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

Case reference : LON/00AT/LBC/2015/0006

Property : Ground floor flat, 90 Chiswick Lane, London W4 2LA

Applicant : Lashbrooke Properties Limited

Representative : Mr Serota of Wallace LLP

Respondent : Alison De Castella

Representative : In person

Affected person : Mortgage Agency Services Number Five Limited

Type of application : Determination of an alleged breach of covenant

Tribunal members : Ms N Hawkes
Mr L Jarero BSc FRICS

Date and venue of hearing : 1.5.15 at 10 Alfred Place, London WC1E 7LR

Date of Decision : 26th May 2015

DECISION

The hearing

1. The applicant was represented by Mr Serota of Wallace LLP and the respondent appeared in person at the hearing of 1st May 2015.
2. The matter was first listed for hearing on 25th March 2015. At the first hearing, the Tribunal granted the applicant permission to file and serve additional expert evidence by 4pm on 22nd April 2015 and adjourned the application to 1st May 2015. The respondent did not attend the hearing of 25th March 2015.
3. On 22nd April 2015, the applicant filed the expert report of Mr Mazin FRICS dated 22nd April 2015 ("Mr Mazin's report"). This is the expert report which was relied upon by the applicant at the adjourned hearing.
4. The respondent has not filed and served any written evidence. However, she cross-examined the applicant's expert witness, made oral submissions and participated fully at the hearing of 1st May 2015.

The background

5. The Property is a ground floor flat in a two storey Victorian end of terrace house which has been converted into two flats.
6. A long lease of the Property was granted on 1st September 1986 for a term of 99 years from 24th June 1986 ("the Lease"). On 20th May 1993, the respondent took an assignment of the Lease and on 10th December 1996, the applicant purchased the reversion.

The issues in dispute

7. 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 covenant.
8. The applicant relies upon Part II of the Fifth Schedule to the Lease by which the respondent covenants:

(1) To keep the Demised Premises and additions thereto and the Landlords fixtures and fittings and sanitary and electrical apparatus installed therein and the window glass thereof in good and substantial repair and condition.

(2) In every seventh year of the said term and in the last year of the said term howsoever determined to paint paper or decorate as appropriate and in a proper and workmanlike manner all the interior

parts of the Demised Premises as should be so painted papered or decorated.

...

(5) Not to do or permit to be done upon or in connection with the Demised Premises anything which shall be or tend to be or may grow to become a nuisance annoyance or damage to the Lessor or the Lessor's tenants or to any neighbouring adjoining or adjacent property or the owner or occupiers thereof.

9. By the Second Schedule to the Lease, the Demised Premises includes:

(i) The internal plastering tiles or other coverings of the walls bounding the flat and the doors door-frames windows and window-frames fitted in such walls and the glass fitted in such window-frames

(ii) Any of the walls or partitions lying within the Flat which are not load bearing or do not form part of the main structure of the Property including the plastering tiles or other coverings of such walls or partitions and the doors and door-frames and any glass fitted in such walls and partitions

(iii) The plastering tiles or other coverings of the ceilings of the Flat and the floorboards and other surfaces of the floors of the Flat

...

(vii) All fixtures and fittings in or about the Demised Premises (other than tenant's fixtures and fittings) and not hereinafter expressly excluded

...

10. The facts and matters relied upon in support of the alleged breaches of covenant are listed in a schedule Mr Mazin's report ("the Schedule") and photographs are attached.

The determinations

Plaster

11. Items 1, 2, 4, 5, 7-8, 11-13, 15-16, 19-20, 24-25, 27-28, 32-33, 37-41, 44-46 and 49-50 in the Schedule concern damp, blown, cracked, marked and/or otherwise defective plaster.

