



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

Case reference : LON/00AG/LBC/2017/0016

Property : 243 West End Lane, London NW6
1XN

Applicant : Mr Larry Glenn Lipman

Representative : Ms Schutzer-Weissman, barrister

Respondent :
1. Mr Touraj Fassihi
2. Ms Elizabeth Wyant

Representative : Ms Bedworth, barrister for the
second respondent

Type of application : S168 Commonhold and Leasehold
Reform Act 2002

Tribunal member(s) : Ruth Wayte (Tribunal Judge)
Mrs L Hart
Mr A Lewicki

**Date and venue of
hearing** : 20 April 2017 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 23 May 2017

DECISION

2. *This sub-section is satisfied if –*

(a) it has been finally determined on an application under sub-section (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

3. *But a notice may not be served by virtue of sub-section (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.*

4. *A landlord under a long lease of a dwelling may make an application to a Leasehold Valuation Tribunal for a determination that a breach of covenant or condition in the lease has occurred.*

5. *But a landlord may not make an application under sub-section(4) in respect of a matter which-*

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

The Lease

6. The Lease to the Property was granted on 10 January 1990 between Steven Roy and Larry Glenn Lipman and Adi Engber for a term of 99 years from 29 September 1989. The Applicant is the current owner of the freehold; the First Respondent registered his interest on 16 December 2008.

7. The Lease contained the following lessee's covenants of relevance to the proceedings:

“(4) at the Lessee's own cost from time to time and at all times during the said tem to keep the demised premises including the fixtures and additions thereto and the water and sanitary apparatus sewers drains and pipes and easements

12. The Second Respondent confirmed that she had engaged a surveyor and contractors to attend to any items of disrepair but was currently waiting for a licence from the council to erect the scaffolding so that the works could commence. Ms Bedworth had initially indicated that the Second Respondent would only agree items 29, 31, 33, 36 and 39-40 were caught by the covenants in the lease. During the hearing this agreement was extended to include items 14-17, 23-27, 30 and 34-35. That concession was partly made on the basis that it was accepted that there was a breach of clause 4 but not clause 5 in respect of items 15-17 and 24-26. This narrowed the dispute to items 1-13, 18-22, 28, 32, 37, 38 and 41.
13. Items 1-13 and 19-22 all related to the exterior of the Property and in particular the brick and stonework. That was variously described as “worn, perished and spalling”, as illustrated by the colour photographs in Mr Spiro’s report. The Second Respondent’s challenge was that this was to be expected in a Victorian property. Ms Bedworth relied upon the case of *Simmons v Dresden* [2004] EWHC 993 as authority that the standard of repair had to have regard to the age, character and locality of the house. She also singled out item 11, described in the schedule as “dirt over building” on the basis that dirt was not disrepair. In response, Mr Spiro maintained that defective pointing and brickwork was disrepair which could lead to damage to the structure of the Property due to the ingress of water. He accepted that dirt of itself would not cause damage. Ms Schutzer-Weissman argued that the wording of clause 4, namely “*good and substantial repair condition and decoration*” was wide enough to encompass dirt as a breach of that covenant.
14. Item 18 referred to leaking joints to gutters, illustrated by a photograph of the main gutter to the roof which Mr Spiro claimed showed staining to the walls beneath, although that was not apparent to the tribunal. The challenge from the Second Respondent was that the gutter did not exclusively serve the demised premises and therefore clause 4 did not apply.
15. Item 28 referred to a redundant asbestos cement flue. It was agreed that the flue dated back to the 1950s and would have been capped off internally, the dispute was whether its presence on the exterior of the Property amounted to disrepair. Mr Spiro was unable to say for certain that the flue would be in disrepair, although he doubted it would be in a good state and felt there was a risk of damage to the wall behind it.
16. Item 32 referred to missing render or plaster to the underside of part of the Property which effectively forms a ceiling to a passageway from the front of the shop through to the yard at the rear, currently used as access to a church behind the Property. It was described in the Schedule to the Lease as follows:

21. In respect of item 32, the underside of the overhang to the passageway, the tribunal determines that the description in Part I of the Schedule to the Lease is wide enough to encompass the underside of the overhang. The reference to "first floor level" is descriptive as opposed to limiting.
22. By way of contrast, the tribunal accepts that item 11 – dirt over building, is not disrepair as such. On the evidence before it the tribunal does not consider that the Applicant has established that the gutter described in 18 or the redundant flue described in 28 is in disrepair. Therefore that is no breach of clause 4 in terms of keeping those items in good and substantial repair.
23. In respect of items 37 and 38, the fire safety precautions to the common parts, the tribunal agrees with the Second Respondent that in the absence of any requirement on the part of the local council to carry out such works, there can be no breach of clause 11 of the Lease.
24. Finally, the tribunal agrees with the Second Respondent that item 41 - debris in the roof void is not in breach of clause 4 of the Lease which clearly refers to repairing obligations, rather than any more general obligation to keep the premises free of refuse.

