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

Case reference : LON/00AW/LBC/2017/0101

Property : Flat 6, 40 Redcliffe Square,
London SW10 9HQ

Applicant : 40 Redcliffe (Management Co) Ltd

Representative : Mr A Christensen (Director)

Respondent : Ms A. Al-Barbandi

Representative : none

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

Tribunal member : Mr N Martindale FRICS

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

Date of decision : 20 January 2018

DECISION

Decision

1. The Tribunal determines that the respondent is in breach of the tenant's covenant at 3(c) of the lease, because one or more windows at the flat were in disrepair and because the responsibility to repair these items falls, under the lease, to the tenant.

Application

2. This is an application by the freeholder, 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 the tenant's lease. The property is a one bedroom dwelling, Flat 6, 40 Redcliffe Square. The building of which this forms part consists of some 14No. flats of varying size created by the historic conversion of the large former Victorian end terrace house, set on 5 floors (the Building).

Introduction

3. The applicant is the freehold owner of the Building whose title was registered at HM Land Registry under Title Number 226322 on 13 September 1988.
4. The respondent is the lessee of the Flat. Her leasehold interest was registered at H. M. Land Registry under Title Number NGL283188 on 1 June 1976.
5. The Building is managed by officers of the freehold company, and in this application is represented by Mr A Christensen, director. The tenant was not represented.
6. The lease of the Property is dated 20 April 1976, between N T Grimshaw & T Farrell; and W C Ng & P C Chew, for 125 years from 1 October 1975.
7. Directions were issued by Tribunal Judge Vance, on 1 November 2017. The applicant landlord complied; the tenant did not. The tenant provided no additional material in defence of the allegation of a breach.
8. The applicant alleges that the following tenant's covenant under the lease has been breached:

Clause 3 (c): *"That the Lessee will at all times during the said term keep the interior of the demised premises and all additions thereof and the Lessors' fixtures therein and the sanitary and water apparatus thereof excluding all walls and all items of a structural*

nature in good and substantial repair damage by the insured risks excepted together with the interior of party and other walls and also keep and maintain in good and substantial repair the windows window frames doors and door frames both internal and external damage by the insured risks expected and in the fifth and ;last year of the said term howsoever determined paint twice over in good quality paint of an appropriate colour the woodwork and stucco work in the inside of the demised premises usually painted and at the same time paper colour grain distemper whitewash and varnish such parts of the interior of the demised premises now papered coloured grained distempered whitewashed and varnished such painting to be twice over with proper and appropriate colours and tints and to deliver up the same at the determination of the said term in such good and substantial repair and condition as aforesaid."

Hearing

9. The hearing was held on 17 January 2018 at Alfred Place. The applicant was represented by Mr Christensen, director of the applicant company freeholder. He confirmed that the tenant occupied the property herself, that there was no known sub-tenant, and that the mortgagee had been informed of the application and hearing. The tenant did not attend nor did any representative on her behalf. There were no additional witnesses or attendees. Owing to the seriousness of the consequences for the tenant in this case, the Tribunal specifically delayed the start of the hearing until 10.20am in the event that the tenant was running late, but she did not attend nor otherwise contact the Tribunal.
10. The applicant's case is that the respondent had allowed one or more of the windows to the Property to fall into disrepair. Although the windows are regarded as a structural item forming part of the Building and not part of the demise, responsibility for their repair and internal decoration falls solely on the tenant under tenant's covenant 3(C). The landlord is responsible for the remainder of the structure of the Building and for decorating the exterior of the Building and in particular exterior of the windows (and external doors), under landlord's covenant 4(D)(i). The landlord freeholder is a wholly tenant owned company of which all leaseholders are also shareholders.
11. The Tribunal was informed that at the Property there were some 7No. window openings each containing either an original wooden double hung sash frame; or a wooden double casement; or a more modern metal/ timber window frame with central hinged opener. The Tribunal was informed by Mr Christensen and by specific reference to the expert report dated 23 October 2017 prepared by Steve Hogevoold BSc MRICS for Morse Chartered Surveyors and Project Managers, a copy of which was in the bundle and already sent at the time to the tenant, that the one or more windows to this flat were in disrepair. The Tribunal was able to see from photographs taken from the exterior (from scaffolding

already in place) only and around October 2017, by the surveyor for the freeholder, that one or more of the double hung sash and one or more of the casement windows were in disrepair at that time.