12. The Tribunal accepts Mr Mazin's evidence that the plaster described in the sections of the Schedule listed in paragraph 11 above is not in good and substantial repair and condition.
13. The respondent explained that, on several occasions, water had penetrated from the upper flat (which is also let on a long lease) into the Property and that the water penetration had caused damage to the plaster within the Property
14. The Tribunal determines that whether or not the respondent may have a potential claim against the occupants of the flat above in respect of the water penetration, by virtue of her failure to keep these areas of plaster in good and substantial repair and condition the respondent is in breach of clause (1) in Part II of the Fifth Schedule to the Lease.

Debris in fireplace

15. Item 3 in the Schedule concerns debris in a fireplace at the Property. The Tribunal is satisfied that by virtue of the extent of the debris in the fireplace (which is shown in a colour photograph), the fireplace is not in good condition.
16. The Tribunal determines that, by virtue of her failure to keep the fireplace in good condition, the respondent is in breach of clause (1) in Part II of the Fifth Schedule to the Lease.

Vertical sash windows

17. Items 6 and 48 in the Schedule concern vertical sash windows which the respondent conceded require overhaul, easing and adjusting. Accordingly, the Tribunal determines that, by virtue of her failure to keep the windows in question in good condition, the respondent is in breach of clause (1) in Part II of the Fifth Schedule to the Lease.

Carpets

18. Items 10, 18, 22, 35 and 52 in the Schedule concern the carpets at the Property. However, it was conceded on behalf of the applicant at the hearing that the carpets at the Property are not a landlord's fixture and no determination of breach of covenant was sought in respect of the carpets.

Second fireplace

19. Item 14 in the Schedule concerns a second fireplace. It was conceded on behalf of the applicant at the hearing that respondent is not in breach of covenant by virtue of the condition of this fireplace.

Woodwork

20. Items 9, 17, 21, 29, 34, 42 and 51 in the Schedule concern the condition of areas of painted woodwork at the Property. It was conceded by the respondent at the hearing that she has not painted the woodwork at the Property for over 7 years. The Tribunal accepts Mr Mazin's evidence that these areas of woodwork are not in good condition.
21. The Tribunal determines that, by virtue of her failure to keep the relevant areas of woodwork in good condition, the respondent is in breach of clause (1) in Part II of the Fifth Schedule to the Lease. Further, the Tribunal determines that, by virtue of her failure to paint the relevant areas of woodwork for over seven years, the respondent is in breach of clause (2) in Part II of the Fifth Schedule to the Lease.

Kitchen rear external door

22. Item 23 in the Schedule concerns the rear external door to the kitchen. During the hearing, the respondent conceded that she broke this door which is currently boarded up.
23. The Tribunal determines that, by virtue of her failure to keep the rear external door to the kitchen in good and substantial repair and condition, the respondent is in breach of clause (1) in Part II of the Fifth Schedule to the Lease.

Kitchen units

24. Item 26 in the Schedule concerns the kitchen units which are said to be "in some disrepair" and "completely dirty". The Tribunal is not satisfied on the balance of probabilities that the respondent has failed to keep the kitchen units in good and substantial repair and condition.
25. Items placed on top of the work surface make it difficult to assess the condition of the work surface from the photographs. However, insofar as the work surface is visible in the photographs it appears to be in good and substantial repair and condition. Further, it appears from the photographs that drawers and cupboards below the work surface are also in good and substantial repair and condition. Accordingly, the Tribunal is not satisfied that the respondent is in breach of covenant by virtue of the condition of the kitchen units.

Vinyl floor tiles

26. Items 43 and 30 in the Schedule concern vinyl floor tiles. During the course of the hearing it became apparent that the floor tiles have been

fitted on top of hardboard and an issue arose as to whether the floor tiles are tenant's fixtures or landlord's fixtures.

27. Mr Serota referred the Tribunal to paragraph 3.141 of Woodfall: Landlord and Tenant which provides:

A tenant's fixture is a chattel which is:

(a) annexed by a tenant to the land;

(b) is so annexed either for the purposes of his trade or for mere ornament and convenience; and

(c) physically capable of removal without causing substantial damage to the land and without losing its essential utility as a result of the removal.

