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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AQ/LBC/2013/0100

Property : 96a Walton Avenue Harrow
Middlesex HA2 8QX

Applicant : Susan Karen Brown

Representative : In person and accompanied by Mr
Briggs

Respondent : Donato Schiavone

Representative : Ms I Ferber of counsel instructed
by JPS solicitors

Type of Application : For the determination of alleged
breaches of covenant under a lease

Tribunal Members : Judge P Leighton LLB
Mr R Shaw FRICS
Mr M Taylor FRICS

**Date and venue of
Hearing** : 12th March 2014 10 Alfred Place,
London WC1E 7LR

Date of Decision :

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Respondent is in breach of the following clauses of the lease of 96a Walton Avenue Harrow Middlesex HA2 8QX

The application

1. By an application dated 15th December 2013 the Applicant Susan Karen Brown seeks a determination pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to whether the Respondent is in breach of various covenants in his lease of the premises at 96a Walton Avenue Harrow Middlesex HA2 8QX (“the property”).

The hearing

2. The Applicant appeared in person and was accompanied by her partner Mr Briggs at the hearing and the Respondent was represented by Ms I Ferber of counsel instructed by JPS solicitors.

The background

3. The property which is the subject of this application is a self contained first floor flat in a converted house in a residential street in Harrow. The Applicant is the freehold owner and occupier of 96 Walton Avenue the ground floor flat and both parties reside in the building.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. However a number of photographs were produced by the Applicant in the original bundle of documents and by the Respondent’s counsel at the hearing.
5. The Respondent holds a long lease of 99 years for the property provisions of the lease which he has held since 2007 during which period there has been ongoing dispute between the parties. The relevant covenants will be referred to below.

The Lease

6. By clause 1(a) of the lease the landlord demised “*All that flat number 96a Walton Avenue more particularly described in the First part of the First Schedule hereto and for identification only outlined in red on the plan hereafter called “the flat” which expressly includes*

- (a) *All drains pipes ventilating ducts and wires solely servicing the flat and*
- (b) *All windows, window frames, doors and door frames and all internal non load bearing walls*
- (c) *The linings and surfaces of the interior of all walls*
- (d) *The ceilings of the flat together with the boards or other surface of the floors of the flat but excluding the floor and ceiling joists*

7. In the first Schedule first part the property is defined as

All that flat situate at and more particularly delineated and shown edged red on the plan annexed hereto being the upper or first floor maisonettetogether with the garage shown edged blue on the said plan together with the piece or parcel of land adjacent thereto and more particularly delineated and shown edged green on the plan numbered 2 all of which premises hereinbefore described forming part of the landlord's estate and are collectively referred to in this lease as the demised premises including in this demise the floor and joist supporting the demised premises the roof of the building of which the demised premises form part and the entrance door and hallway of the demised premises situate on the ground floor of the said building and the staircase leading it therefrom to the demised premises but excluding from the demise the ground floor flat including the upper side of the ceiling thereof and the foundations of the said building.

8. The First Schedule Part 2 provides for the following easement for the lessee :

“ 4 The free and uninterrupted right of passage and running of water soil electricity gas and other services in commonwith all others using the same from and to the flat. through the sewers drains watercourses pipes cisterns gutters cables wires and meters now or within 80 years from the date hereof constructed in or under any part of the building “

5 The right to keep a dust or refuse bin in the storage area provided

9. In the Third Schedule clause 9 it is provided

“the said dust or refuse bin shall be kept clean and tidy and inside the said storage area and nowhere else”

10. By clause 3(7) the tenant covenanted as follows:-

“Not to cut maim or injure any of the structural parts roofs or walls of the flat or make any structural alterations or additions to the flat “

11. By the Third Schedule Regulations it is provided as follows

“(1)No act or thing which shall or may be or become a nuisance danger annoyance or inconvenience to the landlord or any occupier of the building or the neighbourhood shall be done or suffered to be done to the flat or any part thereof nor shall the flat be sued for any unlawful or immoral purpose nor shall there be brought or suffered to be brought into the flat any dangerous or offensive goods “

12. There is a restriction in regulation 4 concerning the placing of articles which may be an obstruction which relate to the internal entrance or passageway and not to the exterior of the premises.

13. By regulation 6 it is provided that no clothes or other articles are to be “hung or exposed “outside the flat.

14. By regulation 7 it is provided that *“no person shall reside in the flat unless the floor thereof is covered with carpet rugs or other suitable materials with sound damping materials except that the same may be removed for cleaning repairing or decorating or for some similar temporary purpose”*

15. By regulation 11 it is provided that *“to comply with any regulations which the landlord may from time to time make in respect of the common parts of the building and not cause or omit anything which would or might be an nuisance or inconvenience using the said common parts”*

The issues

16. In the application the Applicant set out 12 breaches on which she claimed to rely. It transpired that of those items only a few were currently live issues between the parties but it was necessary for the tribunal to determine whether a number of items which had been resolved arose from breaches of covenant or were merely matters of dispute between the parties which had now been resolved.

