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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATIONS UNDER SECTION 91(2)(d) OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Case Reference:	LON/00BH/LBC/2012/0106
Premises:	610A High Road, Leytonstone, London E11 3DA
Landlord:	Pritam Singh
Representative:	Qalab Ali LLB MIRPM IOSH AFPWS of Hexagon Property Co Ltd
Tenant:	Aldo Desmily
Representative:	Mr D Stancliffe, solicitor, of Bowling & Co
Date of decision:	10th January 2013
Leasehold Valuation Tribunal:	Mr Adrian Jack and Mr Neil Maloney FRICS

Procedural

1. The landlord applies pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 for a declaration that the tenant was in breach of the repairing covenants of his lease and of ancillary matters.

2. The Tribunal gave directions on 18th September 2012 and on 9th November 2012, by which time the tenant had changed to Mr Desmily who was substituted as respondent. The tenant was late in complying with the Tribunal's directions, but this was due to the landlord's solicitors having indicated that the landlord agreed to sell the freehold to Mr Desmily.

3. The Tribunal held a hearing on 9th January 2013. Mr Hayes, the tenant's expert, attended; Mr Rahman, the landlord's expert, did not.

Discussion

4. On reading the papers the Tribunal considered that there were a number of difficulties with the landlord's case. Firstly, there was evidence that the want of repair in the flat was caused by ingress of damp. Mr Rahman's view was there were a number of potential reasons for the damp. He listed defective pointing in the 9 inch brickwork, a failure of any damp-proof course and the problem that the internal floor was virtually flush with the external ground level. Mr Qalab accepted that external repairs were for the landlord.

5. Secondly, the tenant was able to take advantage of the Leasehold Property (Repairs) Act 1938. Mr Qalab said that he was familiar with the Act. He said that the landlord would seek to argue that the value of the reversion was affected, because the want of repair affected other flats in the block, but there was no evidence to that effect.

6. Thirdly, Mr Qalab accepted that there was no reasonable prospect of the landlord being able to forfeit the lease as a result of the current application.

7. The Tribunal discussed these matters with Mr Qalab, who decided to withdraw the application from the Tribunal.

Costs

8. Following that withdrawal, Mr Stancliffe applied for costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. This allows the Tribunal to award costs in a maximum of £500 if a party has acted frivolously vexatiously or otherwise unreasonably.

9. In our judgment the landlord has acted frivolously vexatiously and unreasonably. Any one of those heads would in our judgment have justified an award of cost in this case. Taken together they make an overwhelming case for the making of a costs order. This was an application which should never have been brought and which, just on the basis of Mr Rahman's report, never had any reasonable prospect of success. Mr Qalab is an experienced property professional with a legal qualification. The landlord must have well known of the application's negligible prospects.

10. The Tribunal has a discretion whether to order costs, but this is a bad case of a landlord abusing the process. We are satisfied that the tenant's costs excess £500.

DETERMINATION

(i) The application is marked as withdrawn.

(ii) The landlord shall pay the tenant £500 in respect of costs.

Adrian Jack, Chairman 10th January 2013