12. In evidence, Mr Christensen confirmed that the wider issues of disrepair to the structure of the building, specifically; the roofs, brickwork and external decorations had been first raised with the leaseholders some 3 years before the date of this hearing. He confirmed that these works had been the subject of the normal consultation process under S.20 for major works. That this works schedule had also apparently included details of the defects and works identified by the landlord's surveyor, as required to the windows for the common parts as well as those of each flat including the Property. Responsibility of the repair of windows serving the communal area being down to the landlord and repair of the windows serving individual flats being down to the respective tenant, according to tenant's covenant 3(C). He confirmed that leaseholders had been invited to engage, through the landlord, for the main contractor to the Building, to also carry out the works to their individual flats i.e. to the windows, or for the tenants to otherwise make clear to the landlord how and when they would arrange the repair work to windows themselves.
13. The Tribunal was shown extensive email correspondence between the landlord's representative and the tenant. It was apparent from this that the tenant did not fully appreciate nor understand the nature of their obligations under the lease; to repair the windows; to co-operate with the landlord in providing access for inspection; nor access for works of repair by the landlord to the windows in default after due notice of 3 months under tenants covenant 3(D). The tenant had made no arrangement for repairs to be undertaken.

Inspection

14. Mr Christensen provided a description of the current state of the works to the building and those recently to the Property in particular. He confirmed that access had finally been provided by the tenant for the landlord to carry out repairs to most of the windows and that these works had just been completed with the very recent agreement of the tenant, by the main contractor. However he also confirmed that work on small window improvements (replacement of some single glazing with double glazed units, for example, had not been completed), the latter works not being the subject of this alleged breach.
15. In the circumstance as there was now nothing of the original disrepair to be seen at the Property and with the benefit of the provision by the landlord of a detailed professional report on the past condition of the windows to this flat, the Tribunal considered that an inspection would not now add anything: Accordingly none was undertaken.

Law

16. 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.

Decision and Reasoning

17. The Tribunal determines that the tenant has breached covenant 3(C), by allowing one or more of the windows at the property to be in disrepair.

18. The Tribunal noted from the expert report with its extensive photographs that: The upper sashes and lower sashes did not meet on one or more window preventing them from being locked; that the surveyor had observed the absence of at least two sash cords to lower sashes; that there was wet rot to one or more window cills; and that the casements in at least one of the window frames did not meet correctly and appeared twisted making their security difficult.

19. Whilst the responsibility to decorate the exterior of the windows fell to the landlord under the lease and therefore their external 'painting up' would almost certainly be down to the landlord, unfortunately the responsibility to free the windows from such paintwork and to carry out all repairs to enable full and free movement of both sashes, and of all casements, nevertheless falls to the tenant under the lease.
20. The Tribunal noted that in addition to the determination of a breach, the applicant in correspondence sought to recover various costs incurred by it in the process. These included the actual cost of the repairs (but not the improvements) to the windows at the Property; the cost of the surveyor's report on these windows; the Tribunal application and hearing fees; the cost of legal advice prior to the making of this application; and the cost of the preparation and attendance at this hearing.
21. The Tribunal explained that such matters would not form part of the determination of this application and the Tribunal accordingly makes no finding on them. The landlord was advised to raise the issue of these costs directly with the tenant and if they are not agreed, should make a further application to the Tribunal for a determination as to what administrative costs were reasonable and payable by the tenant.

Name: N Martindale

Date: 20 January 2018

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.