



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

Case Reference : **LON/00AW/LBC/2013/0066**

Property : **Flat 7, 18/19 Ladbroke Square,
W11 3NA**

Applicant : **18/19 Ladbroke Square Limited**

Representative : **Dale & Dale Solicitors**

Respondent : **Pamela Marion Bremner Brown**

Representative : **None**

Type of Application : **For a declaration as to a breach of
lease – section 168(4)
Commonhold and Leasehold
Reform Act 2002**

Tribunal Judge : **Mr M Martynski**

Date of Decision : **23 September 2013**

DECISION

Decision summary

1. It is determined that the Respondent has breached paragraph 8 of the Fourth Schedule of her lease in that on 23 July 2013 she refused access to the Applicant's agents and workmen having been given reasonable notice of the requirement for access.

Background

2. The Respondent is the long leaseholder of flat 7, 18/19 Ladbroke Square which is described by the Applicant as a two-bedroomed flat in a Victorian conversion consisting of 10 flats.
3. The lease of flat 7 is dated 30th April 1970 and is between the Applicant and Respondent as Landlord and Tenant respectively. The lease is for a term of 99 years from 30 April 1970.
4. The clause in the lease relied upon by the Applicant is in the following terms:-

The Tenant shall permit the Landlord with or without servants agents or workmen at any time and after such notice as may be reasonable in the circumstances to enter upon and examine the condition (sic) of the Flat and may thereupon serve upon the Tenant notice in writing specifying any works necessary to be done for which the Tenant is liable hereunder and require the Tenant forthwith to execute the same and if the Tenant does not within two months (or sooner in case of emergency) after the service of such notice proceed diligently with the execution of such works then the Landlord may enter upon the Flat and execute the same and the cost thereof shall be a debt due to the Landlord from the Tenant and shall forthwith be recoverable by action.
[paragraph 8 of the Fourth Schedule]

5. An application was made by the Applicant for a determination that the Respondent is in breach of the above lease clause.
6. Directions were given for the preparation of the matter and the application was set down to be determined on the papers alone. Neither party requested a hearing.
7. I have determined this case on the basis of:-
 - (a) the bundle of documents submitted by the Applicant
 - (b) the Respondent's letters dated 30 August, 11 & 19 September 2013

The Applicant's case

8. Evidence filed on behalf of the Applicant in support of the allegation of a breach of the lease. This evidence consisted of a signed Application Form setting out the relevant events and the witness statement of Martin Paul Comport.
9. The evidence filed was to the effect on 5 October 2012 the Applicant's managing agents were notified that sewage was escaping from the toilet of the Respondent's flat to the flat below.
10. Three letters sent by the managing agents to the Respondent were exhibited to Mr Comport's statement. The first is a letter dated 31

October 2012 regarding the alleged leak. No specific access is required in that letter.

11. A second letter dated 14 November 2012 threatens legal action.
12. A third letter dated 17 July 2013 requests an appointment. The relevant parts of this letter read as follows:-

In accordance with the terms of your lease I hereby request an appointment to inspect and repair the toilet in your flat which has leaked into the flat below.

We propose to attend at the building on 23 July 2013 at 4 p.m. with a plumber and shall be much obliged if you will kindly permit access to carry out the required works.

13. There is evidence given of the events on 23 July 2013 is as follows; Mr Chambers (the Applicant's managing agent) attended at the building with a plumber. There was no reply to the ringing of the doorbell to the Respondent's flat. Mr Chambers then knocked at the Respondent's flat front door and got no response. A Ms Perigoe, a director of the Applicant, then joined Mr Chambers and called through the letterbox of the flat. They asked for access. The Respondent opened the door. She said that her toilet was not leaking. There was no direct response to the request for access and eventually the Respondent said that there was something wrong and that she could smell fumes. The Applicant's representatives took the view that the Respondent would not allow access and left.

The Respondent's case

14. The Respondent's case is not clear. In her letter of 19 September 2013 (so far as it is legible), she appears to comment as follows on the request for access:-

We are due some politeness and respect. When Mr Chambers came here he said nothing (no 'good morning') silence. And there was a sinister young man behind who just stared rudely. At that time, I suggest, Mr Chambers did not earn the title of 'Agent' he was there solely on behalf of someone hoping to get my property. I do not believe there was a leak – it was so much planned beforehand.

Decision

15. I am satisfied on the evidence in this application that the Applicant had a legitimate reason to require access to the Respondent's property to inspect the same.
16. I am satisfied that reasonable notice was given to the Respondent of the requirement to inspect her flat for the purposes of examining the condition of that flat.

17. I am further satisfied that the Respondent effectively failed to give access to her flat when so reasonably required on 23 July.
18. There has accordingly been a breach of the terms of the lease by the Respondent.

Mark Martynski, Tribunal Judge