

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CHI/42UH/LBC/2007/0013

Section 168(4) Commonhold & Leasehold Reform Act 2004

Re: 4 Beechwood Avenue, Sunbury on Thames, Middlesex TW16 7QJ.

Between:

Susan Webster

Applicant

and

Lancelot Weedon Ling

Respondent

Decision of the Tribunal with Reasons

The matter was determined by the Tribunal without a hearing on 31st August 2007

Issued: 3rd September 2007

Tribunal

Mr R P Long LLB (Chairman)

Mr J B Tarling MCMI

Decision

1. For the reasons set out below the Tribunal determines that there has been a breach both of sub clauses 3(5) and 3(6) of the Lease described in paragraph 2 of this document.

Reasons

2. The property at 4 Beechwood Avenue Sunbury on Thames ("the property") was let to Equity Estate and Investment Company Limited ("the Estate Company") by a lease ("the Lease") dated 21st June 1937 made between Equity and Law Assurance Society (1) River Gardens Estate Limited (2) and the Estate Company (3). According to the office copy of the entries on title number MX 127101 Mr Lancelot Weedon Ling ("Mr Ling") acquired title to the Lease on or about 29th February 1940. It was let for a term of 99 years from 25th March 1936 at an annual rent of £6-00.

3. The Lease contains two covenants on the part of the lessee concerning the maintenance and decoration of the property. They are sub clauses 3(5) and 3(6), and provide as follows:

"3(5) "Well and substantially to repair and at all times during the said term to keep in good and substantial repair and condition the messuage and buildings hereby demised and all other buildings and erections for the time being upon the land hereby demised and sewers and drains and the fences or walls belonging thereto"

3(6) In every third year of the said term and in the last year thereof whether determined by effluxion of time or otherwise to paint all of the external wood and ironwork and parts usually painted of the said messuage and buildings with two coats of good oil paint and in a good and workmanlike manner and in every seventh year of the said term to paint colour grain paper and varnish in like manner all such parts of the inside of the said messuage and buildings previously or usually painted coloured grained papered and varnished and of all other buildings and erections for the time being on the land hereby demised."

4. Sub clause 3(15) of the Lease provides that the lessee shall:

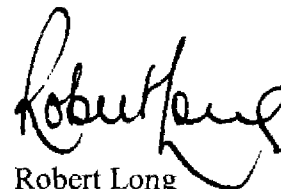
"3(15) Within one month after every assignment transfer underlease legal charge or mortgage (except any underlease for a term not exceeding twenty one years) of the said demised premises or any part thereof or any devolution of the interest of the tenant therein to give notice thereof in writing with particulars thereof to the solicitors for the time being of the lessor and produce such assignment transfer underlease legal charge or mortgage or in the case of a devolution the Probate of the Will or the Letters of Administration under which such devolution arises and to pay to them a registration fee of One Guinea in respect of each such assignment transfer underlease legal charge mortgage or devolution".

5. Clause 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) provides that a landlord under a long lease of a dwelling may make application to a leasehold valuation tribunal for a declaration that a breach of covenant or condition in the lease has occurred.
6. Messrs Rigby Golding have made application to the Tribunal pursuant to section 168(4) of the Act on behalf of Susan Webster for a declaration that a breach of the covenants and conditions contained in the Lease has occurred. They have produced an official copy of the entries upon the Land Register relating to Title Number SY347689 showing that their client is the registered proprietor of freehold land to the southeast of Beechwood Avenue. The copy of the filed plan when read with the official copy of the title relating to the leasehold interest in property created by the Lease (Title Number MX127101) that they have also supplied shows that the site of the property is comprised in that land. The registered proprietor of the land comprised in title number MX127101 is shown as Mr Ling.
7. Messrs Rigby Golding stated in their application that they had been unable to establish whether Mr Ling is still alive. They had instructed enquiry agents to that end, and produced a copy of their report. The report shows various enquiries that the agents conducted with regard to a number of persons named Ling, or thought to be related to a family of that name, but reveals no information as to the whereabouts or possible fate of Mr Ling.
8. The Tribunal gave directions on 11th May 2007 pursuant to regulation 23 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (as amended) (“the Regulations”) that notice of the proceedings should be served by means of advertisement in a local newspaper circulating in the area in which the property is situate. The advertisement appeared in the Staines Guardian on 7 June 2007 and indicated that anyone who considered themselves likely to be affected by the application may apply to the Tribunal by 28th June 2007 to be joined in it. The Tribunal’s address and reference followed. No such application has been received.
9. Messrs Fynmores had been in correspondence with Messrs Rigby Golding on behalf of the estate of William Henry Ling. Copies of that correspondence have been produced with the application. In it Messrs Fynmores stated that they acted for the representatives of William Henry Ling, and that it was believed that his mother had become entitled to the property comprised in the Lease on Mr Ling’s death and that Mr William Henry Ling had in turn become entitled to it on his mother’s death. They adduced no evidence to show how this had happened.
10. The Tribunal gave further directions on 2nd July 2007 to the effect that a copy of the application should be sent to Messrs Fynmores so that their client(s) might apply to become parties to the proceedings and that if joined they should be entitled to make such representations as they may wish by 27th July 2007. No request has been received that any person should be joined as a party to these proceedings in consequence of that action.

