

S24



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

Case Reference : CHI/29UN/LBC/2013/0017

Property : Flat 1 Victoria House
80 Victoria Road
Margate
Kent
CT9 1RD

Applicant : Mr. C. Hoenes

Respondent : Mr. P. Ioannou

Interested Party : Kensington Mortgage Company Limited

Representative : Eversheds LLP

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

Tribunal Members : Judge R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM

**Date and venue of
Determination** : 25th July 2013
Margate, Kent

Date of Decision : 25th July 2013

DECISION

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Decision

1. There have been breaches of the following covenants in the lease:
 - (a) Clause 2 and Schedule 4 paragraphs 1 and 4.
 - (b) Clause 3(4).
 - (c) Clause 3(6).
2. No order is made as to costs.

Background

3. Mr. C. Hoenes ("the Applicant") is the current freeholder of Victoria House and made an application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition in the lease of Flat 1 Victoria House, 80 Victoria Road, Margate, Kent CT9 1RD ("the subject property") had occurred.
4. The lessee of the subject property is Mr. P. Ioannou ("the Respondent"). He obtained a mortgage from Kensington Mortgage Company Limited ("the Interested Party") and the Interested Party has now entered into possession of the subject property.
5. Directions were issued and with those directions the Tribunal gave notice to the parties under the Regulation in force at that time namely Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004, that the Tribunal intended to proceed to determine the matter on the basis only of written representations and without an oral hearing. Also that if the matter were dealt with in that fashion it might be considered by a Chairman sitting alone, or alternatively with another Member of the Panel, rather than by a full tribunal of three members. The parties were given the opportunity to object to that procedure by writing to the Tribunal. No written objection has been received and the matter is being dealt with on the basis only of written representations and without an oral hearing.

Inspection

6. On 25th July 2013, in the presence of the Applicant and Mrs. Hoenes, the Tribunal inspected the subject property which is on the ground floor of the building. The Applicant provided access to the common parts of the building. Another man was also present and had keys for the subject property. He did not give his name and stated that he had no instructions to take any part in the proceedings but allowed the Tribunal access to the subject property and agreed to wait until the inspection had been completed. After which, presumably, he secured the subject property.

7. The subject property is described in the lease by reference to a plan annexed thereto. However, we saw that there was a note on the plan that "All partitions to be of..." and there then followed specifications for the construction of the partitions. It appeared to us probable that the plan had been prepared for the purpose of obtaining consent for the conversion and when alterations were made was not clear. However, it was obvious that the layout of the subject property was substantially different from that shown on the lease plan.

(a) The plan shows an entrance lobby in the corner of the lounge. We found markings to the walls and ceilings which confirmed that at some previous time there had been such an entrance lobby but it no longer exists.

(b) To the rear of the subject property there is an area of brickwork in one of the main structural walls of the building. The brickwork is distinct from the surrounding brickwork and is in the position where a window to the w.c. is shown on the plan.

(c) Shown on the plan is a wall with a door giving access to the kitchen from the hallway. It is a structural wall which supports the main part of the building but the door is not in the position shown on the plan.

(d) There is a room at the rear of the subject property which is shown on the plan as the kitchen but may be intended to be used as a second bedroom. The fact that electrical sockets are at kitchen height is the only evidence of the room formerly being a kitchen.

(e) The kitchen is now in an area which on the plan appears to be a hallway but the width of the room is greater than shown on the plan because the wall between the hallway and the bedroom is not in the position shown on the plan. The present kitchen appeared to have been in place for some time but we could not say when it was installed.

(f) Shown on the plan is a wall between the original bedroom and the hall giving access to the w.c. but that wall is not there now. In fact none of the walls to the original bedroom are as shown on the lease plan. However, it was clear to us from the skirtings and architraves, and from a built-in wardrobe, bedside cabinet and dressing table that all had been fitted and had been there for many years.

8. The subject property was in a poor decorative state and not clean and there was a hole in floor of the hallway leading to the w.c. because floorboards were missing.

Determination

9. The Tribunal considered all the documents which had been supplied and all that had been seen at the inspection.

10. The lease provides at Clause 2, a covenant by the lessee to perform and observe the restrictions stipulations and conditions set forth in the Fourth Schedule to the lease.

11. Paragraphs 1 and 4 of the Fourth Schedule read:

“1. Not at any time to make any alterations modifications or additions to the demised premises”

“4. Not to maim injure or deface the footings and foundations main walls or timbers of the demised premises save in connection with and only so far as may be necessary to permit renovations and repairs thereto or to any other part of the property.”

12. The demised premises are defined in the lease by reference to the plan annexed thereto and at the inspection it was clear that they did not correspond to the plan. In the absence of evidence indicating the contrary, such as evidence of consent of the lessor having being granted, we find that the matters set out in paragraph 7 above are breaches of the covenant contained in Clause 2 and Paragraphs 1 and 4 of the Fourth Schedule to the lease.

13. Clause 3(4) of the lease contains a covenant by the lessee “To keep the demised premises and every part thereof in tenantable repair throughout the term hereby granted”

14. The subject property was in a poor decorative state and not clean but that alone would not necessarily render it not in tenantable repair as required by the lease. However, there was a hole in floor of the hallway leading to the w.c. because floorboards were missing. In the absence of evidence, such as the temporary removal of the floorboards to effect a repair, that we find is a breach of Clause 3(4) of the lease.

15. Clause 3(6) of the lease contains a covenant by the lessee “To permit the Lessor and her duly authorised agents with or without workmen and others twice a year upon giving previous notice in writing at reasonable times to enter upon and examine the condition of the demised premises.....”

16. By a letter dated 18th April 2013 written by the Applicant to the Solicitors representing the Interested Party, the Applicant gave what amounted to notice in writing to inspect the demised premises. He did not specify a date and time for the inspection but left it to the Solicitors to contact him with a definite appointment for a joint inspection and suggested that it should take place within seven days. There is no evidence of compliance with that notice and consequently we find that there was a breach of Clause 3(6)

17. The Tribunal was not satisfied that any order as to costs should be made and that the parties should be responsible for their own costs.

Appeals

18. 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.

19. 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.

20. 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.

21. 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.

Judge R. Norman (Chairman)