



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

Case Reference : **CAM/26UG/LBC/2017/0003**

Property : **24 Wyedale, London Colney, St Albans, AL2 1TG**

Applicant : **Rosmar Limited**

Representative : **Ms Sarah Walker Counsel**

Respondent : **Ms Jean Norriss**

Representative : **Ms J Norriss In Person**

Type of Application : **Section 168 Commonhold and Leasehold Reform Act 2002 – to determine whether a breach of covenant or condition has occurred**

Tribunal Members : **Judge John Hewitt
Mrs Helen Bowers MRICS
Mr Owen Miller BSc**

Date and venue of hearing : **1 August 2017
St Albans Magistrates Court**

Date of Decision : **7 August 2017**

DECISION

Decisions of the tribunal

1. Breaches of several covenants on the part of the tenant set out in the lease have occurred, being breaches of the following covenants:

Clause 2(3) to carry out internal redecorations;

Clause 2(15) to permit entry to the landlord and its surveyor to inspect;

Clause 3(1) to keep the flat in good and tenantable repair and condition; and

Clause 3(2) to perform and observe the obligations and restrictions set out in the Second Schedule as regards:

Paragraph 2 Not to do or permit a nuisance, annoyance to the landlord, the management company or occupiers of other flats;

Paragraph 4 Not to throw dirt, rubbish, rags or other refuse into the sinks, baths or lavatories in the flat; and

Paragraph 14 To clean the interior of the windows of the flat at least once a month.

The above is a brief paraphrase of the relevant covenants and obligations and the full text of the material provisions is set out in the Schedule to this decision

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The tribunal received an application dated 12 April 2017 [1] pursuant to section 168 Commonhold and Leasehold Reform Act 2002. The applicant sought a determination that breaches of specified covenants set out in the lease had occurred.
4. Directions were given on 24 April 2017 [11].
5. An inspection of the subject property (mostly external for the reasons set out below) took place at 10:00 on Tuesday 1 August and the hearing commenced at about 11:10 later that day.
6. The applicant was represented by Ms Sarah Walker of counsel who was accompanied by Mr Michael Tant and Ms Louise Tant.

The respondent (Ms Norriss) was present at both the inspection and the hearing and represented herself. Ms Norriss had hoped that a friend would be able to accompany her to the hearing for moral support

but unfortunately her friend was unwell and unable to do so. Ms Norriss was content to present her case alone.

The lease, the development and the flat

7. 24 Wyedale (the subject flat) is a one-bedroom ground floor flat in a three-storey block of 36 self-contained flats being part of a development of flats and houses carried out by the Fairview Homes Group in the early 1980s.

8. The lease of 24 Wyedale is at [22]. It is dated 19 September 1980 and was made between:

Esherfield Properties Limited (as the Lessor) (1)

Richard David Norriss and Jean Norriss (as the Lessee) (2)

Eaglestate Limited (as the Company) (3)

The lease granted a term of 99 years from 29 September 1979 at a ground rent commencing at £60 pa and increasing during the term and on other terms and conditions therein set out.

The lease refers to the demised premises as being 'the Flat'. There is a precise definition of the extent of the demised premises, but for present purposes it is sufficient to note that the external walls, windows, window frames, glass, fastenings and the front door are all included within the demise.

The lease defines 'the Estate' and recites that Lessor was in the course of erecting three interconnected blocks of flats ('Block C') which together with other buildings were defined as 'the Property'.

9. The lease further recites that the Company was incorporated with the object of providing certain services to the lessees and to manage the Block. Each lessee is a member of the Company. The Company has managed the Block from the outset. Mr Michael Tant, a semi-retired surveyor, is general manager and company secretary. It appears that the Company has appointed Tant (Building Management) Limited to undertake the role of managing agent and/or to provide advice on management issues.

10. On 21 January 2010, the applicant was registered at Land Registry as proprietor of the freehold interest [15].

11. On 29 June 1983, Ms Norriss was registered at Land Registry as the sole proprietor of the lease of 24 Wyedale.

12. The text of the covenants which are material to this application are set out in the Schedule to this decision.

The gist of the case for the applicant

13. At the hearing, the applicant did not pursue all of the allegations set out in the application form.

The applicant relied on the evidence of Mr Michael Tant – his witness statement is at [53] and the evidence of his daughter, Ms Louise Mary Caroline Tant – her witness statement is at [57] and her report is at [59].

Ms Tant BEng, MSc, MRICS is a director of Tant Building Surveying Limited. Ms Tant's report is addressed to Tant Building Management, a company of which Ms Tant is also a director, albeit in the name Louise Mary Caroline Mercier.

