



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

Case Reference : LON/00AY/LBC/2014/0094

Property : 28 Sherborne House, Bolney Street, London SW8 1EW

Applicant : Notting Hill Housing Trust

Representative : Glazer Delmar Solicitors

Respondent : Ms A Esan

Representative : None

Type of Application : Application for determination under section 168(4) Commonhold and Leasehold Reform Act 2002 (breach of covenant in lease)

Tribunal Members : Judge P Korn (Chairman)
Mr T Sennett FCIEH

Date of Decision : 3rd February 2015

DECISION

Decision of the Tribunal

The Tribunal determines that breaches of covenant under the Respondent's lease have occurred.

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 a breach of covenant has occurred under the Respondent's lease.
2. The Respondent is the leaseholder of the Property and the Applicant is her landlord. The Respondent's lease ("**the Lease**") is dated 5th April 2004 and was originally made between The Mayor and Burgesses of the London Borough of Lambeth (1) and the Respondent (2).
3. The Applicant contends that the Respondent has committed the following breaches of the Lease:-
 - failure to repair and maintain the Property and keep the interior in good and substantial repair and condition;
 - failure to provide access to the Applicant to inspect the Property;
 - failure to provide access to the Applicant to enable it to carry out repair works;
 - causing nuisance to neighbouring premises; and
 - failure to make good damage caused by the occupier of the Property.
4. The Respondent has not responded to the application and has not submitted a statement of case. She did, though, send an email to the Tribunal stating that she would not be able to attend the case management conference organised by the Tribunal as she was unwell.
5. No oral hearing has been requested and, as the Tribunal considers this to be a case which is suitable to be dealt with on the basis of the papers alone, the Tribunal has made its decision on the basis of those papers without an oral hearing.

Applicant's case

6. The Applicant has particularised each alleged breach by reference to the relevant clause in the Lease and has provided two in-house Surveying Project Manager Reports dated 9th June and 11th November 2014 respectively, copy photographs, copy correspondence with the Respondent and evidence of the Applicant having obtained a County Court Order against the Respondent.

7. As regards the alleged failure to repair and maintain the Property and keep the interior in good and substantial repair and condition, the Applicant has correctly identified clause 2.9 of the Lease as the relevant covenant and there is no need to set it out in full here. The Applicant refers to the Surveying Project Manager Report dated 9th June 2014 and submits that it shows evidence that the WC flush pipe at the Property is in disrepair, causing water penetration to Flat 22 below. The Respondent confirmed her intention to carry out the necessary works on 19th June 2014 but has failed to do so.

8. As regards the alleged failure to provide access to the Applicant to inspect the Property and carry out works, the Applicant has correctly identified clauses 2.12 and 2.13 of the Lease as the relevant covenants and again there is no need to set them out in full here. The Applicant states by reference to the copy correspondence provided to the Tribunal that between 28th March and 27th May 2014 the Applicant made extensive attempts to contact the Respondent by telephone and by letter to try to resolve the matter. As a result of what the Applicant describes as the Respondent's failure to engage the Applicant applied for an Injunction Order requiring the Respondent to provide access to the Property and this was granted on 27th August 2014. A copy of the Order has been provided. In breach of the Injunction Order the Respondent failed to provide access to the Applicant's contractors.

9. As regards causing nuisance to neighbouring premises and the alleged failure to make good damage caused by the occupier of the Property, the Applicant has correctly identified clauses 2.19 and 2.24 of the Lease as the relevant covenants and again there is no need to set them out in full here. The Applicant states that the water penetration coming from the Property is causing damage to Flat 22 below. The Applicant's surveyor attended Flat 22 on 11th November 2014 and a copy of the report has been provided. The report refers to clear evidence of excessive water penetration, saturation and staining to the ceiling and walls of the kitchen, WC, hallway and bathroom. The report concludes that if the cause of water penetration is not rectified it will cause further damage to Flat 22 and render it prejudicial to the occupier's health and therefore uninhabitable.

The statutory provisions

10. The relevant parts of section 168 of the 2002 Act provide as follows:-

“(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 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.*

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

Tribunal’s analysis

11. The Applicant has clearly set out each alleged breach by reference to the relevant Lease covenant or covenants. It has also provided details of the factual background together with supporting evidence.
12. In relation to the water penetration the Applicant has provided two survey reports. Although these are in-house reports they still carry some weight and constitute evidence of the matters to which they refer. It is possible that this evidence could have been rebutted by the Respondent, for example if she had provided her own surveyor’s report, but the Respondent has not submitted any evidence. The Applicant has also provided copy correspondence in which it identifies the problem and asks the Respondent to take action.
13. In relation to the failure to provide access, the Applicant has provided relevant copy correspondence and has also provided a copy of an Injunction Order requiring the Respondent to allow access.
14. In relation to causing nuisance to neighbouring premises and the alleged failure to make good damage, again the Applicant has provided relevant copy correspondence and the copy reports from the surveyor.
15. There may be an argument in relation to the nuisance issue that a failure to remedy the water penetration problem does not technically constitute a breach of the covenant in clause 2.19 of the Lease “*not to do*

or permit to be done or in connection with the Flat or the Building anything which shall be or tend to be a nuisance annoyance or cause of damage to the Council or its tenants or any of them or to any neighbouring adjoining or adjacent property or the owner or occupiers thereof". However, our view on balance is that – on the basis of the evidence provided – allowing the problem to develop and then failing to deal with it despite having been made aware of it is sufficient to constitute a breach of this covenant in the absence of any arguments to the contrary having been raised.

16. The Respondent, despite being aware of the application, has not made any submissions in support of her position, and consequently there has been no challenge to the Applicant's factual or legal submissions. Having considered those submissions the Tribunal is satisfied that they constitute sufficient evidence to discharge the Applicant's burden of proof to show that the Respondent is in breach of each of the covenants cited in the application.
17. Accordingly, the Tribunal determines that the Respondent is in breach of covenants contained in clauses 2.9, 2.12, 2.13, 2.19 and 2.24 of the Lease.

Cost applications

18. No cost applications were made.

Name: Judge P Korn (Chairman) **Date:** 3rd February 2015