

HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002

Case No. CHI/29UN/LBC/2011/0033

Property: Flat 10
2-8 Athelstan Road
Margate
Kent
CT9 2BF

Between:

Ms S. Tamiz (“the Applicant”)

and

Ms Z. Bello (“the Respondent”)

Date of Hearing: 1st March 2012

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM

Date Decision Issued: 15th March 2012

FLAT 10, 2-8 ATHELSTAN ROAD, MARGATE, KENT CT9 2BF

Decision

1. The Tribunal found that there had been breaches of the following covenants contained in the lease:

(a) Paragraph 9 of Part I of the Fifth Schedule to the lease which provides:

“To permit the Lessor the Lessor’s Managing Agents and their duly authorised Surveyors or Agents with or without workmen at all reasonable times by appointment (but at any

time in case of emergency) to enter into and upon the Flat or any part thereof for the purposes of rectifying any lack of repair causing or likely to cause loss or damage to any other flat or part thereof in the Building or viewing and examining the state of repair thereof or of the Flat”

(b) Paragraph 1 of Part II of the Fifth Schedule to the lease which provides:

“To keep the Flat and additions thereto and the Lessor’s fixtures and fittings and sanitary water and gas and electricity apparatus installed in or affixed to the Flat and the window glass thereof in a clean good and substantial repair and condition”

(c) Paragraph 21 of Part I of the Fifth Schedule to the lease which provides:

“To give notice of any transfer mortgage assignment Underlease parting with possession which expression includes letting by assured shorthold tenancy charge Order of the Court or Probate Letters of Administration or other devolution of the term hereby created within twenty-one days of such devolution together with a certified copy of every instrument of which (*sic*) devolution to the Lessor’s Solicitor paying a reasonable registration fee therefore (*sic*) (which shall not be less than Thirty Pounds (£30) plus any Value Added Tax payable thereon at the rate for the time being in force”

(d) Paragraph 5 of Part II of the Fifth Schedule to the lease which provides:

“Not to do or permit to be done upon or in connection with the Flat or the Building anything which shall be or tend to be a nuisance annoyance disturbance or cause of damage or inconvenience to the Lessor or the Lessor’s tenants or any neighbouring adjoining or adjacent property or the owner or occupiers thereof”

Background

2. Ms S. Tamiz (“the Applicant”) is the lessor of Flat 10, 2-8 Athelstan Road, Margate, Kent CT9 2BF (“Flat 10”) and has made an application under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition in the lease has occurred so that Section 168 (2) of that Act can be satisfied and the Applicant may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease. Ms Z. Bello (“the Respondent”) is the lessee of Flat 10.

3. With the application dated 18th November 2011 the Applicant supplied a copy of the lease and a document headed “Applicant’s Statement of Case”. In that document the breaches set out in paragraph 1 above were alleged together with the following:

(a) Paragraph 16 of Part I of the Fifth Schedule to the lease which provides:

“Not to hold on any part of the Flat any sale by auction nor to use the same or any part thereof nor allow the same to be used for any illegal or immoral purposes but only to use the same as a private residential flat in the occupation of one family only”

(b) Paragraph 22 of Part I of the Fifth Schedule to the lease provides:

- “(a) Not to assign underlet or part with possession of part only of the Flat whatsoever
- (b) Not to assign underlet or part with or share possession of the whole of the Flat without the Lessee prior to any assignment procuring the execution of a Deed of Covenant by the assignee direct with the Lessor in such form as shall be prepared by the Lessor’s Solicitors
- (c) To procure that any underletting of the Flat contains restrictions similar to those set out in the Ninth Schedule and does not contain terms inconsistent with the terms of this Lease”

(c) Paragraph 4 of Part II of the Fifth Schedule to the lease which provides:

“Not to do or permit or suffer to be done any act deed matter or thing or keep any material of a dangerous or explosive nature whatsoever whereby the risk or hazard of the Flat or any part of the Building being destroyed or damaged by fire shall be increased or which may require an additional premium for insuring the same or for any adjoining premises or which may make void or voidable any policy for such insurance and to give notice to the Lessor of any act thing or matter done or brought on to the Flat which may lead to an increase in the premiums for insuring the same and to pay any increase in the insurance premium attributable to the Flat or the Building by reason thereof”

4. Directions were issued on 28th November 2011 which included the following:

- (a) A requirement that the Applicant prepare and send to the Tribunal and to the Respondent a further written statement of case and copies of additional documents on which she relied in support of her case.
- (b) A requirement that the Respondent, if she wished to contest the application, send to the Tribunal and to the Applicant a written statement setting out her grounds for doing so together with copies of documents that supported her statement.

5. In response to the Directions the Tribunal received the Applicant’s statement of case and other documents but nothing was received from the Respondent. On 27th February 2012 the Tribunal received a statement from Mr. Pedram Tamiz.

