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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/2011/0034

Property: Flat 5
2-8 Athelstan Road
Margate
Kent
CT9 2BF

Between: Ms S. Tamiz (“the Applicant”)

and

Mr. S. Taylor (“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 5, 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 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 5, 2-8 Athelstan Road, Margate, Kent CT9 2BF (“Flat 5”) 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. Mr. S. Taylor (“the Respondent”) is the lessee of Flat 5.

3. With the application dated 28th 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:

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. On 27th February 2012 the Tribunal received a letter from the Applicant’s solicitors enclosing a statement from Mr. Pedram Tamiz and confirming that a copy of the statement had been served on the Respondent.

5. On 1st March 2012 a fax was received at the Tribunal Office from Cramer Pelmont LLP on behalf of their client the Respondent. The fax was headed "URGENT – Hearing Today – Tamiz v Taylor". The fax enclosed a copy email and stated "Please excuse the non-attendance of our client and ourselves". The copy email was dated 1st March 2012 and was sent by Mr. Cullen of Cramer Pelmont LLP to the Applicant's solicitors. The email referred to previous correspondence and confirmed that the Respondent was willing and able to carry out works described by the Applicant's surveyor except in respect of the shower by the end of April 2012. It was also stated in the email that the Respondent was neither at fault nor in breach of his lease and that he reserved his position as to the cause of the damage to his flat.

Inspection

6. The Tribunal in the presence of Mr. P. Tamiz 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 his behalf.

7. Flat 5 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 5 is on the ground floor. Knocking on the door of Flat 5 produced no response.

Hearing

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

9. The Tribunal was satisfied by the fax received from Cramer Pelmont LLP that the Respondent had been made aware of the proceedings.

10. Miss Reid outlined the alleged breaches as set out in paragraph 1 above and stated that her instructions were not to proceed with the allegation of a breach of Paragraph 4 of Part II of the Fifth Schedule to the lease.

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

12. As to the Respondent allowing the Applicant access to Flat 5, Mr. Tamiz referred to the letter dated 27th August 2010 written by the Applicant's solicitors to the Respondent by which he was informed that the Applicant had had to exercise her right to enter Flat 5 to deal with a water leak from Flat 5 to Flat 2 below. Mr. Tamiz added that

the ceiling of Flat 2 was in danger of coming down because of the leak, that he had tried to liaise with the Respondent but without success and therefore he had entered Flat 5 and turned off the water. The Respondent was invited to attend and look at the damage and to make repairs but he did not do so. Flat 5 was in a poor state, it was like a tip and disgusting. The letter also contained a formal request for access and was also sent by email to the Respondent. The Respondent did not provide access until after the statement of case was sent to him. Mr. Charles Stimpson attended and made a report on the condition of Flat 5. He also took photographs of the interior of Flat 5. Mr. Tamiz did not attend but he believed that someone from Green Knight Lettings was present.

13. As to nuisance, Mr. Tamiz stated that he had seen the damage to Flat 2 caused by the water leak from Flat 5 and that it was quite severe and that the water leak had also damaged communal lighting.

14. As to the requirement to keep Flat 5 in good repair, the Tribunal was referred to the report of Mr. Stimpson and the photographs he had taken which showed the poor state of repair of Flat 5. Also the evidence referred to in paragraph 12 is relevant.

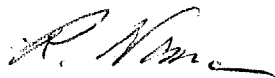
Reasons

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

16. 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.

17. The Tribunal accepted the evidence of the report of Mr. Stimpson as to the condition of Flat 5 and was satisfied that there had been a breach of the covenant contained in Paragraph 1 of Part II of the Fifth Schedule to the lease.

18. The Tribunal accepted the evidence of Mr. Tamiz that he saw the effects of water leaking through the ceiling into Flat 2 which is below Flat 5 and that he had had to enter Flat 5 to turn off the water to prevent further damage to Flat 2. The Tribunal found that allowing water to leak from Flat 5 to Flat 2 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.



R. Norman
Chairman