Issue 1 Nuisance and annoyance

17. There had been a large number of incidents between the parties over the past 7 years often leading to the intervention of outside agencies such as the Anti Social Behaviour Unit and the police. It had caused a great deal of ill feeling between the parties.
18. The tribunal considered that issues of nuisance and annoyance needed to be clearly particularised in relation to dates and incidents. The allegations in this case were of a general though often recurring nature. Allegations of nuisance and annoyance were also likely to lengthen the proceedings and increase the hostility between the parties.
19. It was agreed between the parties therefore, that allegations of nuisance and annoyance would not be pursued in the current application but that if there were further proceedings in court it would be open to either party to pursue them if so advised on the basis that they were specifically pleaded and proved.

Issue 2 Damage to the Applicant's wall

20. The tribunal finds that there was a breach of clause 3(7) of the lease by drilling holes in the applicant's wall.
21. The evidence showed that the Respondent had run a cable from his property to the garage which was part of his demise but in order to achieve this he drilled a hole through the Applicant's wall. The holes have now been removed but the cable is still in place.

Reasons for the tribunal's decision

22. Ms Ferber submits that the Respondent has the right to electricity and other services based on the easements contained within the First Schedule of his lease. There was no hole in the wall prior to the Respondent's arrival and the clause in the lease clearly implies that the respondent has an existing supply. In any event even if the Respondent is entitled to create a new source of supply to the garage he is not entitled to cause damage to the Applicant's wall and the tribunal finds that there was a breach of clause 3(7) of the lease.

Issue 3 Trespass to the Applicant's property by placing wires, closed circuit television and a post box

23. The tribunal finds that the placing of wires, a closed circuit television camera on the front of the building secured by pins and an external post box on the Applicant's wall were trespasses and in breach of the lease.

Reasons for the tribunal's decision

24. These breaches were admitted by the Respondent but the items had all been removed by the date of the hearing with the exception of the external post box which the tribunal was assured would be removed immediately after the hearing.

Issue 4 Placing electric wires under the driveway to connect supply to the garage

25. The tribunal holds that there is a breach of clause 3(7) as a result of digging a trench under the driveway which is the applicant's property. This action was undertaken without permission and the applicant is understandably concerned that the installation should be approved by a qualified electrician.

Reasons for the tribunal's decision

26. The Respondent relies upon the provisions of Paragraph 4 of the First Schedule concerning the free and uninterrupted passage of wires and pipes now or to be constructed within 80 years.
27. In so far as there was damage to the Applicant's property this appears to have been remedied and the applicant is content to allow the present situation to remain but it seems to the tribunal that approval by a qualified electrician should be sought on safety grounds.
28. The tribunal considers however that the invasion of the Applicants' property by digging a trench without permission is a breach and although it has now been remedied it has in fact occurred.

Issue 5 Damage to block paved driveway by screwing in a foot mat

29. The Respondent placed a mat in position outside his front door in a recess to the entrance lobby. The Applicant alleges that this caused damage to the block paving but the photograph appears to show that no damage was caused to the block paving itself and the mat has now been removed.
30. In the circumstances the Applicant did not press for a finding and the tribunal is not prepared to find a breach in this instance.

Issue 6 Cracks to Applicant's ceiling

31. Photographs reveal that a number of circular cracks have occurred to the Applicant's living room ceiling. This was allegedly caused by banging on the floor of the respondent's flat. A breach of clause 7 of the

third Schedule was alleged regarding covering of the floors with carpet but the respondent produced a photograph showing that the floor of the bedroom is carpeted. Whilst the Applicant strongly suspects that such cracks were caused by the respondent there is no expert evidence from a surveyor and in the face of the respondent's denials it would be difficult to say that he had caused the breach. The Respondent's bedroom is above the Applicant's living room and it was not clear what activities (if any) could have caused the cracking which may have been caused by other factors. Again the Applicant did not press for a finding of breach of covenant and the tribunal finds that the breach is not proven.

Issue 7 Refusal to remove a hosepipe attached to an external tap.

32. The tribunal finds that the placing of a hose across from the building to the garage was a breach of clause 6 of the third schedule.

Reasons for the tribunal's decision

33. Ms Ferber submits that the hose pipe was put in place to enable a flow of water to the garage after the Respondent had fitted a tap to his building. She submits that the tribunal should take a restrictive construction of clause 6 and that the hose pipe is not hung or exposed.
34. The tribunal considers that the purpose of the clause was to prevent unsightly objects being put on display at the premises such as a washing line or similar item. In the view of the tribunal the hose pipe is similar in appearance and is certainly exposed in an unsightly manner according to the photographs exhibited. In the circumstances the tribunal is of the opinion that placing the hosepipe in that position is a breach of clause 6 of the third Schedule.

