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443
LEASEHOLD VALUATION TRIBUNAL

Case Number: CAM/26UB/LBC/2012/0009

Property : 27 High Street, Waltham Cross, EN8 7AA

Applicant : Alan Hammersley

Respondent : David Perry

Type of Application : For determination that a breach of a covenant or condition of the lease has occurred – section 168(4) of the Commonhold and Leasehold Reform Act 2002

Tribunal Members : David S Brown FRICS MCI Arb (Chair)
Bruce M Edgington (Lawyer)

DECISION

The Tribunal determines that there has not been a breach of a covenant or condition in the lease.

STATEMENT OF REASONS

Background

1. The Property was let to the Respondent and Miss K H Taylor for a term of 125 years from 24th June 1990 by a lease dated 31st August 1990 ("the Lease"). On 1st April 1992 the leasehold interest was transferred to the Respondent alone.
2. Clause 2(7) of the Lease contains a covenant by the lessee, "*To permit the Lessor and its agents with or without workmen and others at reasonable times and upon giving reasonable prior written notice to the Lessee to enter upon and examine the condition of the Demised premises.....*"
3. The Applicant, who is one of the Lessors, wishes gain access to the Property to inspect the condition of the roof. He has been unable to obtain a response from the Respondent to his requests to agree a time for a visit. On 28th August 2012, the Applicant made an application to this Tribunal for a determination that there has been a breach of this covenant.
4. Directions were issued on 4th September, including a direction for the Respondent to serve a statement of reply to the application by 28th September. The Directions also gave notice to the parties that the application would be considered on the papers, without an oral hearing, after 26th October, unless either party requested a hearing. No such request has been received.

The Law

5. Section 168(4) of the Commonhold and Leasehold Reform Act 2002 provides that a landlord under a long lease may apply to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

The Applicant's case

6. The Applicant states that the Property is a self contained flat above a shop. On renewal of his building insurance this year, his insurers asked if the flat roof was less than 10 years old. The Applicant wrote to the respondent requesting information on the roof's condition.
7. Having obtained no response, the Applicant wrote to the Respondent on three further occasions "*requesting a time to inspect the flat*". He has also made numerous telephone calls to the mobile phone number that he has for the Respondent.
8. The last letter, on 17th August 2012, was sent by recorded delivery and delivered. In it, the Applicant referred to "*requesting a time from you to visit*" and asking for "*a firm commitment from you to arrange with me a date and time for me to make the inspection*". He has still received to response from the Respondent.

The Respondent's case

9. The Respondent has failed to serve a statement in reply and has made no contact with the Tribunal.

Conclusions

10. It is reprehensible of the Respondent not to reply to the Applicant's communications but this does not constitute a breach of the covenant.
11. Clause 2(7) provides for the landlord to give reasonable prior written notice to the tenant of a reasonable time when he intends to inspect the flat to examine its condition. The tenant would then be in breach of the covenant if he did not permit access to the flat at that time. The purpose of framing the covenant in this way is to create a specific point in time at which the tenant must permit access in order to comply with the covenant.
12. In this case, the Applicant has not given such a notice, he has requested the Respondent to contact him to arrange an appointment. The Applicant may consider that this informal approach is preferable to serving a formal notice, from a landlord-tenant relationship point of view, but that is not the procedure set out in clause 2(7) and it is a material difference. Without a reasonable prior written notice having been given there cannot be a breach of the covenant by the Respondent.

Signed:

Date: 29th October 2012

D S Brown FRICS MCI Arb (Chair)