14. Both Mr Tant and Ms Tant gave oral evidence and confirmed that their respective witness statements were true. Both answered questions put to them by Ms Norriss and members of the tribunal.
15. In the event there was not that much in the way of factual matters in dispute between the parties. It may be helpful to record one contentious matter that was of considerable concern to Ms Norriss; namely a suggestion that she had taken to sleeping overnight in her car parked in the communal car park. Ms Norriss denied the suggestion save for one occasion on or about 4 July 2017 when she returned home late one very hot evening and fell asleep just after she had parked up due to heat exhaustion. Neither Mr Tant nor Ms Tant had any direct evidence to support the suggestion made and appeared to rely upon anonymous reports of others. As it happens the issue of sleeping in the car is not a breach of covenant relied upon by the applicant in support of its case. It is perhaps unfortunate that uncorroborated suggestions on the topic were introduced into the evidence, since no useful purpose was served by doing so and considerable distress to Ms Norriss was occasioned.
16. The gist of the applicant's case is that over recent years Ms Norriss has accumulated a very substantial quantity of goods and possessions into the flat and that more or less they are stacked floor to ceiling in all rooms, including the kitchen and the bathroom. Mr Tant has never been into the flat. Ms Tant was able to gain very partial entry on her visit on 15 March 2017 she was able to stand on the front door mat and peer into the hallway and (slightly) round to the right to peer into the bathroom. The front door would not open to the full 90° due to items stored behind in the hallway. Ms Tant noted what she considered to be the smell of rotting or decomposing rubbish. Ms Tant also noted a layer of liquid on the hallway carpet just inside the front door which appeared to her to give of an overpowering and very unpleasant aroma. The curtains to most rooms were drawn and were seen to be dusty, stained and mouldy.
17. Ms Tant also noted evidence of damp in the common parts hallways in two areas in a dividing wall between the flat and the common parts and

in an internal wall dividing flats 24 and 25. Ms Tant concluded that the cause low level dampness in items stored within the flat and laying against the walls which damp then seeped into and through those walls, over a considerable period of time. There was also evidence that Ms Tant had made an inspection of 25, Wyedale and noticed the condition of the party wall with the subject flat. Although the party wall between the two flats was dry lined, there was still evidence of damp ingress. Ms Tant confirmed that it was unlikely that this dampness was caused by condensation. Although she was unable to clearly identify the source of the damp without further investigation, she suggested that it is likely to have arisen from plumbing problems within the subject flat.

18. Ms Tant was of the view that the interior of the flat had not been decorated within the past 7 years because that was a strong impression from the limited view into the flat from the front door and through the windows. Ms Tant acknowledged that she did not know for certain that internal redecoration had not been carried out in the past 7 years.
19. Ms Tant said that it was clear from an external inspection that the windows of the flat had not been cleaned internally for a good while and thus the windows had not been cleaned internally once a month as required by the Regulations set out in the Schedule to the lease. This was not disputed by Ms Norriss.

The gist of the case for Ms Norriss

20. In a frank and open manner Ms Norriss accepted much of what Ms Tant had to say in her report and her evidence. To use her expression; 'Guilty as charged'. Ms Norriss explained that she suffers poor health - in a number of respects, including a tendency to depression and very high blood pressure. Ms Norriss had to retire from work early due to ill-health. Ms Norriss said that her mother had died some years ago and she has accumulated together a substantial amount of family possessions which she needs to go through and sort out, but at times she just does not have the energy or strength of mind to do so. Ms Norriss said that she was divorced, had no close family with whom she was on terms; and whilst she had a small circle of very good friends they were mostly older than her and also suffering poor health and thus could give much in the way of practical help. Ms Norriss said that she was aware of anonymous complaints made by some neighbours about the items she has stored and the consequences arising.
21. Ms Norriss said she recognised that the flat needed to be cleared out but it was a very daunting task. She saw the proceedings as a 'wake-up call' and is determined to get to grips with the problem. She said she would like to try and get it sorted out before Christmas. Ms Norriss sought some sympathy because at times she finds it very difficult to cope.
22. Whilst Ms Norriss said that she was 'Guilty as charged' there were two issues she challenged. The first was that she claimed the flat was

redecorated within the last seven years. Ms Norris said that she had retired early in 2011 and the flat was redecorated shortly after that. She said the white painted woodwork was repainted and the walls and ceilings painted with emulsion. Some large items of furniture were too heavy to move and so they had painted around them.

23. With regard to Regulation 4 Ms Norriss, denied that the items stored in the washbasin and bath in the bathroom were 'dirt, rubbish, rags or other refuse' and asserted that they were family possessions. Ms Norriss did not say of what nature and, of course, we were not able to inspect them.