Item 8 Placing of wheelie bins on the applicant's driveway often causing an obstruction

35. The tribunal decides that the placing of a wheeled bin in the driveway of the property causing an obstruction to the Applicant or her partner Mr Briggs's vehicle is in breach of clause 1 and 11 of the Third Schedule of the lease.

Reasons for the tribunal's decision

36. The Applicant complains that the Respondent is placing refuse bins (wheelie bins) on the driveway of the property on a Sunday evening prior to collection of the waste on Monday morning which causes an obstruction to Mr Briggs who parks his vehicle on the driveway.

37. The Applicant states that there is a bin storage area where the Respondent is required to store the bins. This is placed near the garage which is set back some distance from the highway. Bins are collected on Monday mornings and the refuse collectors will only collect from bins on or adjacent to the highway.
38. The respondent produced an email from the London Borough of Harrow which stated that bins could not be placed on the highway and that if they were the local authority would prosecute any offender under the Highways Act. The respondent contends therefore that he cannot be required to break the law and has to place the bins on the driveway. He does not accept that they cause an obstruction.
39. Difficulties have arisen when Mr Briggs who leaves for work early on Monday mornings has had to remove the bins which are blocking his use of the driveway.
40. Whilst the tribunal accepts that it would be an offence to store bins on the highway and that this would give rise to prosecution it has now become commonplace for householders to place their bins temporarily on the highway immediately adjacent to their properties to enable the refuse collectors to deal with them safely and efficiently.
41. If the Respondent were to place his bins immediately outside the property on Sunday evenings and remove them on Monday after the bins have been emptied there would be no risk whatsoever of his being prosecuted by the Borough of Harrow.
42. Even if the respondent were correct in fearing a prosecution it is for him to make arrangements in such a way as not to cause nuisance and obstruction to the Applicant and Mr Briggs's vehicle. The letter from the Respondent's solicitor dated 28th February suggest that the Respondent will place the bins at a spot to be nominated by the Applicant and this appears to be a sensible resolution to the problem.

Issue 9 Other articles being left in the driveway

43. The Applicant alleges that these items have subsequently been removed. The Respondent left a pallet and building materials in the driveway. It does not appear that these items caused an obstruction although they were technically a trespass. The Applicant did not press for a finding of breach on this item and the tribunal finds that no breach occurred.

Item 10 The placing of Italian and other flags in the windows

44. The applicant alleges that the respondent has placed Italian and other flags in the windows of the flat in breach of clause 6 of the third

Schedule. The flag have now been removed and it is not intended to place them there in the future.

45. Ms Ferber submits that since the flags and posters were inside the flat they do not constitute a breach of clause 6 and the tribunal accepts that submission and finds no breach. The position here is different from the hosepipe which extends outside the premises.

Issue 11 Failure to carpet the floors of the flat

46. The Applicant alleges that the Respondent has failed to provide carpets or other suitable floor covering in breach of clause 7.
47. The Applicant was unable to provide any cogent evidence that carpets were not used by the Respondent in the flat as she had never been inside the property. The respondent produced a photographs showing that rooms were carpeted and accordingly the tribunal dismissed this allegation for the same reasons as in Issue 6.

Issue 12 The respondent is using the loft space for storage

48. The tribunal finds that there is no breach associated with the use of the loft for storage space.
49. The Applicant alleges that the Respondent is not permitted to use the loft space as it is not within the demise and therefore is the property of the Applicant.

Reasons for the tribunal's decision

50. The tribunal has noted the definition of the demise in the first Schedule and in particular notes that it includes the roof of the building of which the demised premises forms part. In the view of the tribunal it must follow that all the area above the joists and below the roof is comprised in the demise and accordingly there is no breach in using the loft area which is within the demise.

Conclusion

51. The tribunal has endeavoured to deal with the many breaches alleged by the applicant although the main allegation of nuisance has not been dealt with for the reasons set out above.
52. The tribunal has noted that there has been a considerable period of friction between these parties which it is hoped can now be brought to a close. The tribunal has not dealt with the nuisance allegations in the hope that the matter will not inflame tensions between the parties.

53. It should be noted, however, that in the instances where the tribunal has found breaches of the lease they have arisen because the respondent has decided unilaterally to take steps which he no doubt considered reasonable, but which interfered with the peace and comfort of the Applicant. In most cases these steps were taken without consultation or permission and this inevitably causes friction when neighbours are living closely together as in this case.
54. The Respondent has received good advice from his solicitors which has resulted in the abatement of many of the breaches and the annoyance caused to the Applicant. It is clearly in the interest of harmony and good neighbourliness if either party and particularly the respondent who is the tenant, should endeavour to consult with the other party so as to avoid allegations of breach of covenant and litigation in the future.

Name: Judge P Leighton

Date: 27th March 2014