



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

Case Reference : **MAN/00CM/LBC/2015/0031**

Property : **1 Neville Court, Marlborough Park,
Washington, Tyne & Wear NE37 3DY**

Applicant : **Marlborough Park Services Limited**

Representative : **Town and City Management Limited**

Respondent : **Mr G Walton**

Representative : **N/A**

Type of Application : **Subsection 168(4) Commonhold
and Leasehold Reform Act 2002 –
application for an order that a
breach of covenant or condition in
the lease has occurred**

Tribunal Members : **Judge S Duffy
Judge J Holbrook**

**Date and venue of
Hearing/Determination** : **Paper determination on
22 January 2016**

Date of Decision : **22 January 2016**

ORDER

Introduction

1. This is a decision on an application made to the Tribunal by Marlborough Park Services Limited, the freeholder of the flat at 1 Neville Court, Marlborough Park, Washington, Tyne and Wear, NE37 3DY (“the subject property”), for a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that a breach of a covenant contained in the lease of the subject property has occurred.
2. The Respondent and current leaseholder of the subject property is Mr G Walton.

Background to the application

3. The subject property is described in the application as a Ground and First Floor apartment in a purpose built block of flats. On 6 January 1992 the Applicant acquired the freehold of the subject property which was subject to a lease granted on 24 November 1989, for a term of 125 years from 1 April 1986 (“the Lease”).
4. The present application relates to the condition of the garden of the subject property. The application has clearly been made as a result of several site visits to the subject property made by the Applicant’s agent Town and City Management Limited (“Town and City”).
5. In compliance with the Tribunal’s directions the Applicant has filed with the Tribunal a Statement of Case and a bundle of documents containing, copies of the Tribunal’s directions, the letters referred to above and 7 photographs showing the extent of disrepair to the garden.
6. The Applicant has included with the bundle copies of letters from Town and City to the Respondent dated 6 May 2011, 1 February 2012, 15 May 2012, 25 February 2013, 18 April 2013, 22 September 2014 and 7 April 2015. In these letters Town and City inform the Respondent that they have received complaints about the state of the garden and they have inspected the subject property and found the garden on each occasion to be in poor condition. In these letters Town and City have also at various times advised the Respondent of his obligation to keep the garden in good repair and that, unless the garden is put back into repair, they will peruse legal action on the basis that the disrepair amounts to a breach of covenant.
7. The Respondent has not responded to any of the letters from Town and City.
8. The Respondent has not complied with Tribunal’s directions and sent the bundle as required.

The repairing covenant

9. The Applicant, in its statement, claims that the breach is pursuant to First Schedule Article 3(1)M(i) of the Lease, but this appears to be a typo as the relevant clause is 3(1)(m)(i) (not the First Schedule), whereby the Respondent covenants:-

“To keep the demised premises and all walls party walls sewers drains pipes cables and wires and appurtenances thereto belonging (other than the parts thereof comprised and referred to in clause 5 hereof) in good and tenantable repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter and protect the parts of the property other than the demised premises.”

In the circumstances, the Applicant now claims that the Respondent has breached this Article by allowing the garden to fall into a state of disrepair.

The Law

10. Section 168(1) of the 2002 Act provides:

“A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 ... in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.”

Subsection (2) may be satisfied by any of three alternative conditions. The relevant condition in the present case is that “it has been finally determined on an application [to the Tribunal] under subsection (4) that the breach has occurred”.

11. Accordingly, the Applicant seeks a determination under subsection section 168(4) from the Tribunal and has therefore commenced the preliminary stage to the statutory forfeiture procedure introduced by the 2002 Act.

Condition of the premises

12. It was not necessary to inspect the premises as the Applicant had provided 7 clear photographs of the garden to the subject property in evidence. Having viewed these photographs the Tribunal has concluded that the garden is unkempt, overgrown with vegetation and littered with detritus (including an old settee and what appears to be a mattress). Indeed, it was clear the garden and had not been tended for several years.

Determination

13. The burden of proving that there has been a breach of covenant lies with the Applicant.

14. In determining the application the Tribunal took account of all the relevant evidence and submissions presented by the Applicant.

15. The directions made on 29 October 2015 make provision for the Respondent to provide a bundle setting out his case. Nothing has been received from the Respondent.

16. It follows that, according to the terms of clause is 3(1)(m)(i) to the Lease, the Respondent is required to keep the demised premises (which includes the garden) in repair. The Respondent has clearly failed to do this. Due to years of neglect as the garden is in a substantial state of disrepair and undertaking a programme of repairs will represent a significant task.

17. In the absence of any contrary evidence or submissions from the Respondent, the Applicant has discharged the burden upon it and, in the circumstances, the Tribunal is compelled to determine that the Respondent has breached the covenant in clause is 3(1)(m)(i) of the Lease.

S DUFFY

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Simon Duffy
Regional Judge