Costs

25. The Second Respondent made an application for an order under section 20C of the Landlord and Tenant Act 1985, preventing the landlord from recovering his costs by way of the service charge. In fact, the Applicant relied on clause 9 of the lease for the recovery of its costs, the relevant parts of which are as follows:

"to pay all costs and expenses (including solicitors costs and surveyors fees) incurred by the Lessors for the purpose of or incidental to the preparation and service of any notice under section 146 or section 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court..."

26. The Second Respondent's application was made on the basis that clause 9 is arguably a service charge provision. No costs should be payable as the Second Respondent had always indicated that she was prepared to do the works, in the light of any successful challenge to the items and the fact that forfeiture would not occur in reality as any breach would be remedied once the works were complete. She also challenged clause 9 on the basis that no s146 notice had been served as at the date of the hearing.
27. In response, the Applicant maintained that clause 9 clearly applied as these proceedings were incidental (and in fact a prerequisite) to the service of a s146 notice. The Applicant was entitled to recover their

Schedule of Dilapidations (Building Fabric)

1	2	3	4	5
Item	Clause	Location / Breach Complained of	Remedial Works Required	Cost (£)
		EXTERNAL		
		Front and front left-hand side return		
		Chimney stacks, parapet walls and flashings		
		2 no. chimney stacks, left-hand side return.		
1	4	Worn and perished pointing and spalled brick faces to front stack.	Rake out worn and perished pointing and re-face brickwork.	500.00
2	4	Worn and perished pointing and spalled brick faces to rear chimney (as seen from the front)	Rake out worn and perished pointing and renew brick faces.	400.00
3	4	Worn chimney pots.	Take down and renew 2 no chimney pots to match existing, making good flashing.	650.00
4	4	Defective pointing to copings between chimneys.	Repoint copings between chimneys.	75.00
5	4	Perished pointing to copings to left-hand side front parapet.	Rake out and repoint.	75.00
6	4	Worn and perished pointing and spalled brick faces to left-hand side parapet.	Repoint whole of left-hand side return above window lintel to underside of coping and re-face. Allow for 10 no. brick faces.	1000.00
7	4	Perished stonework to front parapet wall.	Cut out spalled and defective stonework and re-face whole of front parapet wall.	2000.00
8	4	Worn and perished detailing to stone oversailing coursework.	Renovate, re-face and re-form stonework.	1250.00

1	2	3	4	5
Item	Clause	Location / Breach Complained of	Remedial Works Required	Cost (£)
		Main Walls		
9	4	Worn and perished pointing and spalled brick faces to left-hand side return.	Rake out worn and perished pointing and renew spalled brick faces. Allow for 10 sq. metres over neighbouring building No. 141 and 4 no. brick faces, and 10 sq. metres and 20 no. brick faces to left-hand side return leading to No. 141.	1500.00
10	4	Perished pointing and spalled brick faces to the front face.	Rake out and re-pointing to front elevation and renew spalled brick faces. Particular attention required to second and third floors, allowing for 30 no.	1500.00
11	4	Dirt over building.	Clean down masonry to front face to left-hand side return and stonework	2500.00
12	4	Perished and defective stonework to oversailing sections to window details, especially at second and third-floor levels.	Remove all loose and perished stonework and re-form and re-face, with particular attention required to window lintels to third-floor level and oversailing coursework to second floor, and to head of windows to first floor.	3500.00
13	4	Defective stone sill.	Strip out and renew 1 no. sill.	400.00
		Woodwork and decorations		
14	5	Perished decorative finishes	Carefully and thoroughly prepare and redecorate sash windows to first, second and third floor levels, 9 no.	3000.00
15	5	Open conervation joints to sash windows.	Make good all open joints to sash windows with resin Repaircare system.	150.00
16	5	Decay to bottom rails to timber sash windows.	Repair and/or renew.	750.00
17	5	Defective window putties and sash cords.	Renew perished window putties and sash cords.	750.00
		Rear		
		Eaves, gutters and rainwater pipes		
18	4	Leaking joints to gutters	Overhaul gutters, make good all joints.	200.00

