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LEASEHOLD VALUATION TRIBUNAL

Commonhold and Leasehold Reform Act 2002

Section 168(4) – Application for an order that a breach of covenant or a condition in the lease has occurred

DECISION AND REASONS

Case Number: CHI/00HG/LBC/2012/0024
Property: Ground Floor Flat 28 Oxford Avenue Plymouth PL3 4SQ
Applicant: Rosie Fox
Respondent: Anna Elizabeth Willis
Date of Application: 26 September 2012
Date of Hearing and inspection: 7 March 2013
Appearances: Rosie Fox (Applicant)
Marjorie Creek Fursdon Knapper Solicitors for the Applicant
Tribunal Members: Cindy A. Rai LLB Solicitor (Chairman)
Timothy N. Shobrook BSc FRICS Chartered Surveyor
Michael Woodrow MRICS Chartered Surveyor
Date of Decision: 14 March 2013

Summary of Decision

1. The Tribunal determined that the Respondent is in breach of the covenants on the part of the tenant and/or conditions contained in the lease dated 24 November 1982 of the Property being the ground floor flat at 28 Oxford Avenue Plymouth made between David Green (1) Brian Lawrence Spear (2) ("the Lease"). The reasons for its decision are set out below.

Background

2. The Applicant applied to the Tribunal on 26 September 2012 for a determination that the Respondent is in breach of some covenants and conditions in the Lease. The alleged breaches are specified in the Application. The Property demised by the Lease is registered at the Land Registry in the names of the Respondent and her late husband Keith Sydney Willis, (Mr Willis).

3. Following receipt of the Application the Tribunal requested documentary proof of Mr Willis's death as he was referred to as a party to the Application albeit as being "deceased".
4. The Applicant believes that Mr Willis died in Belize approximately four years ago but has been unable to obtain any documentary evidence of his death.
5. Directions dated the 29 November 2012 (the Directions), were issued by the Tribunal requiring that the Applicant give notice to the Respondent:-
 - a. at the Property,
 - b. at the Respondents last known address in Belize and
 - c. by placing advertisements in two local newspapers
6. A copy of one advertisement was included in the Applicant's hearing bundle together with receipts for payment for two advertisements one from Plymouth Shopper and the other from The Herald. Subsequently the Applicant supplied a copy of the other advertisement to the Tribunal.
7. The Directions provided that following the Respondent complying with the notice provisions and supplying her statement of case a hearing would proceed whether or not the Respondent replied. Nothing was received from the Respondent.
8. As the Tribunal was satisfied prior to the commencement of the Hearing that the Applicant had taken all required steps to notify the Respondent of the Application and also used reasonable endeavours to obtain documentary evidence of Mr Willis death it was able to proceed with the Hearing despite the Respondent's absence.
9. Regulation 14(8) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 [2099] (the Regulations) states that a LVT may proceed with a hearing without a party appearing at it if it is satisfied that notice has been given to the Respondent in accordance with the Regulations.
10. At the Hearing the Tribunal requested confirmation as to how the Applicant had traced Mr Willis's sister, Pat Luffman who had made two written statement a copies of which were produced in the Applicant's bundle. It was told that a contact details for her had been provided by the Bank who had been named as Executor of David Rae, the late tenant of the Property. That bank had also provided a telephone number for the Respondent in Belize.

Inspection

11. On the morning of 7 March 2013 prior to the Hearing the Tribunal inspected the property accompanied by Marjorie Creek and the Applicant. The Property is a ground floor flat converted from a mid-terraced house into two self contained flats with its own entrance door which leads into a narrow hall giving access to two rooms which appear to have been used as living room and bedroom and behind which is a kitchen and bathroom. An external door from the side of the kitchen leads into an enclosed rear courtyard. All furniture and furnishings had been removed from the Property by the Applicant. Evidence of rat poison was clearly visible in the Property and in the yard. A skeleton of a small rat like creature was lying in the yard. A hole which appeared to be the drain was also visible and had no protective grid or cover over it.

