



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

Case Reference : LON/00AZ/LBC/2014/0031

Property : 118 Perry Rise, London SE23 2QP

Applicants : Richard Steward
Panida Steward

Representative : Peacock & Co solicitors

Respondent : Camelia Baugh

Type of Application : Breach of covenant

Tribunal Members : Judge Nicol
Mr WR Shaw FRICS

Date of Decision : 16th June 2014

DECISION

Decision of the Tribunal

The Tribunal determines that the Respondent is in breach of the covenants contained in clauses 2(5) and 2(12) of her lease dated 2nd October 1970.

The application

1. The Applicants are the freeholders and the Respondent is the lessee of the subject property. The lease includes the following clauses:-
 2. THE Lessee ... HEREBY COVENANTS with the Lessor as follows:
 - (5) To permit the Lessor and its surveyors or agents with or without workmen and others twice or oftener in every year

during the said term at reasonable times in the daytime to enter upon the demised premises and every part thereof to view the state and condition of the same and of all defects decays and wants of reparation there found to give notice thereof in writing by leaving the same at or on the demised premises to or for the Lessee to repair such defects decays and wants of reparation.

(12) To keep all buildings for the time being forming or on the demised premises insured in the names of the Lessor and the Lessee against loss or damage by fire or aircraft to their full value in some reputable insurance office approved by the Lessor in writing and shall produce to the Lessor on demand the policy of such insurance and the receipt for the latest premiums and shall rebuild the said building whenever destroyed or damaged by fire or aircraft applying all monies received by virtue of any such insurance in the first place towards such rebuilding making good any deficiency out of the Lessee's own monies.

2. By letter dated 2nd February 2011 the mortgagees of the Respondent's neighbour at 120 Perry Rise notified her of the existence of subsidence. The properties being adjoined as part of a terrace, they sought an assurance that she take the appropriate action. It appears she did nothing. In particular, she failed to inform the Applicants of the problem.
3. On 18th July 2012 a surveyor, Mark Kenward MRICS MCIOB of Right Surveyors Kent and South East Ltd, identified cracking at 120 and 122 Perry Rise and noted similar problems from his external view of the subject property. Therefore, there can be no doubt that the subject property suffers from issues which are potentially very serious, require investigation and would come within a normal buildings insurance policy.
4. The Applicants only became aware of these issues much later, during 2013, following conversations with the neighbours, not from the Respondent. They entered into correspondence, mostly by e-mail, with the Respondent and with her representative, Christopher Sherwood of Placedealcorp. In particular, they sought to exercise their right under clause 2(5) of the lease to inspect the subject property and also requested a copy of the current insurance certificate in accordance with clause 2(12) (see letter of 24th November 2013 and e-mail of 25th November 2013).
5. There is no doubt that the Respondent is aware of the Applicants' requests because Mr Sherwood responded to them. However, the Respondent has failed to comply with either request.
6. Therefore, in April 2014 the Applicants applied to this Tribunal for a determination under section 168 of the Commonhold and Leasehold

Reform Act 2002 that the Respondent is in breach of the aforementioned covenants.

7. One of the Tribunal's letters addressed to the Respondent at the subject property has been returned by the Royal Mail but the Tribunal and the Applicants have also written to Mr Sherwood and to the mortgagees, Bristol & West/Bank of Ireland. The Tribunal is satisfied, therefore, that the Respondent is on full notice both of the Applicants' case and of these proceedings. Further, despite the Respondent's failure to participate in these proceedings, the Tribunal is satisfied that it is appropriate to proceed to determination on the papers, without a hearing, in accordance with the directions issued on 25th April 2014.
8. Having read the documents in the Applicants' bundle provided in accordance with the Tribunal's directions, and for the reasons set out above, the Tribunal is satisfied that the Respondent has failed to provide access or any insurance information required under clauses 2(5) and 2(12) of her lease so that she is in breach of both clauses.

Name: NK Nicol

Date: 16th June 2014