



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

Case reference : **LON/00AW/LBC/2015/0061**

Property : **Flat 13, 29 Egerton Gardens,
London SW3 2DE**

Applicant : **25/27/29 Egerton Gardens Limited**

Representative : **Mr T Jefferies of Counsel
instructed by TWM solicitors**

Respondent : **Mr A Khan**

Representative : **In person**

Type of application : **Determination of alleged breaches
of covenants under s.168(4) of the
Commonhold & Leasehold Reform
Act 2002**

Tribunal members : **Judge E Samupfonda
Mr M Taylor FRICS**

**Date and venue of
hearing** : **28 August 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **2 September 2015**

DECISION

Introduction

1. This is an application made by the Applicant under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that the Respondent has breached more than one of the covenants and/or conditions in his lease of the property known as Flat 13, 29 Egerton Gardens, London SW3, 2DE (“the Flat”).
2. The Applicant is and has since 9 July 2013 been the registered proprietor of the freehold title to the building known as 25/27/29 Egerton Gardens (“the Building”) which comprises 14 flats. The Respondent has been the lessee of the Flat since 27 September 2001.
3. By an application dated 30 June 2015, the Applicant made this application to the Tribunal seeking a determination that the Respondent had variously breached clauses 3(4) 3(5), 3(7) 3(12) 3(16) 3(17) of the lease. The relevant lease terms are set out in the application and in Mr Jefferies’ skeleton argument and therefore need not be repeated here.
4. The alleged breaches are in essence that the Respondent has failed to decorate, carry out repairs, failed to provide access, allowed the Flat to be used as business premises and sublet the Flat.
5. The specific allegation relied upon by the Applicant are set out in the witness statements of Mr Syson whose involvement in Flat 13 arose when he joined the Collective Enfranchisement Claim in 2013 following the non participation of Mr Khan, dated 31 July 2015 and Mr Pursley a solicitor and partner of TWM Solicitors LLP, also dated 31 July 2015.
6. On 10 July 2015, the Tribunal issued Directions, which have been complied with by the Applicant. The Respondent has not complied with the Directions at all and has not participated in these proceedings in any way. The evidence relied upon by the Applicant is, therefore, unchallenged.

Decision

7. As directed, the hearing took place on 28 August 2015. Mr T Jefferies of Counsel represented the Applicant. Mr Syson and Mr Pursley attended with him and gave evidence. The Respondent did not attend and was not represented.
8. Having carefully considered the witness statements relied upon by the Applicant and heard Mr Syson and Mr Pursley give evidence, the Tribunal found that, on balance, the evidence does sufficiently prove that the Respondent has in fact breached the covenants of the lease as alleged for the reasons set out below.

Repairs and decorations

9. Mr Syson explained that he visited the Flat in April 2013 as he was interested in acquiring the freehold. He inspected the Flat and his impression was that it was in poor condition, really run down and needed overhauling. Whilst his evidence lacked particularity, the Tribunal found Mr Syson to be a credible and helpful witness. There was no reason for the Tribunal to disbelieve his evidence, which was based upon his impressions of the Flat as a prospective buyer.

Entry to inspect

10. Mr Syson told the Tribunal that he made a number of unsuccessful attempts to gain entry in order to inspect the Flat during 2013, 2014 and 2015. Evidence of refusal was provided in the form of an email dated 8 September 2014 from the then occupant of the Flat, Samarah Sulaman who stated that she had been told "by the Agents for the Receiver that I do not have permission to allow you as the Freeholder into the property". He said that he contacted the receiver Touchstone Lender Services in February 2015 to request access and he was informed that Ms Sulaman had been given notice to quit but access was denied because the Flat was then occupied by a trespasser.

Business Use

11. Mr Syson told the Tribunal that when he visited the Flat in April 2013, he was met by Samarah Sulaman who had just finished discussions with someone that she described to him as being her client. He formed the view that the Flat was being used as a business as well as private accommodation as he saw 2 children there. He added that when he met Ms Sulaman a year later at a party she informed him that she had occupied the Flat for about 7 years and had set up a business called UK Immigration. Copies of the business email address and website entries were produced which demonstrated to the Tribunal's satisfaction that the Flat was being used for business purposes.

Alienation

12. Mr Pursley informed the Tribunal that he had spoken to then managing agent Mr Richard Philo and he could not recall an application being made by the Respondent for consent to sublet or part with possession of the Flat or to carry on a business there. Mr Pursley confirmed that the Applicant had not given any such consent and there are no records of notice having been given of any underlease. The Tribunal accepted Mr Syson and Mr Pursley's evidence and found that the Respondent has unlawfully sublet the Flat.
13. Having regard to the evidence of Mr Syson and Mr Pursley, the Tribunal determined that the various breaches complained of are made out.

Judge E Samupfonda
2 September 2015