1	2	3	4	5
Item	Clause	Location / Breach Complained of	Remedial Works Required	Cost (£)
		Main walls		
19	4	Worn and perished pointing.	Rake out and repoint rear main wall to whole of first, second and third-floor levels, including window reveals.	4000.00
20	4	Perished stone sills.	Cut out and re-cast window sills - 9 no.	2700.00
21	4	Missing brickwork.	Cut in new brickwork to rear main wall at second-floor level, 10 no. bricks.	150.00
22	4	Distortion and bulged brickwork.	Rebuild lintel over hallway.	500.00
		Woodwork and decorations		
23	5	Decorative finishes to cast-iron goods worn and perished.	Carefully and thoroughly prepare and redecorate cast-iron rainwater goods.	350.00
24	5	Open joints to windows.	Make good conservation joints to timber sash windows.	200.00
25	5	Decay to timbers.	Make good rot and decay to rear timber sash windows, particularly to bottom rails.	250.00
26	5	Decay to timbers.	Cut out and renew 2 no. window sills.	400.00
27	5	Perished decorative finishes.	Carefully and thoroughly prepare and redecorate timber sash windows.	2600.00
		Soil pipes and gullies		
28	4	Redundant flue.	Remove redundant asbestos cement flue to second floor and make good brickwork.	600.00
29	4	Broken cast-iron goods.	Remove where redundant cast iron and soil waste pipe to rear and make good walls.	250.00
30	4	No collar to at least 1 no. boiler flue.	Provide collar.	125.00
31	4	No cover to extractor to first floor.	Provide cover.	55.00

1	2	3		5
Item	Clause	Location / Breach Complained of	Remedial Works Required	Cost (£)
		LEFT-HAND SIDE PASSAGEWAY		
32	4	Missing render/plaster to underside of ceiling.	Replaster underside of ceiling to provide uniform finish and fire stop.	250.00
		COMMON PARTS - EXTERNAL		
		Main Entrance		
33	5	Poor decorative finishes.	Carefully and thoroughly prepare and decorate ceiling and panel immediately above door.	100.00
34	5	Poor decorative finishes.	Carefully and thoroughly prepare and redecorate main entrance door, frame and plinth.	250.00
35	5	Poor decorative finishes.	Carefully and thoroughly prepare, fill and make good and redecorate right hand side column/panel to entrance.	300.00
36	4	Broken tiles to main entrance	Take up and replace broken tiles.	250.00
		INTERNAL		
		COMMON PARTS		
37	11	No smoke detectors noted.	Provide smoke detector system.	3000.00
38	11	No emergency lighting noted.	Upgrade internal lighting and provide emergency lights.	1500.00
39	4	Missing spindles to stairs.	Replace missing spindles to stairs and decorate to match.	600.00
40	4	Entry phone broken.	Provide working entry-phone system.	500.00
41	4	Roof void - full of debris.	Clear all rubbish and debris from the roof void.	500.00



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

Case Reference : LON/00BE/LVM/2017/0004

Property : Tower Mansions, 86 – 87 Grange Road, London SE1 3BW

Applicant : Mr Warren Dann tribunal appointed manager

Representative :

Respondent : The Leaseholders at Tower Mansions

Representative : Twm Solicitors (1) and N C Brothers & Co for Tower Mansions Limited and Mr and Mrs B Dhillon(2)

Type of Application : Variation of the appointment of a manager order dated 23rd June 2016

Tribunal Members : Tribunal Judge Dutton
Mr M C Taylor FRICS

Date and venue of PTR : 24th May 2017 at 10 Alfred Place, London WC1E 7LR

Date of Decision : 24th May 2017

Decision

Upon reading the letter from N C Brothers & Co dated 18th May 2017 and the letter from twm Solicitors dated 20th April 2017 and upon hearing from Mr Warren Dann of Omnicroft Limited, the manager appointed by the Tribunal under an Order dated 23rd June 2016 (the Order), the Tribunal ORDERS that the Order shall continue for a further period expiring on 31st May 2018. In all other respect the terms of the Order remain.

Andrew Dutton

Tribunal Judge Dutton

24th May 2017