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

Case Reference : BIR/44UF/LBC/2014/0022-26

Property : Nos. 40/44/46/50/52/54 Cowdray Close, Leamington Spa
CV31 1LB

Applicant : Cowdray Close Leamington Limited

Representative : Miss T. Wallace

Respondents : No. 44 Mrs J.E. Rose
No. 40/46 Monopoly Properties Midlands Limited
No. 50/52/54 Findalet.net Limited

Representative : Messrs Hammons Solicitors

Type of Application : The Applicant seeks declarations that the Respondents have
breached covenants in their leases pursuant to section 168(4)
of the Commonhold & Leasehold Reform Act 2002

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
Judge D.R. Salter

Date of Hearing : None. Decision on written submissions.

Date of Decision : 27 January 2015

DECISION

3(i) *Keep the demised premises and all walls party walls sewers drains pipes cables wires and appurtenances thereto belonging in good and tenantable repair and condition ...*

3(v) *To keep all passageways landings stairs pathways and drives clear and unobstructed so as to permit the free passage therein or thereon of all persons entitled thereto and not to permit or suffer any material goods chattels or effects of the lessee to be placed stored or kept in any of the said places*

3(vi) *Not at any time during the continuance of the term hereby created to obstruct or permit to be obstructed the courtyard and driveways on the land by the standing storing or parking thereon or any part thereof of any vehicle automobile or car or carriage self-propelled or otherwise (for periods longer than eight hours at any one time) or of any goods or chattels belonging to the Lessee*

3(vii) *In common with the other owners or lessees of premises erected or to be erected on the land throughout the said term to maintain in good repair and condition all courtyards driveways and other open spaces on the land and in particular at all times during the said term to maintain free from weeds in a neat and tidy condition all lawns there and to re-seed re-turf and mow the same as often as shall be necessary ...'*

3(xv) *Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on any flat on the land or may cause an increased premium to be payable in respect thereof'*

- 9 The demise is defined in the Third Schedule as:
'*ALL THAT piece or parcel of land shown on the plan annexed hereto and thereon coloured green together with the flat ...'*

This may be construed to include the gardens demised with individual flats.

Submissions and Tribunal Determinations

The issues raised by the Applicant with the parties' submissions on each point and the Tribunal's decision are set out below.

1 Dustbin Areas

10 Applicant's Submission

The Applicant provided photographs showing rubbish strewn around the dustbin areas overflowing from the Council's black wheelie bins. This was claimed to be waste left by the Respondents' sub-tenants in default of clause 3(v) of the lease.

11 Respondents' Submission

The Respondents sent a written submission through Messrs Hammons Solicitors in which it was claimed that the areas were kept in a 'proper and orderly manner'.

12 Tribunal Decision

The Tribunal noted piles of waste around the bin area serving the western block (on the right on entering the development from Cowdray Close) which was unacceptable. The waste included black bin bags, nappies, bottles, plastic containers and waste paper that were unlikely to be removed by the Council.

The bin area serving the eastern block was found to be clean and tidy.

However, the Tribunal is unable to make a declaration of breach of covenant without any evidence to prove that the waste had been left by the Respondents or their sub-tenants since the affected areas are within the communal parts of the development.

2 Abandoned Car

13 Applicant's Submission

The Applicant provided a photograph showing an abandoned vehicle on the communal gardens in contravention of clause 3(vi).

14 Respondents' Submission

The Respondents sent a written submission through Messrs Hammons Solicitors in which it was claimed that 'the grounds are clear of the vehicle as alleged'.

15 Tribunal Decision

At the time of the Tribunal's inspection, the vehicle shown in the photograph had been removed from the site. Accordingly, no declaration is made.

3 Obstructed Hallways

16 Applicant's Submission

The Applicant provided photographs showing waste and rubbish in the halls and landing areas in contravention of clause 3(v).

17 Respondents' Submission

The Respondents sent a written submission through Messrs Hammons Solicitors in which it was claimed that there were no obstructions to the halls or landings.

18 Tribunal Decision

At the time of the Tribunal's inspection, there were bags of waste and painting materials left on the landings obstructing access, but without any evidence proving that it had been left by the Respondents or their sub-tenants, the Tribunal is unable to determine that there has been a breach of covenant by the Respondents.

