



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

Case Reference : **CAM/11UB/LBC/2015/0015**

Property : **Flat 2C, Bicester Road, Aylesbury, Bucks HP19 8AD**

Applicant : **JAC Investments Limited**

Representative : **Miss E White – counsel
Miss S M Jordan and Mr G W Goodban both of
WH Breeding & Son (Commercial) Limited,
managing agents for the Applicant**

Respondent : **Mr S C Matthewman**

Representative : **None**

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

Tribunal Members : **Tribunal Judge Dutton
Mr D Barnden MRICS
Mr O N Miller BSc**

Date and venue of hearing : **Aylesbury Magistrates Court,
30th November 2015**

Date of Decision : **4th December 2015**

DECISION

DECISION

The Tribunal determines that there have been breaches of the Respondent's lease as set out below

BACKGROUND

1. By an application dated 2nd September 2015 the Applicant JAC Investments Limited sought an order that the Respondent, Scott Anthony Matthewman was in breach of his lease. The property held by the Respondent is 2c, Bicester Road, Aylesbury (the Property), a maisonette on the first and upper floor of a four storey semi detached property. The lease under which the Respondent holds the ownership of the Property is dated 11th September 1987 for a term of 99 years with a rising ground rent (the lease)
2. In the application the details of the alleged breached covenants relate to maintenance and repair of the windows and doors and their frames and the lack of repair to a water pipe. In addition it is alleged that the Respondent has failed to decorate the exterior of the Property each 5 years as is provided for in the lease. It is further alleged that the Respondent owes the Applicant the sum of £3,545.55 in respect of ground rent, insurance premiums, interest, management charges and contributions to the reserve fund. These matters are expanded upon paragraph 13 of the application.
3. The relevant lease terms are as follows:
 - 1(iii)(b)(ii) which states under lessee covenants *"to pay one third share of the due expenses incurred by the Lessor for the purpose of complying or in connection with the fulfilment of his obligations under subclause (d)(i) and (ii) of Clause 3 of this lease and incurred in respect of the management of the building"*
 - 1(iii)(b)(iv) which states that the lessee covenants *"to pay one third of the amount which the Lessor shall from time to time pay by way of premium for keeping the building insured.."*
 - At clause 1(iii) (c) the lessee covenants to *"maintain uphold and keep the Upper Flat and all walls party walls fences sewers drains pipes cables wires and appurtenances thereto belonging in good and substantial repair and condition..."*
 - At clause 1(iii)(d) there is a further covenant on the part of lessee to *"once in every fifth year of the said term and during the last year thereof if so required by the Lessor to paint and redecorate the exterior of the Upper flat including the window frames.."*
 - The lease also includes a proviso to allow access to the Landlord and or his workmen and under the Fourth Schedule it is clear that the demised premises include the doors, door frames, windows and window frames.
4. In the bundle of papers provided for the hearing we had a copy of the lease, the application, directions from the Tribunal, two statements made by Miss Sharon Jordan from the managing agents WH Breeding & Son (Commercial) Limited, with exhibits. Finally the bundle included some colour photographs of the exterior of the Property.

5. The Respondent did not participate in the procedure. He neither filed any response nor was he present when we conducted an external inspection of the Property.
6. 2c Bicester Road is an end of terrace property dating from the late 19th or early 20th century. It is built of brick with a tiled roof, timber windows and external doors. It was originally on two floors with a basement. At some point the property has been converted into three flats, one in the basement, one on the ground floor, and one on the upper floors, including a loft conversion. Access to the ground floor flat is via the original front door. Access to the basement and upper flats is from the rear of the property/
7. The property is in very poor repair. All the window frames at first floor level to the front of the property are badly in need of painting. The upper floor windows at the rear are showing a significant degree of rot and one window pane is missing. The rear door to flat 2c is damaged and in poor repair. The metal staircase leading up to flat 2C is slippery in wet weather. The brickwork pointing and guttering are also in need of attention, with some vegetation growth apparent from parts of the brick structure at both the front and rear of the property.