28. On the limited information available, the Tribunal determines that it is likely on the balance of probabilities that the vinyl floor tiles laid on hardboard in the present case are physically capable of removal without causing substantial damage to the land and without losing their essential utility as a result of the removal.
29. Accordingly, the Tribunal determines on the facts of this particular case that the floor tiles are tenant's fixtures and that the respondent is not in breach of covenant by virtue of the condition of the floor tiles.

Electrical installations

30. Items 54 and 55 in the Schedule concern the electrical installations at the Property. Mr Mazin informed the Tribunal that no electrical testing had been carried out. However, he confirmed that where light bulbs were in place the lights worked.
31. It is possible that an electrical test might reveal defects to the electrical installations at the property. However, the Tribunal is not satisfied on the balance of probabilities on the basis of the evidence available at the date of the hearing that the respondent has failed to keep the electrical installations in good and substantial repair and condition. The Tribunal notes that there is no evidence to suggest that where lights bulbs are not in place the light fittings are defective.

Sanitary fittings

32. Item 56 in the Schedule concerns the sanitary fittings in the bathroom. The Tribunal accepts Mr Mazin's evidence that, whilst the sanitary

fittings may not be a state of disrepair, the extent of the staining to the sanitary fittings is such that they cannot be said to be in good condition.

33. Accordingly, the Tribunal determines that, by virtue of her failure to keep the sanitary fittings in the bathroom in good condition, the respondent is in breach of clause (1) in Part II of the Fifth Schedule to the Lease.

Front and rear gardens

34. Items 59 to 63 in the Schedule relate to the condition of the front and rear gardens at the Property. The Tribunal is satisfied by virtue of the presence of cracked paving stones; a rear fence which has been reduced to a few fence posts; and by virtue of the extent to which weeds are growing in between the paving stones that the front and rear gardens are not in good and substantial repair and condition.
35. The Tribunal determines that, by virtue of her failure to keep the front and rear gardens good repair and in good condition, the respondent is in breach of clause (1) in Part II of the Fifth Schedule to the Lease.

Glass in windows

36. Item 64 in the Schedule concerns the glass in the windows at the Property which is said to be dirty. The Tribunal has considered all of the evidence including the colour photographs of the windows which are attached to the Schedule and the colour photographs of the windows which are contained in the hearing bundle. The Tribunal is not satisfied on the balance of probabilities that the glass in the windows is not in good and substantial repair and condition by virtue of the presence of dirt or for any other reason.

Keys to flat

37. Item 65 concerns the keys to the Property and was not pursued at the hearing.

Accumulation of rubbish

38. The applicant submitted that extent to which rubbish had been allowed to accumulate at the Property is such that the rubbish is likely to attract vermin. The applicant relied upon two reports both dated 8.1.15 from Thompson Pest Control and Proofing Service which include the statement:

“We advise that the rubbish be removed and property be cleared of all items to prevent breeding sites and harbourage for rodents as soon as possible.”

39. Signs of rodent infestation had been found on 8.1.15 and a successful treatment has been carried out. The Tribunal accepts the applicant’s submission that the extent of the accumulation of rubbish at the Property is such that it may again attract vermin which are likely to cause a nuisance to the occupiers of the upper flat.
40. The respondent explained that she has not lived at the Property for some time and that the rubbish has accumulated as a result of the actions of builders who she allowed into the Property. However, the respondent has covenanted not to *permit* anything to be done which may grow to become a nuisance to the occupiers of any neighbouring, adjoining or adjacent property.
41. Accordingly, the Tribunal finds that by virtue of the level of rubbish which the respondent permitted her builders to leave in the Property, the respondent is in breach of clause (5) in Part II of the Fifth Schedule to the Lease.

Judge N Hawkes

26th May 2015