11. The Tribunal has given notice that this matter is to be dealt with upon consideration of the papers before it on 31st August 2007, and without a hearing, in accordance with regulation 13 of the Regulations. No request for a hearing has been received up to time of that consideration. It indicated that it would inspect the property if any party so requested, but no request has been received and it has determined that it is prepared to deal with the matter on the basis of the evidence contained in Mr Hooper's report described below.
12. Messrs Rigby Golding have produced a report from Mr Paul J Hooper. The report is not dated, but refers to an inspection undertaken on 27th June 2006. They have produced a copy of a letter from Mr Hooper dated 22nd August 2007 covering a number of formal matters that the Tribunal wished to clarify, including the fact that Mr Hooper is an Associate of the Chartered Institute of Building, that he personally carried out the inspection the subject of the report, and took the photographs that are included in it, that the report is an accurate record of the property on the day of the inspection, and that although the report is unsigned his signature to a letter of 10th July 2007 sending a copy of the report to Messrs Rigby Golding may be taken as "covering the preparation and issue of the report" by which the Tribunal has understood that it may be taken as tantamount to signature by Mr Hooper of the report.
13. Mr Hooper's report and photographs cover a number of aspects. Major aspects of external disrepair or lack of decoration were that the window frames have reached the end of their useful life and require to be replaced, that the external decoration is peeling and that parts of the timber support frames are exposed, that the porch has dropped and is supported on a temporary post, that there are cracked panes of glass and some missing panes on the front door, there were deficiencies particularly of pointing to the pitched roof over the front bay.
14. The report showed that internal decorations were poor, and it seemed likely that the property had last been redecorated internally at some time around the 1960's. There were areas of blown plaster. The electrical wiring was poor and probably needed to be replaced, and lead water feeds remained throughout the property. In general the property appeared to have been neglected both in terms of repair and redecoration for many years, and a major undertaking in terms of work would be required to bring it to a condition acceptable by present standards.
15. The report included a considerable number of photographs reproduced by means of a colour printer on plain paper. They did not show sufficient detail in the copy supplied to enable the Tribunal to draw much helpful information from them in respect of the condition of the property. It notes however that the internal photographs indicate that there are furnishings. The report does not indicate whether or not the property is occupied. If it is, then the papers before the tribunal contain no indication of the result of any enquiry of the occupier with a view to establishing the whereabouts of the lessee or the person claiming to be entitled to let the property.
16. The Tribunal is satisfied from Mr Hooper's report that there have been breaches of sub clauses 3(5) and 3(6) of the Lease. It has borne in mind the

decision in *Proudfoot v Hart* [1890] 25 QBD 42 whereby in determining the standard required it must take into account the age character and locality of the property, and that it must consider too the requirements of the sort of person who would be likely to take it. It considers that the defects described in Mr Hooper's report, when taken as a whole, show a state of neglect that is not at all reasonable in the locality in which the property is situated, and with which the members of the Tribunal are reasonably familiar from their work in that connection.

17. The Tribunal similarly considers that a person likely to take a house of this sort at the present time would look for a house of the standard that the modern letting market has come to expect. It would be in good repair and decorative order with proper water and electricity services, and have a reliable hot water system (Mr Hooper says the boiler is defective). The property appears from the evidence before it to be far from those standards in terms both of repair and decoration, and so the Tribunal determines that there has been a breach both of sub clauses 3(5) and 3(6) of the Lease.
18. On the evidence before the Tribunal the lessee remains Mr Ling who is the original lessee. If that is so then he is plainly responsible for compliance with the covenants as a matter of contract. If however there has been some transmission then it appears that the covenants in sub clauses 3(5) and 3(6) are covenants that "touch and concern the land" (*Spencer's Case* [1583] 5 Co Rep 16a) so that the burden of them runs with the land and will bind a subsequent lessee if the property has indeed passed from Mr Ling.
19. The Tribunal is not asked to make a determination about any possible breach of sub clause 3(15), no doubt because the evidence is unclear.



Robert Long
Chairman

31st August 2007