



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

Case Reference : **LON/00AW/LBC/2018/0056**

Property : **Flat 5, 24 Pembridge Crescent,
London W11 3DS**

Applicant : **Justmill Limited**

Respondent : **Ms Gillian Barnes**

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

Tribunal Members : **Judge Professor Robert M. Abbey**

Date of Decision : **25th October 2018**

DECISION

Decision of the Tribunal

The Tribunal determines that, on the basis of the evidence provided, that a breach of covenant under the Respondent's lease has 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 Current Lease") is dated 22nd January 2008 and the Applicant and the Respondent are the original parties to the Lease. The Lease incorporates by reference the terms of the previous lease ("the Original Lease") subject to some modifications.
3. The Property is one of seven flats in a converted house.
4. In its application the Applicant stated that it would be content with a paper determination, and in its directions the Tribunal stated that it considered the case to be suitable for a paper determination but that both parties had the right to request a hearing. No such request has been received and the case is therefore being dealt with on the papers alone without a hearing.

Applicant's case

5. The Applicant states that, despite repeated requests, the Respondent has failed to allow access to the Property in breach of the covenant contained in paragraph 6 of the Fourth Schedule to the Original Lease which now forms part of the Current Lease.
6. The Applicant has been attempting to gain access to the Property for some time in order to check its condition. The Respondent failed to reply to the request for access made by the Applicant's managing agents in a letter dated 2nd May 2017 and also failed to reply to further requests made by the Applicant's solicitors in letters dated 14th July 2017 and 7th March 2018.
7. The Applicant's written submissions include a witness statement from Anntoinette Griffiths of Homes Property Management Limited. She is a senior property manager with that company who are the managing agents for the applicant. In her witness statement she sets out how the applicant's solicitors wrote to the respondent on 18th July 2018 stating that access was required to the property to check on its state of repair

and that Ms Griffiths would be attending on the flat on 7th August 2018 at 11am to carry out the desired inspection. She duly attended at the property on the stipulated day and time. She knocked on the property front door but there was no answer.

Respondent's case

8. The Respondent has not made any submissions.

The statutory provisions

9. 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

10. The wording relied on by the Applicant is in paragraph 6 of the Fourth Schedule to the Original Lease which now forms part of the Current Lease and which reads as follows:-

“The Tenant shall permit the Landlords with or without servants agents or workmen at any time and after such notice as may be reasonable in the circumstances to enter on and examine the condition of the Flat ...”.

11. Clause 2 of the Original Lease contains a covenant on the part of the tenant to observe and perform the obligations set out in the Fourth Schedule, and clause 5 of the Current Lease contains a covenant on the part of the tenant to observe and perform the covenants contained in the Original Lease subject to the modifications effected by the Current

Lease. None of those modifications in any way varies the terms of paragraph 6 of the Fourth Schedule of the Original Lease.

12. We are satisfied that the Applicant has discharged its burden of proof to show that the Respondent is, or has been, in breach of covenant. The Applicant gave notice requiring access. The amount of notice has to be "reasonable in the circumstances" and on the basis of the evidence before us the date and time specified were reasonable in the circumstances. In a good landlord and tenant relationship it is to be expected that there will be communication between the parties to ensure that the date and time chosen are convenient, but clearly this is not such a relationship. Having specified a reasonable date and time and having not received a response the Applicant was then entitled to exercise its right of access. The Respondent had not been available to permit entry as there was no reply to the knocking on the front door at the time and on the day specified in the letter to the respondent from the applicant's solicitors. Consequently, she is in breach of covenant.
13. Therefore, in conclusion, a breach has occurred of the covenant contained in paragraph 6 of the Fourth Schedule to the Original Lease (which now forms part of the Current Lease).

Cost applications

14. No cost applications have been made.

Name: Judge Robert M. Abbey **Date:** 25th October 2018

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- D. 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.