THE HEARING

8. At the hearing the Applicant was represented by Miss White of Counsel. She was accompanied by Miss Jordon and Mr Goodban of W H Breadding. We were told that the Applicant company was owned by Mr Goodban's daughters and that his company managed this Property, and others, on their behalf.
9. Miss White took us to the relevant terms of the lease, which we have referred to above and with Miss Jordan we were told that the exterior of the flat had not been decorated since at least 2007, which is when WH Breadding took over the management. Further, despite requests, the Respondent had not allowed the Applicant or its representative's access, save in 2007, when a possession order was granted but not pursued by the mortgagee and the Applicant's representatives were able to gain access.
10. On a schedule included in the papers we were shown an account which purported to show that the Respondent owed the Applicant £3,545.55. This sum was made up of ground rent and insurance premiums for the years 2012 through to 2016. In addition included in the schedule were administration charges, which we were told were in fact management charges of £60 plus VAT per annum interest payments and a contribution of £100 per year to a sinking fund.
11. We asked the Applicant to provide a copy of the demands sent for the payment of the ground rent and the service charges. We were provided with a copy of the documents dated 7th August 2015. This included an invoice in the sum of £186 for the nominal administration fee (management charge), ground rent and sinking fund contribution. This demand appeared to have the wording required under s21B of the Landlord and Tenant Act 1985 but did not have details of the address of the landlord, just the managing agent.

FINDINGS

12. An order finding that there has been a breach of condition or covenant of the lease is a pre-requisite to the landlord ultimately seeking forfeiture. It is, therefore, a very serious allegation and the burden of proof rests fairly and squarely with the Applicant. In this case, largely as a result of our inspection we are satisfied that the Respondent has failed to maintain and repair the windows, doors and the frames in which they sit. Further, we accept the evidence of Miss Jordan that the Respondent has not carried out external decoration of the flat since at least 2007, in breach of the lease. Accordingly, we find that in respect of the repair and decorating provisions set out above the Respondent is in breach of a covenant/condition of his lease.
13. In respect of the failure to pay service charges and other associated costs we make the following findings. The sums claimed in respect of the insurance premiums for the years in question, namely 2012/13 of £136.20, for the following year in the sum of £136.14, for the year 2014/15 the sum of £142.60 and in the current year 2015/16 in the sum of £148.49, appear to us to be reasonable and are not challenged. We do not consider that there is a specific clause enabling sums to be collected towards a sinking fund. We were told that the lessees of the two other flats wished such a fund to exist, which is not unreasonable, but the lease does not, in our finding, require the Respondent to contribute. The only reference to a reserve fund is in clause 1(iii)(b)(iii) which provides that if there has been an overpayment of monies on account they may be retained in "*a special fund to be used towards the discharge of future years expenses..*". The administration charge, which we were told was in fact a management charge at £60 per annum plus VAT is reasonable and is recoverable under the lease, see above.
14. The difficulty the Applicant has is that the demands do not, in our finding, comply with s47 of the Landlord and Tenant Act 1987. This section requires that demands must contain the name and address of the Landlord, but they do not. Only the name and address of the managing agent is shown. The result is that the Respondent is not required to pay the sums demanded until that information is supplied. It should not be difficult for the Applicant to reserve the demands with the registered office of the Applicant shown. This means that no sums are presently due from the Respondent to the Applicant and accordingly there can be no breach in this regard. Further we find that any claims for interest are irrecoverable in any event as there can be no late payment if the monies have not been properly demanded
15. Mention was made of further non-repair to a drain pipe and that the Respondent had failed to grant access when requested. There was a paucity of evidence to support these allegations and we make no findings.
16. It is a pity that the Respondent did not engage in these proceedings. The property is in a very poor state as we have described in the inspection notes above. We are concerned as to the well being of the Respondent, although there is no certainty that he is living at the flat.

Judge: Andrew Dutton
A A Dutton

Date: 4th December 2015

THE RELEVANT LAW

S168 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 a leasehold valuation 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.

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.