Inspection

6. The Tribunal in the presence of Mr. P. Tamiz and Miss Williamson, who stated that she was observing the proceedings on behalf of the Solicitors representing the Respondent’s mortgagee, inspected the exterior and the common entrance hall, stairs and

landings of 2-8 Athelstan Road. There was no appearance by the Respondent or by anybody on her behalf.

7. Flat 10 is approached by steps from the street to the front door of the building. There was a lock on the front door but the door was not locked. Inside was a hallway with stairs leading to flats on other floors and landings outside the doors of flats. Near the front door there was a fire alarm panel fixed to the wall. Usually such a panel would have lights illuminated indicating either that it was working or that there was a fault but no lights were illuminated on this panel. This was pointed out to Mr. Tamiz. Flat 10 is on the top floor. In answer to Mr. Tamiz knocking on the door of Flat 10 two adults and a child came to the door. They had little understanding of English but produced an assured shorthold tenancy agreement which appeared to have been prepared by Green Knight Lettings of 81 Northdown Road Margate and showed the Respondent as the landlord. The tenancy was for 6 months from 21st January 2012.

Hearing

8. Present at the hearing were the Applicant, Miss Reid of Counsel representing the Applicant, Mr. Tamiz and Miss Williamson. There was no appearance by the Respondent or by anybody on her behalf.

9. The Tribunal was concerned that the Respondent might not be aware of the proceedings and asked for evidence of service of notice of the proceedings.

10. Miss Reid produced a copy of a letter dated 16th December 2011 written by her instructing solicitors to the Tribunal Office in which it was stated that the Applicant's statement of case had been sent to the Respondent by email and by first class post to her at Flat 10. Copies of the letter and of the email confirmation had been supplied to the Tribunal Office. In addition, Miss Reid drew attention to letters dated 27th August 2010, 21st December 2010 and 19th May 2011 which had been sent by the Applicant's solicitors to the Respondent. The only response by the Respondent had been an email dated 20th May 2011. From that it was clear that she had received the letter dated 19th May 2011. In her email she stated that she was sure the letter had been sent to her in error as she had no tenant in her flat, she had inspected it in March and it had been locked up due to ongoing issues in the building till further notice. She also pointed out that her flat was Flat 10 not Flat 7. The heading of the letter dated 19th May 2011 read "Re: Flat 7, 2-8 Athelstan Road". Miss Reid explained that on 21st May 2011 an email was sent by the Applicant's solicitors to the Respondent apologising for that error.

11. The Tribunal was satisfied that the Respondent had been made aware of the proceedings.

12. The Tribunal was concerned that the statement of Mr. Tamiz had been provided only a few days before the hearing.

13. Miss Reid explained that the delay had been caused because the lack of response by the Respondent meant that the Applicant's solicitors were unsure of how the Respondent wished to proceed. They had been in contact with the Respondent's mortgage provider and were hoping that the Respondent would admit the breaches and thereby save costs but that had not been the case and it had been necessary to provide the statement so that the proceedings could continue. She submitted that there was little which was new in the statement and that there was no prejudice to the Respondent.

14. The Tribunal decided that in all the circumstances, particularly the lack of response by the Respondent, other than the email dated 20th May 2011, Mr. Tamiz should be allowed to give evidence.

15. Miss Reid outlined the alleged breaches as set out in paragraphs 1 and 3 above and stated that her instructions were not to proceed with the allegation of a breach of Paragraph 22 of Part I of the Fifth Schedule to the lease.

16. Mr. Tamiz gave evidence and referred to his witness statement. He identified his signature on it and confirmed he was happy with the contents.

17. As to the requirement to give notice of underletting and to provide the Applicant with a copy of the tenancy agreement, no copies of assured shorthold tenancy agreements had been provided. In the email dated 20th May 2011 the Respondent stated that there was no tenant in Flat 10 but Mr. Tamiz had visited Flat 10 and the tenants there had given him a photocopy of part of a shorthold tenancy agreement for a tenancy of Flat 10 for 6 months commencing 28th March 2011. The name of the landlord was given as Zainab Bello and the agents as Green Knight Lettings.

18. As to the Respondent allowing the Applicant access to Flat 10, letters dated 27th August 2010 and 21st December 2010 had been written by the Applicant's solicitors to the Respondent and both those letters contained formal requests for access. The Applicant's solicitors had also written to the Respondent on 19th May 2011 pointing out the failure to provide access but, in error, the heading on that letter referred to Flat 7. Access had not been provided by the Respondent.