4 Unauthorised Alteration of Electricity Supply to Communal Hallways

19 Applicant's Submission

The Applicant provided photographs of electric wiring in a cupboard under stairs and claimed that it had been altered by the Respondents without authority from the Applicant. It was claimed that this contravened clause 3(xv) since it invalidated the insurance policy for the block.

20 Respondents' Submission

The Respondents did not deny that the electricity supply had been altered, but claimed it had been altered by one of their sub-tenants diverting the lighting supply to the halls and landings in the eastern block allowing it to be controlled from the sub-tenant's flat. This had been carried out because the lighting in the halls was not working.

21 Tribunal Decision

It was not denied in either the Respondents' written submission or by Mrs Rose on site that the supply had been switched in the above manner. She explained that it had been carried out because there had been an unpaid electricity bill for lighting that had resulted in the supply being terminated, and that without her tenant's action there would have been no lighting in the halls or landings. However, Miss Wallace for the Applicant said it was unacceptable as it left the lighting of common areas under the control of only one sub-tenant and the proper course of action would have been for the lighting to be provided by the Applicant, the Freeholder, as originally intended.

The Tribunal appreciates the difficulty and practicality of the problem and the reason for the Respondents' action, but, nevertheless, finds that there has been a breach of covenant 3(i) (to keep cables and wires in good repair) and also clause 2(c) (not to make any structural alterations which include fixed wiring, without the landlord's consent).

5 Waste in Demised Gardens

22 Applicant's Submission

The Applicant provided photographs showing a burnt out mattress on the ashes of a bonfire, scrap metal, old doors and builder's waste, discarded children's toys, a Calor gas bottle and mattresses behind a shed being stored on gardens demised to individual flats in contravention of clause 3(vii).

23 Respondents' Submission

The Respondents sent a written submission through Messrs Hammons Solicitors in which it was claimed that the gardens were kept 'in a proper and reasonable manner in compliance of the covenant and is free of any unkempt items including mattresses, bedsteads, broken doors, bricks and so forth as alleged or at all'.

24 Tribunal Decision

The Tribunal finds the Respondents' written submission extraordinary because at the time of inspection there were indeed all sorts of waste and rubbish in the gardens as described by the Applicants. It was very untidy and clearly contravened clause 3(vii).

The waste was on gardens demised to the Respondents' flats and, accordingly, the Tribunal finds that the Respondents are in breach of the terms of each of their respective leases. However, at the inspection, Mrs Rose acknowledged the waste and gave an oral undertaking to the Tribunal and Applicant that all the waste, including several abandoned car tyres, would be removed from the site within a reasonable time.

6 Damage from Tree Roots

25 Applicant's Submission

The Applicant provided photographs showing a neighbour's brick wall that had allegedly been cracked by damage from self-seeded tree roots on gardens demised to one of the Respondents, contravening clause 3(vii).

26 Respondent's Submission

In the written submission submitted on behalf of the Respondents any breach of covenant caused by the tree roots was denied, but, on site, Mrs Rose gave an oral undertaking to remove the self-seeded trees within a reasonable time.

27 Tribunal Decision

The neighbour's wall was clearly cracked next to the tree. No expert evidence was adduced by the parties to show that the damage had been caused by the tree, but, regardless, the tree needs trimming and removal. Accordingly, the Tribunal finds that there has been a breach of covenant 3(vii) by the Respondents. The Tribunal, however, notes Mrs Rose's undertaking to remove the tree.

7 Missing Fences

28 Applicant's Submission

The Applicant provided photographs of poorly maintained fence panels in contravention of clause 3(vii).

29 Respondent's Submission

No specific comments were made by the Respondents.

30 Tribunal Decision

The northern site boundary of the Respondents' gardens was marked by a line of conifers but there was no sign of any fencing when the Tribunal's inspection took place. It had been fenced at some time as shown by the Applicant's photographs, but there is no positive covenant in the leases requiring the Respondents to fence their boundaries. Accordingly, the Tribunal is unable to determine that there has been a breach of covenant.

Appeal

31 If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 27 January 2015