



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

Case Reference : CHI/45UC/LBC/2017/0013

Property : Flat 1, 214 London Road, Bognor Regis
PO21 1AX

Applicants : Contractreal Limited

Representative : Remus Management

Respondent : Mr M Sheppard

Representative :

Type of Application : Breach of Covenant section 168(4)
Commonhold and Leasehold Reform Act
2002

Tribunal Member : Mr D Banfield FRICS

**Date and venue of
Hearing** : Determination on the papers

Date of Decision : 13 July 2017

DECISION

Summary

The Tribunal determines that the Lessee's covenant Clause 2(4) has been breached. The Tribunal further finds that there has not been a breach of Clause 2.17 and Clause 4 of the Fourth Schedule

The application for costs is refused.

The Application

1. The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that the Respondent tenant is in breach of various covenants contained in the lease. In particular, the Applicant asserts that the Respondent has failed to maintain the property in accordance with Clause 2(4) and has exhibited a “name writing drawing signboard plate or placard in breach of Clause 4 of the Fourth Schedule.
2. Directions were made on 27 March 2017 setting out a timetable for the exchange of documents between the parties and the submission to the Tribunal of a hearing bundle.
3. The Tribunal indicated that the application would be determined on the papers without an oral hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected within 28 days.
4. A copy of the Directions and the Application were sent to the Respondent and Santander UK PLC, the Respondent’s mortgagee was informed to give them an opportunity of becoming a party.
5. Santander returned the correspondence and despite writing to them again nothing has been heard.
6. On 25 May 2017 the Tribunal received a letter from Mr Sheppard asking for more time to respond due to his recovery from illness and the Tribunal wrote on 31 May 2017 giving 14 days extra time to respond to the application.
7. No response has been received and in the absence of a request for an oral hearing the matter is determined on the papers received.

Evidence and submissions

8. In the Applicant’s submission a photograph dated 2017 is provided showing the front door to the house with a one of the panes of glass missing and replaced in timber together with left hand sash in the adjoining ground floor bay window apparently missing and with sections of wood roughly nailed in its place. A second photograph dated 2010 is also provided showing the window and door intact.
9. The Applicant acknowledges that the use of timber over broken or missing glazing is used on a temporary basis but this has been in place too long.

10. Correspondence with Santander going back to May 2015 referring to the broken window and other defects is also provided.
11. The alleged breaches are said to be;
 - (i) Clause 2.(4) To keep the demised premises and all walls and party walls and appurtenances thereto belonging in good and tenantable repair and condition and in particular (but without prejudice to the generality of the forgoing) so as to support shelter and protect the part of the building other than the demised premises.

A dictionary definition of appurtenances is then given
 - (ii) Clause 2. (17) To observe the restrictions set forth in the Fourth Schedule hereto and any other restrictions which the lessor may from time to time make for the benefit of the lessee and for the better regulation of the building.
 - (iii) Fourth Schedule 4 No name writing drawing signboard plate or placard of any kind shall be put on or in any window on the exterior of the demised premises or so as to be visible from outside the demised premises.
12. The Tribunal is also asked to determine that the Applicant's costs may be recovered in accordance with Clause 5 of the Fifth Schedule and at page 74 of the bundle provides a schedule totalling £376 and referred to as "S20C costs".

Inspection

13. The Tribunal carried out an external inspection of the property on 11 July 2017 and confirmed that the condition as shown in the 2017 photograph was still in existence.

Discussion and Decision

14. From its inspection the Tribunal is satisfied that the current state of the window demonstrates disrepair. It agrees that as a temporary measure pending repair of the window such a state would be acceptable however it appears from the correspondence with Santander that this has been the condition since at least 2015

15. The Tribunal then needs to determine whether the window referred to falls within the lessee's repairing obligations contained in Clause 2.(4).
16. In this regard the lease is not helpful No reference is made to the maintenance windows and the Tribunal will have to consider how this affects their determination.
17. The First Schedule refers to the demise as "All that ground floor flat at number 214 London Road Bognor Regis in the County of West Sussex as the same is shown edged red on the plan annexed together with the garden shown edged brown."
18. The plan is not coloured and therefore unhelpful although it appears that the location of the window at least is within the demise.
19. Windows are not referred to in clause 2. (4) and the Tribunal have to consider whether they may be treated as forming part of the obligation to maintain the walls. It notes that the Lessor's repairing obligations extend to the main structure, decorating the exterior and insurance i.e. not the windows.
20. Given that the lessor has no obligations in this regard the Tribunal find it more likely that this obligation must fall to the lessee and it therefor determines that the repair of the window (but not their external decoration) is a lessee's obligation.
21. We have already determined at paragraph 14 above that the window is in disrepair and as such we further determine that **the Respondent is in breach of Clause 2(4) of the lease.**
22. Turning now to **Clause 2.17 and Clause 4 of the Fourth Schedule** the Tribunal does not consider that the unpainted rough boarding in place can be described as a "writing drawing signboard plate or placard" as referred to and as such finds that **no breach has taken place.**

Costs

23. The Applicant makes an application for costs totalling £376.00 under Section 20C and for a declaration that costs may be recovered under Clause 5 of the Fifth Schedule.
24. S.20C of the Landlord and Tenant Act 1985 is an application that may be made by lessees for the Tribunal to determine that the costs incurred in connection with the application may not be charged to the service charge. Such an application is not available to Landlords and is therefore refused.

25. To assist the parties, the Tribunal determines that if an application had been made for costs under S.13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 it would have been refused.
26. Costs may only be awarded where a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case.
27. **No evidence has been provided that satisfies the required criteria and the application is therefore refused.**
28. The Fifth Schedule is in respect of Lessor's costs which the Lessee has to contribute in accordance with Clause 2(18) (i). Such a matter falls under S.27A of the Landlord and Tenant Act 1985 and is not a matter to be determined under this application.

D Banfield FRICS
13 July 2017

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

S.168 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.