The Hearing

The Applicants case

12. The Applicant is the owner of both the freehold of 28 Oxford Avenue which she acquired in 2007 and the leasehold flat above the Property. She currently lives in the flat which is known as 28A Oxford Avenue.
13. The Lease demised the Property for a term of 999 years from 10 September 1982. It describes the Property as the Lower Maisonette and the Applicant's property as the Upper Maisonette. The tenant is obliged to pay an annual rent of £25 on the 10 September in each year and also contribute towards the cost of the buildings insurance maintained by the Landlord. Specific covenants contained in clause 2 require that the tenant:-
 - a. Pay the said rents (ground rent and insurance)
 - b. Pay one half of any rates taxes assessments imposed on the building
 - c. Maintain the Property in good and tenantable repair....."and in particular so as to give support and protection to the Upper Maisonette"
 - d. Not to use the Property or permit it to be used.....for anything which shall or may become a nuisance damage annoyance or inconvenience to the Lessor
14. Marjorie Creek told the Tribunal that the Application listed the alleged breaches of lease which were non payment of ground rent and insurance, failure to maintain the property and allowing it to fall into disrepair by its abandonment which has resulted in damage, inconvenience and annoyance to the Applicant. She was reluctant to assume that this amounted to nuisance, but suggested that the fact that the Property had been subject to rodent infestation and that the structure had been damaged and the flat left in a very unsanitary condition, causing the neighbours to complain about it, might amount to a nuisance.
15. In relation to clause 2(d) of the Lease the abandonment of the Property exacerbated the Applicant's annoyance and when rodents infested the property she was forced to take action. Discovery of the gas leak has led to anxiety about her safety and prompted her to make this application.
16. The Respondent and Mr Willis left the country in or about 1995 when they went to live in Belize. They let the flat to David Rae but later a dispute arose which resulted (it was thought) in his continuing in occupation as a squatter.
17. David Rae died on the 27 April 2012. Prior to his death the Property had fallen into disrepair and he had apparently removed the furniture and effects belonging to the Respondent from the Property and stacked these in the yard. He appointed NatWest Bank PLC as his executor but following his death that Bank renounced its appointment. The Applicant had obtained a telephone number for the Respondent in Belize and the name of Mr Willis's sister who lives locally from the Bank.
18. Subsequently the Applicant spoke by telephone to the Respondent who had agreed to her making arrangements to empty the Property and make it secure, which she had done. Copies of various invoices relating to works and services supplied are included within the bundle and had all been paid by the Applicant. She had tried to reach agreement with the Respondent as to how these costs would be funded but had been unable to contact her after 15 June 2012 being the date of the last telephone call that she received from the Respondent.

19. She has spoken to Pat Luffman on several occasions and statements from Mrs Luffman are included within the Applicant's bundle and confirm both that she spoke to the Applicant and that she believes that her brother died "three or four years ago." She had tried to contact the Respondent on account of the Applicants anxiety about the Property and its state and condition. In her statement dated 12 November 2012 [Page 44-45] she confirms that the Respondent has not answered her telephone calls and that emails sent to her "keep bouncing back".
20. Evidence of the outstanding amounts due from the Respondent are set out on Page 71 of the bundle. The Respondent has paid nothing to the Applicant since 2007.
21. Marjorie Creek has telephoned the Respondents mortgagee but it was not willing to talk to her. She had also written to Capita as she believed that Mr Willis had received a civil service pension, but in the absence of written authority she could not pursue investigations about Mr Willis.
22. She alleges that the Respondent has breached clauses of the Lease by not paying the ground rent or her share of the building insurance.
23. She believes that the Respondent is also in breach of clause 2(c) of the Lease as its condition is jeopardising the support and protection of the upper maisonette.
24. Whilst the state and condition of the Property may not in itself be sufficient to establish a nuisance her client was very shaken by the discovery of the gas leak and the potential danger to herself and her family. The Application is motivated by a desire to eliminate the problems which have arisen as a result of the Respondent's abandonment of the Property and its consequential deterioration.

DECISION OF THE TRIBUNAL

25. A determination by a Leasehold Valuation Tribunal under section 168 of the CLARA is a pre-requisite for service of notice by a Landlord under section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or a condition in its lease
26. The Leasehold Valuation Tribunal is asked to determine pursuant to this application made under section 168 (4) of CLARA that a breach of lease has occurred. Part of section 168 is set out below:-

S. 168(1)

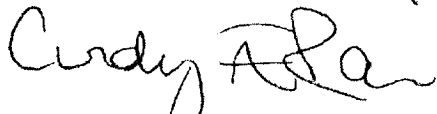
"A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection 2 is satisfied"

168(2)

"This subsection is satisfied if--

- (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
- (b) the tenant has admitted the breach, or
- (c) a court..... has finally determined that the breach has occurred"

29. Having considered all the circumstances of the Application and on hearing the Applicant's written and oral evidence and on the basis of its inspection of the Property the Tribunal determines that the Respondent is in breach;-
- (a) of clause 2(a) of the Lease as she has failed to pay ground rent or contribute towards the cost of the buildings insurance
 - (b) of clause 2(c) for failure to maintain and repair so as to give support and protection to the Upper Maisonette
 - (c) of clause 2(d) as she has allowed the Property (by effectively abandoning it) to become an annoyance damage and inconvenience to the Lessor (Applicant).



Cindy Alpona Rai LLB
Chairman