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

Case Reference : **LON/00BH/LBC/2013/0079**

Property : **Ground and First Floor Flats, 35
Chingford Road, London E17 4PW**

Applicant : **Dalkator Limited**

Representative : **Circle Residential Management
Limited (Managing Agents)**

Respondent : **Mr M Mandra**

Representative : **Unrepresented**

Type of Application : **Determination of an alleged breach
of covenant under section 168(4) of
the Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Mr Jeremy Donegan (Tribunal
Judge)
Mr Michael Mathews FRICS
(Professional Member)**

**Date and venue of
Paper Determination** : **21 November 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **02 December 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that breaches of the covenant at clause 2(f) of the leases of the Ground and First Floor Flats, 35 Chingford Road, London E17 4PW ("the Flats") have occurred. Details of the breaches are set out at paragraph 20 of this decision.

The application

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent is in breach of a covenant contained within his leases. In particular the Applicant asserts that the Respondent has failed to keep the building at 35 Chingford Road, London E17 4PW ("the Building") in good substantial repair and condition.
2. The application was submitted to the tribunal on 23 September 2013 and directions were issued at a pre-trial review on 02 October 2013. These provided that the case would proceed to a paper determination. None of the parties has objected to this or requested an oral hearing.
3. On 12 November 2013 the tribunal wrote to the Applicant's managing agents, Circle Residential Management Limited ("Circle") inviting representations as to responsibility for the maintenance and repair of the external walls at ground floor level, the entrance door and the communal hallway of the Building. The tribunal also requested colour copies of the lease plans and the letter was copied to the Respondent. Circle responded in a letter dated 19 November 2013, in which they enclosed coloured plans.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Building comprises of two flats, Flat A on the ground floor and Flat B on the first floor. The Applicant is the freeholder of the Building. The Respondent is the leaseholder of both Flats.
6. The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondent holds each of the Flats on a separate long lease. The specific provisions of the leases are referred to below, where appropriate.

The issues

8. The application relates to the condition of the external walls, roof, entrance door and communal hallway at the Building.
9. The Applicant served a detailed statement of case and bundle of supporting documents in accordance with the directions. The Respondent has not served any statement of case or contested the application.
10. The Applicant produced a hearing bundle that included copies of both leases, the application, directions, Land Registry searches for both flats, a witness statement from Mr Ben Turner dated 11 October 2013 and various photographs of the Building.

The leases

11. The leases are each dated 20 December 2007 and were granted by Jasveer Mann to the Respondent. Each lease is for a term of 125 years expiring on 20 December 2132.
12. Clause 1 of the leases defines the Flats, as follows:

GROUND FLOOR FLAT “ALL THAT Ground floor flat situate at 35a Chingford Road London E17 4PW which is more particularly delineated on the plan annexed hereto and thereon edged red (hereinafter called “the demised premises”) AND IT IS HEREBY DECLARED that one half the depth of the joists between the floors of the upper flat and the ceilings of the lower the flat the external walls above this level and the roof are included in the demises and that the walls of the front entrance and garden exit passages and staircases are party walls severed medially **TOGETHER** with the following rights at all times during the said term”

FIRST FLOOR FLAT “ALL THAT First floor flat situate at 35b Chingford Road London E17 4PW which is more particularly delineated on the plan annexed hereto and thereon edged red (hereinafter called “the demised premises”) AND IT IS HEREBY DECLARED that one half the depth of the joists between the floors of the upper flat and the ceilings of the lower the flat the external walls above this level and the roof are included in the demises and that the walls of the front entrance and garden exit passages and staircases are party walls severed medially **TOGETHER** with the following rights at all times during the said term”

13. In the case of the Ground Floor Flat, the external walls at the front and sides of the Building are not within the red edging on the lease plan. However the external wall and the garden at the rear of the Building are

within the red edging. None of the external walls are within the red edging on the lease plan for the First Floor Flat. In all of the lease plans the front garden, entrance and communal hallway are edged in blue.

14. Clauses 2(f) and (g) of each lease are in identical form and read:

“(f)At the expense of the Lessee throughout the said term where and as often as need or occasion shall require well and substantially to repair renew uphold support maintain drain point pave cleanse paint grain varnish enamel whiten colour strip and re-paper glaze amend and keep in good and substantial repair and condition and in proper order the demised premises and all erections and building that shall for the time being be erected or built upon the site thereof and any additions thereto and all fences railings and gates and to keep the garden in a good and tidy state of cultivation and without prejudice to the generality thereof in particular to carry out the demised premises subject to contribution of one equal half part of the costs of such works by the Lessee of the lower flat subject to the provisions of Clause 3(c) hereof

(g) At all times during the said term to pay and contribute (a) one equal half part of the expense of repairing maintaining and rebuilding the roof foundations and main structure of the building of which the demised premises form part (b) a rateable or due proportion of the expense of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes cisterns gutters party walls party structure fences easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the Lessor or the tenants or occupiers of the premises near to or adjoining the demised premises including the lower flat or of which the demised premises form part such proportion in the case of difference to be settled by the surveyor for the time being of the Lessor whose decision shall be binding and to keep the Lessor indemnified against all costs and expenses as aforesaid”

Submissions

15. In the original application, the Applicant sought a determination that the Respondent has breached clause 2(f) of the leases by allowing weeds to go through the brickwork at the Building.
16. The grounds of the application were expanded upon in the statement from Mr Turner. He is a Maintenance and Health & Safety Co-ordinator for Circle and is an Associate of the Institute of Residential Property Management. In his statement, Mr Turner listed various, alleged dilapidations at the Building that he had identified during an inspection on 03 October 2013. Mr Turner also produced various photographs of the Building that he taken during the inspection.

