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

Case Reference : LON/00BK/LBC/2014/002

Property : Flat 2, 1 Gloucester Street, London Sw1V 2DB

Applicant : Calum Watson of D and G Block Management, the tribunal appointed manager

Representative : None

Respondents : Mr and Mrs E Bonneau

Representative : None

Type of Application : For the determination of an alleged breach of covenant

Tribunal Members : Judge O'Sullivan
Mr D Jagger MRICS

Date and venue of Hearing : 10 Alfred Place, London WC1E 7LR

Date of Decision : 18 March 2014

DECISION

Decision of the tribunal

The Tribunal determines that there has been a breach of clauses 3(g) and 2 of the Lease

The application

1. The Applicant seeks a determination pursuant to s. 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent tenants are in breach of covenants contained in the lease.
2. Directions were made dated 21 January 2014 which set out the steps to be taken by the parties and provided for this matter to be considered by way of a paper determination, that is, without the presence of the parties.
3. In accordance with those directions both parties have served bundles containing their statements of case and evidence relied upon.

The Applicant's case

4. The Applicant is currently the tribunal appointed manager of the property known as Flats 1-6, 1 Gloucester Street London SW1V 2DB. The Respondents are the long leaseholders of Flat 2, 1 Gloucester Street London SW1V 2DB (the "Property").
5. The Applicant set out its case in the application.
6. The Applicant says that the main reason for his appointment as manager was to enforce breaches of covenant by the Respondents in relation to alleged water damage to the flat below over previous years said to have been caused by defective plumbing. The breaches complained of are as follows;
 - a) That the Respondents have not allowed the landlord access to the Property in accordance with the provisions of clause 3(g)
 - b) That the Respondents have kept a dog in breach of paragraph 9 of the First Schedule
 - c) That the Respondents have installed hard wood flooring in breach of paragraph 11 of the First Schedule
7. The lease of the property is dated 20 October 1978 and was made between (1) Charles Donald Triggs and Mary Triggs and (2) David King (the "Lease"). The relevant clauses of the lease are as follows;

8. Pursuant to clause 3(g) of the Lease the Respondents covenanted;

“to permit the Lessors or their surveyors Agents or workmen on first receiving at least three days prior notice in writing...from the Lessors at all reasonable times in the daytime to enter into and upon the demised premises to view the state and condition thereof”
9. Pursuant to clause 2 of the lease the respondents covenant to observe the restrictions and regulations set out in the First Schedule.
10. Pursuant to paragraph 9 of the First Schedule it is stipulated that;

“No bird dog or other animal shall be kept in the demised premises without prior written consent of the Lessors which consent if given can at any time be revoked at the Lessors’s discretion
11. Pursuant to paragraph 11 of the First Schedule it is stipulated that;

“At all times to keep all parts of the floors of the demised premises (except the kitchen and bathroom) carpeted with suitable sound deadening material”
12. The leaseholders of the flat below Flat 2 are now trying to obtain contents insurance and the insurers have confirmed that they require a plumbing inspection of Flat 2 to be carried out where the damage is said to have emanated. The Applicant says that he has made a number of attempts to gain access having given notice under clause 3(g) but has refused access on each occasion. The tribunal has been provided with copy correspondence in which it can be seen that access has been requested on several occasions with three days notice having been given. In particular the tribunal noted emails dated 21 April 2013 and 20 May 2013 which both requested access with three days notice. In both cases it is noted that a reply was received from the Respondents stating that no access would be given.
13. The Respondents deny that there has been any breach of covenant.
14. As far as the access is concerned they say that there have been no water leaks for the past 2 years and that they have allowed access to their Property on 6 occasions over the last 3 years. The most recent inspection was admitted to be on 25 September 2012 when an inspection took place by Westminster City Council Environmental Health. It is said that it is unreasonable and disproportionate to continue to demand an inspection given that there are no continuing issues in relation to water leaks.

15. The Respondents admit in their statement that they have kept a dog at the property for the last 5 years.
16. The Respondents admit there is a wooden floor. They say that they had the verbal consent of the first freeholder to install the wooden floor. They say that in 2012 they were asked to put down rugs which would be sufficient. They confirm that in November 2012 the Applicant asked that they fit a carpet. However since then they say that another leaseholder has been given consent to install a wooden floor so they now say there is no breach.

The Law

17. Section 168(4) provides that;

“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.”

The Tribunal’s decision

1. The Tribunal is satisfied that there has been a breach of clause 3(g) of the Lease in that access has been requested in accordance with the provisions of that clause on at least two occasions and has been denied. It should be noted that the landlord has the power to request an inspection and does not have to show that access is reasonably required for a particular reason.
2. The Tribunal is likewise satisfied that there has been a breach of clause 2 of the Lease in that the Respondents have not observed paragraph 9 of the First Schedule in that they have admitted that they have kept a dog for the past 5 years. The fact that this has not caused any complaints is not a factor for the tribunal to consider when deciding whether there has been a breach of the Lease.
3. The tribunal is likewise satisfied that there has been a breach of clause 2 of the Lease in that the Respondents have not observed paragraph 11 of the First Schedule in that they have failed to keep the Property carpeted. Any issues as to purported consent would be a matter for the County Court on any application for forfeiture.
4. The Tribunal notes that the Property is subject to a charge to Mortgage Express dated 30 May 2007. The Tribunal directs that a copy of this determination is sent to Mortgage Express within 14 days of the date of this decision.

Name: S O’Sullivan

Date: 18 March 2014