



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

Case Reference : CHI/19UC/LBC/2020/0017

Property : Ground Floor Flat, 12 Fairmile,
Christchurch BH23 2LJ

Applicant : Mrs Terry Bugler
Mr Stephen Poole

Representative : Frettens LLP

Respondent : Ashley Elliot Satchelle

Representative :

Type of Application : Determination of breach of lease

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 19th November 2020

DETERMINATION

Background

1. The Applicant is the owner of the freehold of 12 Fairmile Road, Christchurch, Dorset BH23 2LJ.
2. The Respondent is the owner of a leasehold interest in the Property pursuant to a lease dated 20th June 2005 made between the parties.
3. An Application dated 30th April 2020 was received seeking a determination that the Respondent was in breach of various covenants under his lease. Directions were issued on 21st September 2020 with further directions on 5th October 2020.
4. The directions provided for the matter to be dealt with on paper
5. The directions have been complied with by the Applicant and the Tribunal has been supplied with an electronic bundle by the Applicant. References in [] are to pages within that bundle.

The Law

6. The relevant law is set out in section 168 of the Commonhold and Leasehold Reform Act 2002.

Determination

7. The Tribunal has considered the bundle and whether it is appropriate to proceed to determine the matter on the papers. Given the circumstances of this case the Tribunal is satisfied.
8. The Respondent has played no part in these proceedings. It would appear that the Respondent has abandoned the Property and as set out in the witness statement of Mr Poole [59-143] and the statement of case [13-20] he has not believed to have resided at the Property since in or about July 2018.
9. The original directions invited submissions as to whether this was a matter the Tribunal could determine given the whereabouts of the Respondent were unknown. The same are within the bundle [52 and 53]. I am satisfied that the Tribunal has jurisdiction to make a determination notwithstanding the failure by the Respondent to take any part in these proceedings.
10. The Respondents address at the Land Registry [42 & 43] is the Property address. Documents have been sent to him at that

address and I am satisfied that is the last known address for the Respondent. I am satisfied that documents have been sent to the Respondent at an address he has provided for service. I am satisfied that it is appropriate to proceed and determine this application.

11. A copy of the lease is within the bundle [125-140]. The statement of case [13-20] sets out the breaches alleged and the grounds for the same.
12. I remind myself notwithstanding the failure by the Respondent to take any part in these proceedings I have to be satisfied, on a balance of probabilities, that the breach is made out on the basis of the evidence produced. I have a bundle which I have considered which includes various black and white photocopies of colour photographs. It is unfortunate that the same are only poor copies rather than the coloured photographs which would have been clearer.
13. The Applicant contends that the Respondent is in breach of various terms of the Fourth Schedule of the lease being the Lessees covenants. The Applicants rely upon Mr Poole's witness statement and the documents within the bundle. Also the Applicants include a timeline of attempts made to contact the Respondent. All have been carefully considered by the Tribunal.
14. The evidence is that the Property has been abandoned for some considerable period of time. I am satisfied that it appears that the property has been abandoned since some point in 2018. Further the evidence is clear that the Respondent has failed to carry out any repairs or maintenance on the Property and that there is evidence that internally the Property is in disrepair including broken doors, plug sockets and further damage to electrical cables.
15. Further it is clear from the correspondence that the Applicants have sought access to inspect the flat in accordance with the terms of the lease. The Respondent has not provided access although on a second occasion access was obtained by the Applicant by way of changing the lock to a rear patio door. I am satisfied on balance that the Respondent has breached the covenant to provide access to the Property.
16. Subsequent to such inspection notice of dilapidations has been given but it would appear no works have been undertaken. I am satisfied that the Respondent has failed to remedy any disrepair having been notified of the same.
17. The Applicant suggests that the failure to pay the insurance premium, the erection in the garden of a shed and his abandonment of the Property are likely to cause the insurance policy to be void or voidable. Whilst it is clear the Respondent has

not paid, a shed has been erected and he has abandoned the Property I am not satisfied that these acts may make the insurance void or voidable. It is for the Applicant to pay for the insurance and they may then under the lease be entitled to recover a proportion of such cost from the Respondent. His failure to pay does not make the insurance void or voidable. On balance I am not satisfied that the erection of a shed, a not unusual thing for people to do, and the abandonment would void the insurance and there is no evidence from the insurers as to the same.

18. It is suggested that a dog or polecat has been kept at the Property. The Applicants suggest that animal cages have been left in the Property with animal excrement in the garden. Further it appears from a newspaper article included within the bundle that the Respondent was convicted of an offence relating to the keeping of an animal. On balance I am satisfied that he was keeping an animal at the Property without the Applicants consent and so is in breach of the lease.
19. Further I am satisfied that despite notice being given the garden of the Property has not been properly maintained and that this is a breach of the lease.
20. The Applicant also seeks a determination as to breach for failure to pay ground rent. Determinations as to liability to pay ground rent are not matters within the Tribunals jurisdiction and are matters by which a County Court judgement should be obtained.

Conclusion

21. I am satisfied on balance of probabilities that the Respondent is in breach of the clauses of the Fourth Schedule: Part I (e), (f) and (h), and Part II (11) and (12).
22. The application has attached to it a statement of costs. The question of costs is not one for this Tribunal given nothing as yet has been demanded from the Respondent.

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 rpsouthern@justice.gov.uk being 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