17. The alleged dilapidations identified by Mr Turner can be summarised as follows:

17.1 Exterior of Building - Damage to external stonework, ground floor cill, moulding above the front door and all of the stonework requires redecoration;

17.2 Front Garden – this is full of refuse and requires clearing;

17.3 Gas Meter - the meter box is hanging off the wall and requires attention;

17.4 Roof - there is a broken hip tile above the front bay window, the cement work to the right hand parapet wall is in need of attention and the guttering requires clearing;

17.5 Front Door – this is in dilapidated state and the glass has been replaced with chipboard;

17.6 Internal Hallway – the walls are marked and in a poor decorative state, the carpet is worn and the covers are missing from the electrical consumer units; and

17.7 Rear of Building – ivy is growing all over the rear elevation at first floor level and may have entered the roof space and caused damage.

18. In their letter to the tribunal dated 19 November 2013, Circle acknowledged that the front door and the communal hallway are not demised and therefore fall outside the Respondent's repairing obligations. The letter goes onto say:

“At clause 1, both leases appear to demise the exterior of the first floor “the external walls above this level”; however the office copy of the Ground Floor states that it only relates to the ground floor”.

19. Having studied the evidence and submissions from the Applicant and having considered all of the documents provided, the tribunal has made the following determination.

The tribunal's decision

20. The tribunal determines that the Respondent has breached the repairing obligations at clause 2 (f) of the leases, as follows:

20.1 Failing to decorate the whitewashed stonework of the Building at first floor level;

- 20.2 Failing to cultivate the front garden and allowing refuse to accumulate there;
- 20.3 Failing to repair the broken hip tile in the roof, above the bay window;
- 20.4 Failing to repair the cement work to the right hand parapet wall on the roof;
- 20.5 Failing to clear the roof guttering; and
- 20.6 Failing to clear the ivy growing all over the rear elevation of the Building at first floor level.

Reasons for the tribunal's decision

- 21. The Respondent has not contested the application and the tribunal accepts the unchallenged evidence of Mr Turner. Further the photographs in the bundle establish all of the dilapidations identified in that statement, which are attributable to a failure to maintain and repair the Building. The Building is not in good and substantial repair and condition and the front garden is not in a good and tidy state of cultivation.
- 22. The tribunal carefully considered the extent of the repairing obligations at clause 2 (f) of the leases. In each case the Respondent has to “*..repair renew uphold....and keep in good and substantial repair and condition and proper order the demised premises....and all fences railings and gates and to keep the garden in a good and tidy state of cultivation....*”.
- 23. The definition of the demised premises for the First Floor Flat, at clause 1 of the lease, is straightforward and includes the external walls at first floor level and the roof. Bizarrely the corresponding definition in the lease of the Ground Floor Flat also includes the external walls at first floor level and the roof. Further it makes no reference to the external walls at ground floor level, the foundations, the front door or the communal hallway.
- 24. The tribunal believe that a mistake might have been made in the drafting of the lease of the Ground Floor Flat. It makes no sense for the upper parts of the Building, the roof and one half depth of the floor joists for the First Floor Flat to be demised to both flats. Further the lease does not address the maintenance of the lower parts of the Building, the front door or the communal hallway. In addition, clauses 2(f) and (g) incorrectly refer to “*..the lower flat..*” in relation to the other flat in the Building.

25. The lease plans do not assist greatly in that the only external wall that falls within the red edging is the rear wall at ground floor level, as shown in the plan for the Ground Floor Flat.
26. Based upon the wording of the leases and the lease plans, the tribunal concluded that:
 - 26.1 The leaseholder of each Flat is liable to maintain and repair the external walls at first floor level, the roof, the fences, railings and gates and one half depth of the floor joists for the First Floor Flat.
 - 26.2 The leaseholder of each Flat must cultivate the front garden.
 - 26.3 The leaseholder of the Ground Floor Flat must also maintain and repair the interior of that flat, the rear external wall at ground floor level and the back garden.
 - 26.4 The leaseholder of the First Floor Flat must also maintain and repair the interior of that flat.
27. Having reached these conclusions, it follows that the following dilapidations do not come within the Respondent's repairing obligations;
 - 27.1 External stone work at front ground level;
 - 27.2 Stone cill to the Ground Floor Flat;
 - 27.3 Stone moulding above the front door;
 - 27.4 Meter box at the front of the Building;
 - 27.5 Front door to the Building; and
 - 27.6 Internal communal hallway.
28. All of the other dilapidations fall within the Respondent's repairing obligations, at clause 2(f) of the leases.

The next steps

29. The tribunal has determined that the Respondent has breached the leases. They recommend that he remedies these breaches, as soon as possible to avoid further action by the Applicants. That action could include service of Notices under section 146 of the Law of Property Act 1925 and possible Court Proceedings to forfeit the leases.

30. The tribunal has identified apparent defects in the lease of the Ground Floor Flat and the parties might wish to agree a variation to this lease to correct the defects. Alternatively the parties might like to consider an application to vary the lease pursuant to section 35 (1) of the Landlord and Tenant Act 1987.
31. The tribunal strongly recommends that the Respondent seeks independent legal advice upon this decision and the wording of the leases.

Name: Jeremy Donegan Date: 02 December 2013

Appendix of relevant legislation

Landlord and Tenant Act 1987

Section 35 (1) Application by a party to a lease for variation of lease

Any party to a long lease may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application

Commonhold and Leasehold Reform Act 2002

Section 168 No forfeiture notice before determination of breach

(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) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(6) For the purposes of subsection (4), “appropriate tribunal” means –

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) In relation to a dwelling in Wales, a leasehold valuation tribunal.