



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

Case Reference : **MAN/32UG/LBC/2017/0010**

Property : **Bank Flat, 4 North Street, Bourne,
Lincolnshire PE10 9EA**

Applicant : **Mazebrook Investments Limited**

Representative : **Taylor Rose TTKW Limited**

Respondent : **Mr William John Kelly**

Representative : **In Person**

Type of Application : **Commonhold & Leasehold Reform
Act 2002 Section 168(4)**

Tribunal Members : **Judge J.E. Oliver
Mr P. Mountain**

Date of Determination : **25th August 2017**

Date of Decision : **5th September 2017**

DECISION

Decision

1. The Respondent is in breach of the covenant contained within Clause 3.9 of the Lease dated 14th February 2003 relating to the Property.

Application

2. This is an application by Mazebrook Investments Limited (“the Applicant”) for an order, pursuant to Section 168(4) of the Commonhold & Leasehold Reform Act 2002 (“the Act”), that there has been a breach of covenant in respect of Bank Flat, 4 North Street, Bourne, Lincolnshire (“the Property”).
3. The Respondent is William John Kelly, the Lessee of the Property (“the Respondent”).
4. The Property is held under a lease dated 14th February 2003 and made between National Westminster Bank PLC (1), the Respondent (2) (“the Lease”).
5. The Lease is for a term of 125 year from the 14th February 2003 subject to a variable ground rent.
6. The Applicant seeks an order that the Respondent is in breach of Clause 3.9 of the Lease. Clause 3.9 states as follows:

“3.9 To allow the Landlord on giving at least seven days notice to enter the Property to inspect the state of it”
7. Directions relating to the application were issued on 26th June 2017, providing for the filing of additional documentation and statements by the parties and thereafter for the application to be determined without an inspection or hearing.
8. Neither party requested a hearing.
9. The matter was listed for determination on 25th August 2017.

The Law

10. Section 168 of the Act provides that before a landlord may apply to forfeit any lease for a breach of either a covenant or condition of the lease by the tenant, it must have been determined that a breach has occurred. This can be done either by a determination under 168(4) of the Act, by the tenant admitting the breach, or by a court making a determination.

11. Section 168 (4), under which the present application is made, provides as follows:

“A landlord under a long lease of a dwelling may make an application to a First-tier Tribunal for a determination that a breach of covenant or condition of the lease has occurred”

Submissions

12. The Applicant purchased the freehold reversion of the Property on 19th August 2014. It's solicitors had written to the Respondent on the same date to advise him of the sale. On 22nd August 2014, Mr Hall, a director of the Applicant hand delivered a letter advising that a surveyor, acting on behalf of the Applicants, would be in contact with the Respondent to inspect the Property and assess the state of repair as provided for in the Lease.
13. Thereafter, there was further correspondence between the parties in which the Respondent denied the Applicant was the freeholder of the Property and its right to inspect it.
14. In December 2016 the Applicant advised there were instances of police activity at the Property after which its then solicitors advised the Respondent, by a letter dated 23rd December 2016, that should he continue to refuse to allow an inspection of the Property, it would initiate “court action”.
15. On 21st March 2017 the Applicant's current solicitors served a notice pursuant to Section 146 of the Law of Property Act 1925 (“1925 Act”) upon the Respondent requiring him to remedy the breach of covenant within 14 days and pay costs, otherwise an application to forfeit the Lease would be made.
16. In the period 2014 to 2017, the Applicant confirmed the Respondent continued to pay both his insurance premiums and ground rent.
17. The Respondent, in his submissions, raised a number of matters:
 - The Tribunal has no jurisdiction to hear the application. The Lease makes reference to arbitration to determine a dispute but no reference is made to the Tribunal.
 - The Applicant does not own the freehold reversion of the Property.
 - The Applicant has not served the Respondent with a notice of the assignment of the freehold reversion as required by the 1925 Act.
 - The Respondent had not received the letter dated 23rd December 2016.
 - The Respondent refuted the allegations made regarding the police.

- The Applicants has waived its right to enforce the Lease by acceptance of both ground rent and insurance premiums.
- The Applicant has failed to maintain the exterior of the Property and deal with dilapidations.
- The National Westminster Bank who occupy the ground floor of the Property are vacating it and the application to the Tribunal is part of a larger conspiracy by the Applicant to obtain possession of the entire building and thereafter sell it providing the Applicant with a “windfall”.
- The National Westminster Bank’s staff have harassed the Respondent and members of his family.
- The Respondent would be willing to dispose of their interest in the Property at a price to be agreed with the Applicant.

Determination

18. The Tribunal considered the submissions made by both parties.
19. The Tribunal determined the covenant within the Lease was clear in its terms and had been breached by the Respondent unless any of the issues raised by him justified his refusal to comply, or there had been a waiver of the breach, as alleged.
20. The Tribunal considered the issue of jurisdiction and did not accept the Respondent’s argument it had no jurisdiction because no reference is made to it within the Lease. The Tribunal’s authority to determine the application is provided for by Section 168(4) of the Act. The Tribunals, Courts and Enforcement Act 2007 provided for a First-tier Tribunal to replace a Leasehold Valuation Tribunal as provided for by the Act.
21. The Tribunal did not accept the Respondent’s argument the Applicant did not own the freehold reversion of the Property. No evidence was produced to confirm the Respondent’s assertion. The Applicant confirmed a copy of the Land Registry documents had been sent to the Respondent.
22. The Tribunal considered the Respondent’s claim that he had not received a Notice of Assignment to show the Applicant’s interest in the Property. Again, the Tribunal did not accept this, having had sight of the letter from the Applicant’s solicitor to the Respondent dated 19th August 2014 to confirm its acquisition of the title. Whilst this letter was not in the form of an actual notice, as considered necessary by the Respondent, it contained all the necessary information to give notice to the Respondent of the change of ownership. As such, the Tribunal determined this to be adequate.

23. The Respondent maintained he had not received the letter of 23rd December 2106. The Tribunal did not consider the receipt of this letter to materially affect the application.
24. The Tribunal further considered whether the payment by the Respondent and acceptance by the Applicant of both the ground rent and insurance premiums waived the alleged breach of covenant. The information provided showed the Respondent had paid ground rent in 2015 and 2016 and insurance premiums in the same years and also in April 2017.
25. The Tribunal determined the Applicant had not waived their right to enforce the covenant within the Lease upon the basis the refusal by the Respondent to allow entry to the Property is a continuing breach. There is clear evidence that following each payment the Applicant has continued to seek a right of entry, including the issue of proceedings of which the Respondent had notice.
26. The Tribunal noted the other matters referred to by the Respondent but did not consider them to be relevant to the issues before it.
27. The Tribunal determined the Respondent was in breach of the covenant in Clause 3.9 of the Lease. The Applicant was entitled to enter the Property upon request. The Respondent had failed to comply over a lengthy period without any adequate reason for doing so.