Discussion and conclusions

24. On the morning of 1 August 2017, we attended the property with a view to inspection. As was the case when Ms Tant visited in March 2017 the front door would only open partway, about 60°. All we could do was stand on the mat just inside the front door and peer around it. It was not possible to walk into the hallway, let alone into any other part of the flat. It was plain that just about everywhere was stacked high with bags and boxes and with clothing on hangers suspended from door frames. What little we were able to see accorded with the factual description of the premises recorded and illustrated by Ms Tant in her report.

Externally, we were able to look through the grimy windows but most of the curtains were drawn and all we could see was the narrow window ledges. Within the space between the inside of the window and the curtains there were small winged insects, perhaps flies or spiders or similar.

Ms Tant pointed out the disrepair to the internal walls in the common parts, the window frames which were plainly in disrepair even though they had been painted over recently, and the cracked, chipped and damaged glass in some of the window panes.

25. We found both Ms Tant and Ms Norriss to be open and honest witnesses doing their best to assist us in what were quite difficult circumstances.
26. Ms Tant was questioned quite closely on the causes of damp penetrating the walls dividing the flat and common parts and the wall dividing flats 24 and 25. Ms Tant was, to some extent, constrained by her inability to gain full access to flat 24 to inspect the walls from within that flat but, on balance, we accept her evidence and explanation which struck a chord with members of the tribunal.
27. On the internal redecorations point from what little we could see from the front door and through the windows we gained the strong impression that the white painted woodwork had not been painted for many years and on the window ledges we could see a thick layer of dust and grime. We find, on the balance of probabilities, that the flat has not

been redecorated internally within the past 7 years. Accordingly, we determined that this breach had occurred and is made out.

28. As to the 'dirt, rubbish, rags or other refuse' point, this comes down to the proper construction of the lease and what the parties meant by that expression back in 1980 when the lease was granted.
29. We find that the lease does not prohibit the temporary storages of items in the washbasin or bath. However, whilst such items can start off in good order, the condition of them may well deteriorate over time especially if not kept in suitable and ventilated conditions.
30. Ms Norriss explained to us that some while ago there was a leak into her bathroom from the flat above and she wished to pursue an insurance claim in respect of loss and damage occasioned as a result.

We infer that many of the items stored in the bathroom will have become wet or damp as a consequence. In the absence of appropriate ventilation, it is inevitable that the quality of certain items will rot, smell and deteriorate over time. We find that inevitably there will come a time when an impartial bystander will reasonably conclude that the condition of those items has reached the point where they can properly be said to come within the words and meaning of Regulation 4. From what we could see and detect we find that time has now come and thus we determine the breach complained of has occurred and is made out.

Judge John Hewitt
7 August 2017

The Schedule Material lease terms

- "2(3) Once in every seven years of the term and also during the last three months or at the sooner determination thereof paint all the inside wood and iron work usually painted of the Flat with two coats of good paint in a proper and workmanlike manner and afterwards varnish the parts usually varnished and also whitewash and paint or paper all ceilings and walls as the same are now whitened painted or papered.*
- (15) Permit the Lessor and the Company and their respective Surveyors and Agents with or without workmen at all reasonable times upon reasonable notice during the said term to enter upon and examine the condition of the Flat and thereupon the Lessor or the Company may serve upon the Lessee notice in writing specifying any repairs necessary to be done and for which the Lessee is directly responsible under the covenants hereinbefore contained and requiring the Lessee forthwith to execute the same and if the Lessee shall not within two months after the service of such notice commence and proceed diligently with the execution of such repairs then to permit the Lessor and the Company and their respective Agents to enter upon the Flat*

and execute such repairs and the costs thereof shall be a debt immediately due from the Lessee to the Lessor or the Company as the case may be and shall be forthwith recoverable by action

- 3(1) Keep the Flatand all walls party walls sewers drains pipes cables wires timbers floors and ceilings and appurtenances in good and substantial and tenantable repair and condition and in particular to afford all necessary support shelter and protection to the parts of the Block other than the Flat ...*
- (2) Perform and observe all and singular the obligations and restrictions set out in the Second Schedule hereto*

The Second Schedule

- 2. Not to do or permit to be done any act or thing in or upon the Flat or any part thereof or any part of the Property which may be or grow to be a damage nuisance or annoyance to the Lessor or the Company or any of the occupiers of other parts of the Estate or to the neighbourhood*
- 4. Not to throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in the Flat*
- 14. To clean the interior of the windows of the Flat at least once a month”*

Judge John Hewitt
7 August 2017

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.