)

“In every fifth year of the said term.....to redecorate in a proper and workmanlike manner all the external and internal surfaces of the

demised premises all metal wood and other parts usually painted to receive two coats of paint.....”

Clause 3(4)

“Without prejudice to the generality of the tenants covenants herein contained to repair to the satisfaction of the Landlord any part of the exterior of the demised premises which needs to be repaired and is not included in the Landlords obligation under Clause 4(3) hereof....”

Clause 3(5)

“To clean the windows of the demised premises at least once every month”

The Third Schedule, Paragraph 1

“Not to use the demised premises nor to permit the same to be used for any purposes whatsoever other than as a private dwellinghouse in single occupation only nor for any purpose from which a nuisance or annoyance can arise to the Landlord...”

The hearing

10. The applicant was represented by Mr Myers. Oral evidence, supported by a witness statement [38] was given by Mr Reed. The applicant supplied a signed copy of the last page of Mr Reed’s witness statement. The respondent did not attend
11. The applicant’s case is that the respondent has allowed the rear garden (which is only accessible from the Flat) to become overgrown leading to an infestation of rats and other vermin and also that the front external bay window frames are in a state of disrepair. It was also asserted that the internal condition of the Flat had not been redecorated in accordance with the above lease provisions and that the respondent had allowed offensive odours, amounting to a nuisance, to emanate from his Flat.
12. In evidence, Mr Reed stated that he had only visited the Flat once in August 2014 following which he wrote to the applicant on 8 August 2014 [43] setting out what he considered to be the disrepair present at the Flat and in which he asked the respondent to remedy these defects. He conceded that he had not seen any rats or other vermin during his visit and that he had been unable to access the rear garden. The source of his belief regarding the alleged infestation problem and offensive smells was the tenant of the upstairs flat who, he said, was upset by the respondent’s neglect of the Flat.

13. He stated that his colleague, Vinny Edirmanasinghe visited the Flat in September 2014 and found it to be in the same condition as per the August visit, with no remedial works having been carried out by the respondent.
14. Mr Reed confirmed that no response had been received from the respondent to the letters sent by ABC on 8 August 2014; 5 September 2014 [45] nor the letter sent by Churchill's, solicitors on 4 November 2014 [46] which enclosed a notice under s.146 Law of Property Act 1925. He did not know if the applicant lived at the Flat or if he sub-lets it. When he visited the house in August 2014 he looked inside the Flat and saw that a man was present but this person did not answer the door when he knocked.

Inspection

15. Although neither party requested an inspection the Tribunal considered it appropriate to attempt to do so. It inspected the front elevation of the house and the rear garden on the afternoon of 26 February 2015, after the conclusion of the hearing. The landlord was present but the respondent was not at home. The tribunal was therefore unable to gain access to the Flat and was not able to view its' internal condition. Nets were drawn over the bay window preventing a view of the inside of the Flat from outside the house.
16. The front exterior of the Flat is in a very poor condition. The window sill to the bay window is rotten throughout. Render is crumbling in numerous places and the window glazing looked to be insecure. The paintwork is peeling away and it is quite clear that the window has not been decorated for at least the last 10 years. The condition is so poor that it is simply no longer possible to repair and maintain this window. It requires complete replacement.
17. The tribunal viewed the condition of the rear garden from the windows of the upstairs flat. It was completely overgrown and impassable with thick brambles reaching about four to five feet in height. The fence on the left side of the house (facing away from the house) has partly collapsed.
18. The tribunal did not notice any offensive smells either in the common parts or at the front exterior of the Flat.

The Law

19. The relevant parts of s.168 of the Act provide as follows:-

(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 (c. 20) (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)

(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.

The tribunal's decision and reasons

20. Firstly, the applicant is asked to note that it would have assisted the tribunal if it had provided a photographic schedule evidencing the asserted condition of the Flat and if Mr Reed had carried out a recent inspection before the tribunal hearing. This may have avoided the need for the tribunal to carry out an inspection and avoided potentially unnecessary costs to the tribunal.

21. The tribunal notes the absence of any evidence that the local authority has been contacted in respect of the asserted vermin infestation and that Mr Reed was unaware of any such contact. The sole evidence of such an infestation and as to the alleged offensive smells are the

hearsay remarks of the tenant of the upper floor flat to Mr Reed on his August visit. Given the paucity of the evidence the tribunal is not satisfied that there is a vermin infestation amounting to a breach the covenant at paragraph 1 of the Third Schedule of the lease.

22. Nor does the tribunal consider there is any evidence before it sufficient for it to conclude that there has been any breach of covenant in respect of the interior condition of the Flat. The applicant has not inspected the interior of the flat and Mr Reed's evidence is no more than speculation.
23. It is clear, however, that clauses 3(3); 3(4); and 3(5) of the Respondent's lease have been breached in respect of the condition of the front bay window. The state of this window, as described above, is such that the tribunal is satisfied that the respondent has failed to redecorate the external surfaces of the Flat once every five years as required under clause 3(3).
24. In the tribunal's view the condition of that window is such that the Respondent has also failed to comply with his covenant at clause 3(4) of his lease to repair the exterior of the demised premises when requested by his landlord. The tribunal notes that this clause is subject to the landlord's obligation under clause 4(3) to keep maintain, redecorate and renew the structure of the Building. However, in the tribunal's view the landlord's covenant to maintain etc the *structure* of the Building (when read alongside the tenant's covenant at 3(4)) does not impose upon it an obligation to maintain, redecorate and renew the window itself (including the window frame). That responsibility rests with the tenant once he is asked to do so by the landlord. Such a request was made by the landlord in the letter from ABC to the respondent of 8 August 2015 but has not been acted upon by the respondent.
25. For the sake of completeness, the tribunal is satisfied that the condition of the bay window is such that the respondent has failed to clean the windows of the demised premises at least once every month as he is obliged to do under clause 3(5) of his lease.
26. As to the condition of the garden, whilst the tribunal accepts that it is completely overgrown it does not consider that allowing it to fall into this condition amounts to a breach of any of the covenants relied upon by the applicant. It is not a redecoration or repair issue and therefore falls outside of the covenants at clauses 3(3) and 3(4). Nor does the tribunal consider it amounts to a breach of the restriction at paragraph 1 of the Third Schedule which amounts to a restriction on use.
27. Allowing the garden to fall into its current condition does not, in the tribunal's view, amount to the respondent using that part of his demise for a purpose that amounts, or can amount to a nuisance. Rather, it is an act of neglect. In addition, and even if the tribunal is wrong on that

point, the restriction at paragraph 1 of the Third Schedule refers to a nuisance or annoyance “to the Landlord” and not another tenant or neighbour and there is no evidence before the tribunal to establish that a nuisance has occurred. Arguably, it may amount to an annoyance to the Landlord but that is not a matter that is addressed in the applicant’s evidence to the tribunal and the tribunal is not prepared to find that this covenant has been breached without such evidence.

Name: AmranVance

Date: 26 February 2015