



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

Case Reference : CHI/00HE/LBC/2016/0004

Property : The Ground Floor Flat, Millhouse,
Poltair Terrace, Heamoor, Penzance,
Cornwall TR18 3EG

Applicant : Ms Louise Nicholls

Representative :

Respondent : Mr Colin Stephenson

Representative :

Type of Application : Alleged breaches of covenant by tenant

Tribunal Members : Judge D Agnew

**Date and venue of
Hearing** : Paper determination 20th July 2016

DETERMINATION

1. By an application dated 10th March 2016 the Applicant asked the Tribunal to determine under section 168 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that the Respondent has breached the terms of his lease. The Applicant is the landlord and the Respondent the tenant of the Ground Floor Flat, Millhouse, Poltair Terrace, Heamoor, Penzance, Cornwall TR18 3EG (“the Premises”). The Respondent’s lease is dated 15th February 1988 and is for a term of 999 years from that date.
2. The breaches alleged are:-
 - (a) That ground rent demanded has not been paid for three years
 - (b) That clothes have been hung on the glass patio window making the property look unsightly
 - (c) That the state of the flat is affecting the saleability of the Applicant’s own property
 - (d) That the Respondent’s lodger on one occasion threatened the Applicant with an axe which the Applicant, who has a heart condition, found very frightening.
3. Directions were issued on 17th March 2016 requiring, amongst other things, the parties to serve statements of case and for the matter to be determined on the papers rather than by an oral hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal (Property Chamber) Rules 2013 if neither party objected within 28 days. Neither party did object.
4. The Applicant complied with the directions. The Respondent did not respond to the application in any way.

The relevant lease terms

5. By clauses 1(a) and 2(a) of the lease the Lessee covenants to pay ground rent of £10 per annum throughout the term.
6. By clause 3 and paragraph (d) to the Third Schedule to the lease, the lessee covenants that “no act shall be done in the demised premises to the damage or annoyance of the Lessor or occupiers of Mill House”
7. There is a similar provision in paragraph (i) of the Third Schedule. This provides that the Lessee shall not “cause any nuisance damage or annoyance to the owners or occupiers of Mill House or their servants visitors or tenants.”
8. By paragraph (e) of the Third Schedule there is a restriction on the Lessee which states that “No laundry or washing shall be hung out of the windows of the demised premises.”

The Applicant’s case

9. In support of her application the Applicant has provided photographs of the Respondent’s flat as viewed from the outside. These purport to show

dirty interior walls and clothes hanging up by patio doors, clearly visible from outside. There has also been produced by the Applicant a copy of a letter to the Respondent from her dated 20th January 2015 complaining of the Respondent hanging clothes "from the patio windows/doors. This is of grave concern to me as it has a detrimental reflection on the building as a whole, and I consider devaluation on the marketability of my property." This letter also is said to enclose a demand for payment of rent and refers to two years' arrears of rent. However, no copy rent demands were furnished by the applicant.

10. No further details of the incident with the axe were given by the Applicant.

The Tribunal's determination

Arrears of rent.

11. Section 168 of the Act states that no notice under section 146(1) of the Law of property Act 1925 may be served (a prerequisite for forfeiture of the lease) unless a determination that a breach of covenant or condition in the lease has occurred. However, a section 146 notice has never been required as a prerequisite to forfeiture for non-payment of ground rent. The Tribunal considers therefore that section 168 of the Act has no application to the non-payment of ground rent. In any event the Applicant has furnished no copies of any demand for ground rent and so the Tribunal has no knowledge of whether the demand has been properly made. Accordingly, the Tribunal makes no determination with regard to the alleged breach of covenant to pay ground rent.

Hanging of clothes

12. There is evidence in the form of photographs and the letter complaining of such behaviour that this has occurred. It is not a breach of paragraph (e) of the Third Schedule as there is no evidence that the clothes have been hung outside the patio door/window as opposed to being hung inside the window/door. It evidently constitutes a nuisance to the Applicant as she complained to the Respondent about such behaviour and said it was of "grave concern" to her. The Tribunal construes the word "nuisance" in paragraph (i) of the Third Schedule to have a similar meaning as "annoyance" which occurs in both paragraphs (i) and (d) of that Schedule. It is unclear as to why there should be two almost identical restrictions in this lease. It should be pointed out that the Applicant does occupy the maisonette which comprises the remainder of the building apart from the Respondent's lease. She is therefore directly affected by the Respondent's actions. Whilst to some this may be a trivial breach of the lease it is, nevertheless in the Tribunal's opinion a breach of paragraphs (d) and (i) of the Third Paragraph as it has evidently been an annoyance to the Applicant which she has complained about to the Respondent but the behaviour has persisted.

The state of the flat

13. By “the state of the flat” the Applicant is referring to the dirty interior walls which she shows in the photographs. Somewhat unusually there is no covenant by the Lessee in this lease to keep the interior of the flat in good condition and to decorate every so often. There is only a covenant to yield the property up at the end of the term “painted repaired upheld cleansed maintained drained...” Accordingly, the Respondent is not in breach of any such express covenant with regard to the “dirty walls” of the interior of the premises. However, the state of the premises is evidently an annoyance to the Applicant and so, for the same reasons as for the hanging of washing, the Tribunal finds that there has been a breach of the paragraphs (d) and (i) of the Third Schedule to the lease in respect of the state of the premises.

The threat with an axe incident

14. This was apparently carried out by someone other than the Respondent. It happened on one occasion and there has been no repeat. This person has not re-appeared. The Tribunal does not know whether this occurred in the premises, outside them or elsewhere. In view of the lack of detailed evidence about this incident the Tribunal is unable to find that there has been a breach of the lease by the Respondent in this respect.

Summary

15. In conclusion the Tribunal finds that there has been a breach of the lease by the Respondent in respect of the hanging of clothes in the patio window/door and the dirty state of the interior walls which are visible from outside the flat, both of which have caused an annoyance to the Applicant, but not in any other respect.

Dated the 20th July 2016

Judge D. Agnew

Appeals

1. A person seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal.
2. An application must be in writing and must be sent or delivered to the Tribunal so that it is received within 28 days of the date that the Tribunal sends these reasons for the decision to the person seeking permission to appeal.
3. The application must –
 - (a) identify the decision of the Tribunal to which it relates
 - (b) state the grounds of appeal; and
 - (c) state the result the party making the application is seeking.
4. If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required in paragraph 2 above or any extension of time granted by the Tribunal –
 - (a) The application must include a request for an extension of time and the reason why the application was not received in time; and
 - (b) unless the Tribunal extends time for the application the Tribunal must not admit the application.