19. As to nuisance and annoyance:

(a) Miss Reid referred to paragraphs 7, 8, 9 and 10 of the statement of Mr. Tamiz. However, apart from the reference to the email dated 20th May 2011 from the Respondent in which she stated that there was no tenant in Flat 10 yet there was evidence of a tenancy for 6 months commencing 28th March 2011, those paragraphs contained no direct evidence from Mr. Tamiz. They were an account of what he had been told by tenants who had not provided witness statements and were not called to give evidence. A copy of an unsigned letter received as an email attachment from former tenants of Flat 2 was produced along with the email confirmation. At paragraph 9 of his statement, Mr. Tamiz said that those tenants had vacated Flat 2 and that he did not have a forwarding address

for them. However, he accepted at the hearing that he had an email address for them so could have contacted them.

(b) However, he did give direct evidence of seeing water leaking through the ceiling into Flat 8 which is below Flat 10 and produced photographs in support of that. He also produced copies of text messages between himself and Green Knight Lettings about water leaking from Flat 10 and stated that in August 2011 he went into Flat 10 and saw 3 water leaks in the kitchen and bathroom of Flat 10. He produced photographs in support of that.

20. As to occupation by more than one family, Mr. Tamiz stated that when he visited Flat 10 at some time during the summer of 2011 he saw 6 adults and 4 children in Flat 10. He also saw at least 15 or 20 pairs of shoes in the hallway and in a bedroom at least 6 or 7 mattresses piled on top of each other. He suspects that the occupants of Flat 10 would spread those mattresses out on the floor and sleep on them. He had also seen about 8 children playing cards in the hallways, on the stairs and on the ground floor outside Flat 5. He assumed they were from Flat 10 as they went upstairs to that Flat.

21. As to conduct causing an increase in insurance premiums, Mr. Tamiz referred to the requirement in the insurance policy to take all reasonable precautions to prevent a claim and to keep the property insured in good condition and repair. He produced a photograph taken of a baby buggy in the communal parts on the ground floor next to the door of Flat 4. He knew the buggy was from Flat 10 because he had asked the tenants of Flat 10 to take the buggy upstairs. At first they had done as he asked but later had brought it back down stairs. They had then refused to take it up to Flat 10. Mr. Tamiz was concerned that if the buggy were to be tripped over in a fire the Applicant would be prosecuted. There was a need to keep the hall clear but Green Knight Lettings did not care less and when he tried to tell the tenants to keep the hall clear he found 10 adults against him quite threatening. He also said that some fire alarms had been broken but he did not know who had broken them.

22. As to the requirement to keep Flat 10 in good repair, the evidence referred to in paragraph 19 (b) is relevant.

Reasons

23. The Tribunal considered all the documentary and oral evidence given and the submissions made and made findings of fact on a balance of probabilities.

24. The Tribunal accepted the evidence that there had not been compliance with formal requests for access and found that there had been a breach of the covenant contained in Paragraph 9 of Part I of the Fifth Schedule to the lease.

25. The Tribunal accepted the evidence of Mr. Tamiz that he saw water leaking through the ceiling into Flat 8 which is below Flat 10 and that in August 2011 he went into Flat 10 and saw 3 water leaks in the kitchen and bathroom of Flat 10. The Tribunal

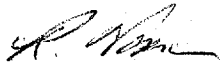
was satisfied that the Respondent had not kept the water apparatus installed in or affixed to Flat 10 in good and substantial repair and condition. Consequently, the Tribunal found that there had been a breach of the covenant contained in Paragraph 1 of Part II of the Fifth Schedule to the lease.

26. The Tribunal accepted the evidence of Mr. Tamiz that tenants were in Flat 10, that no notice of underletting by assured shorthold tenancy had been given and that no certified copies of assured shorthold tenancy agreements had been produced by the Respondent. Consequently, the Tribunal found that there had been a breach of the covenant contained in Paragraph 21 of Part I of the Fifth Schedule to the lease.

27. The Tribunal did not accept the hearsay in paragraphs 7, 8, 9 and 10 of the statement of Mr. Tamiz. However, the Tribunal accepted the evidence of Mr. Tamiz that he saw water leaking through the ceiling into Flat 8 which is below Flat 10 and that in August 2011 he went into Flat 10 and saw 3 water leaks in the kitchen and bathroom of Flat 10. The Tribunal found that allowing water to leak from Flat 10 to Flat 8 was a nuisance and that there had been a breach of the covenant contained in Paragraph 5 of Part II of the Fifth Schedule to the lease.

28. The Tribunal was not satisfied by the evidence of Mr. Tamiz that Flat 10 was occupied by more than one family or that there was any other breach of Paragraph 16 of Part I of the Fifth Schedule to the lease.

29. The Tribunal was not satisfied by the evidence of Mr. Tamiz that there was any breach of Paragraph 4 of Part II of the Fifth Schedule to the lease.



R. Norman
Chairman