

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/00HN/LBC/2009/0047

Decision of the Leasehold Valuation Tribunal on application made under
Section 168 of the Commonhold and Leasehold Reform Act 2002

Applicants:	Ian Joyce and Valerie Joyce
Respondents:	Abbas Abdolkarimi and Pavarish Abdolkarimi
Re:	31a Florence Road, Boscombe, Bournemouth
Date of Application	18 December, 2009
Date of Inspection	18 March, 2010
Date of Hearing	18 March, 2010
Venue	Royal Bath Hotel, Bournemouth
Appearances for Applicants	The Applicants in person
Appearances for Respondents	Mrs Pavarish Abdolkarimi in person

Members of the Leasehold Valuation Tribunal

M J Greenleaves
KM Lyons FRICS.

Lawyer Chairman
Valuer Member

Date of Tribunal's
Decision: 18 2010
March

Decision

1. The Tribunal determined for the purposes of Section 168 of the Commonhold and Leasehold Reform Act 2002 (the Act) that breaches of covenant have occurred on the part of Abbas Abdolkarimi and Pavarish Abdolkarimi (the Respondents), in respect of the flat known as 31a Florence Road Boscombe Bournemouth BH5 1HJ ("the premises") , namely, since 18 December, 2009 and continuing to the date of the hearing, the Respondents have failed to comply with paragraphs 3 & 5

of the 4th schedule to the lease ("the lease") dated 8 June, 1964 made between John Thomas Townsend and Alan Elender Townsend (1) and Donald Bertrand Rodwell and Hilda Mary Rodwell (2). The breach is in respect of the condition of the premises as set out in paragraph 8.0 to 8.4.6 of a report ("the report") by Building Consultancy Bureau Limited dated 2nd of July 2008.

2. The Tribunal makes no order for costs under clause 13 of the 4th schedule to the lease.

Reasons

Preliminary

3. This was an application by the Applicants under Section 168 of the Act for determination that the Respondents was and is in breach of covenants of the lease in respect of the premises. The lease of the premises was at all material times assigned to the Respondents.
4. Clause 2 of the lease contains a covenant by the lessees with the lessor to observe and perform the covenants stipulations and conditions set out in the 4th schedule to the lease.
5. The demised premises are described in the first schedule to the lease as follows: "all that maisonette (hereinafter called "the upper flat") known as number 31a Florence Road Boscombe aforesaid comprising the first and second floors of the building (hereinafter called "the said building") adjoining and on the south side of Florence Road Boscombe aforesaid the site of which said building is for the purpose of identification only delineated on the plan hereunto annexed and thereon coloured blue and including in this demise and in the expression "the upper flat" the land staircase and balcony coloured red on the said plan all which premises hereinbefore described are hereafter referred to as "the demised premises".
6. The relevant paragraphs of the 4th Schedule of the lease (so far as material to this decision) are:
 - a. "3. To keep and maintain in good and substantial repair and condition both as respects structure and decoration all parts of the exterior ... of the demised premises including: –
 - i. the roof and roof timbers and chimney stacks;
 - ii. the external and internal walls above the level of the undersides of the first floor joists";
 - b. "5. In particular at least once in every 5 years ... to paint in a good and workmanlike manner with at least 2 coats of good oil paint all the wood iron and other exterior parts of the demised premises heretofore or usually so dealt with ... ";

Inspection

7. The Tribunal inspected the exterior of the premises in the presence of Mr Joyce. The premises are in poor condition for their age and character to the extent referred to in the report. It is fair to say that the external decorations of the ground floor flat belonging to the Applicants are also not in good condition.

Hearing

8. The Applicants and Mrs Abdolkarimi attended the hearing. It is understood that the Respondents are divorced and Mr Abdolkarimi is no longer in occupation of the premises. We heard evidence from the parties and also took into account our inspection and the case papers.
9. Mrs Abdolkarimi admitted that the condition of the property was, on 2 July, 2008 as stated in the report and that no work had been done to the premises to rectify the matter is identified in that report since that date.
10. Mr Joyce told us that the Applicants had purchased the property 7 years ago and there had been no work carried out to the premises since before that date except to flat roofs over the rear bay windows (these were not the subject of the report) which he had carried out and both parties had shared the cost; also replacement of guttering in part.
11. Mr Joyce said that they had wanted to purchase the premises for some years and that the Respondents knew that. For some years the Applicants seem to have indicated to the Respondents that because of that wish, they were prepared to wait for the Respondents to carry out work to the premises. However, with no progress on the sale/purchase, they had lost patience waiting to work for be done so had issued these proceedings.
12. Mrs Abdolkarimi, while admitting the condition of the property as mentioned above, says that the Applicants continue to say that she does not need to carry out work because of their wish to purchase.
13. We were satisfied that by reason of commencing these proceedings, the Applicants thereby indicated that not carrying out work was no longer acceptable.

Consideration

14. We were satisfied:
 - a. that no external decoration had been carried out to the property since probably about 3 years before the Applicants' purchase 7 years ago;

- b. on the Respondents' admission, that the report, referring to a lack of decoration and the presence of rust on the exterior of the premises, reflected the condition in 2008;
- c. that the rendered surfaces had been painted previously, as both parties agreed;
- d. that the premises are now in the same condition, if not worse, by reason of lapse of time;
- e. that that condition is in breach of paragraphs 3 and 5 of the 4th schedule to the lease;
- f. that while there had been agreement between the parties that appropriate work was not required pending sale and purchase, that agreement terminated no later than the issue of the proceedings on 18 December, 2009 and from that date until the date of the hearing the Respondents have been in breach of covenant.

15. Costs. The Applicants also applied for an order for costs under the terms of paragraph 13 of the 4th Schedule to the Lease. The limited powers as to costs Orders being made by the Tribunal do not encompass making an order in relation to Section 146 of the Law of Property Act 1925 procedure. Even if they did, the Tribunal did not accept that the costs of these proceedings before the Tribunal would be covered by a provision for costs in relation to Section 146. The proceedings before the Tribunal may be preparatory to court proceedings under Section 146 but cannot be taken to be "for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925". That may be a matter for another jurisdiction in due course.

16. The Tribunal made its decision accordingly.

[Signed] M J Greenleaves

Chairman
A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor