



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

Case Reference : **MAN/30UH/LBC/2018/0016**

Property : **Top Floor Flat
203 Heysham Road
Morecambe
Lancashire
LA3 1DF**

Applicant : **Andrew Charnley**

Representative : **Laker Legal, Solicitors**

Respondent : **Francis Burton**

Representative : **N/A**

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

Tribunal Member : **Judge J Holbrook**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **21 November 2018**

DECISION

DECISION

Breaches of covenant in the lease of the Property (dated 30 April 1980) have occurred. In particular, the tenant's repairing and decorating covenants have been breached, as has the covenant to pay taxes and outgoings in respect of the Property.

The application for costs is refused.

REASONS

Background

1. On 7 September 2018, an application was made to the First-tier Tribunal (Property Chamber) under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition has occurred in a lease of a property known as Top Floor Flat, 203 Heysham Road, Morecambe, Lancashire LA3 1DF ("the Property"). I gather that the Property has also been referred to, erroneously, as Flat 4.
2. The lease in question ("the Lease") is dated 30 April 1980 and was made between Frank Hollings and Pauline Mary Hollings (1) and Minnie Ashmole Hill (2). It was granted for a term of 999 years and reserved an annual rent of ten pounds.
3. The application was made by Mr Andrew Charnley, the current landlord under the Lease. The Respondent is Mr Francis Burton, the registered proprietor of the Lease. I gather that Mr Burton does not reside at the Property (which has been vacant since 2016) and that the Applicant has been unable to locate him despite making considerable efforts to do so.
4. Notice of these proceedings has been served on the Respondent by post at his last known address. It is not clear whether he has in fact received that notice (or subsequent correspondence about the proceedings). Certainly, the Respondent has made no contact with Tribunal, or the Applicant, in response to the application.
5. On 2 October 2018, the Tribunal gave directions for the conduct of the proceedings. The parties were informed that this matter was considered suitable for a determination without an oral hearing unless either party gave notice that they wished a hearing to be listed. As no such notification was received, I have determined the matter on the basis of the evidence provided in the application and in written submissions (with supporting documentary evidence) provided by the Applicant in response to directions.
6. I did not inspect the Property.

Law

7. A prerequisite for the forfeiture of a lease (otherwise than for a breach of a covenant to pay rent) is the service of a notice under section 146(1) of the Law of Property Act 1925. However, section 168(1) of the Commonhold and Leasehold Reform Act 2002 provides that a landlord under a long lease of a dwelling may not serve such a notice unless section 168(2) of the 2002 Act is satisfied.
8. One of the ways in which section 168(2) may be satisfied is for it to be finally determined by the Tribunal (upon an application by the landlord under section 168(4)) that a breach of a covenant or condition in the lease has occurred.

The relevant covenants in the Lease

9. The Lease contains a range of tenant's covenants, including covenants to pay outgoings in respect of the Property (clause 2(2)); to notify the landlord of dealings with the Property (clause 2(5)); to put, keep and maintain the Property in good and substantial repair, including its structure and decorative condition (clause 3(1)); to paint the exterior (clause 3(2)); and to insure the Property (clause 3(4)). There is also a covenant to contribute one quarter of the costs to the landlord of maintaining and decorating the common parts.

Grounds for the application

10. The Applicant acquired the freehold of the building in 2014. It contains four flats, of which the Property forms one. The Applicant also owns the leasehold interest in relation to one of the other flats.
11. The Respondent appears to have acquired his interest in the Property in 1992. However, he has paid no ground rent or service charges to the Applicant. Indeed, when the Applicant investigated the ownership of the Property at the end of 2016, he discovered that it was vacant. Whilst the Respondent remained as registered proprietor, the Property had, until recently, been occupied by a third party – presumably, a sub-tenant of the Respondent. The Property had been empty since the death of that person in September 2016, and it had started to pose a nuisance because of a leak affecting the flat below.
12. The Applicant gained entry to the Property and found it to be in a poor state of repair and decoration. Photographic evidence has been produced for the purpose of these proceedings which appears to indicate that this was indeed the case. The Applicant has also received demands for payment of council tax and electricity charges in respect of the Property, addressed to him personally, apparently on the understanding that he is liable for the same. He submits that these matters evidence breaches of the tenant's covenants referred to at paragraph 9 above.

Conclusion

13. The evidence as to the basis on which the Property was formerly occupied by the third party is inconclusive and I do not consider that the Appellant has established that there has been a breach of clause 2(5) of the Lease. Nor has it been shown that the insuring covenant has been breached (although I accept this might be the case).
14. There is, however, clear evidence that the covenants to repair and decorate, and to pay taxes and outgoings in relation to the Property, have been breached. The Appellant is entitled to a determination to that effect.
15. I note that the Applicant says that he seeks a determination from the Tribunal that he may exercise his right of forfeiture and re-entry and/or an order that a notice under section 146 of the Law of Property Act can be served on the Respondent at his last known address. However, it is important to note that these are not matters which it is appropriate for the Tribunal to determine as they fall exclusively within the jurisdiction of the County Court. The Tribunal's jurisdiction in the present proceedings is limited to determining whether, as a question of fact, there has been a breach of the Lease.

Costs

16. I also note that the Applicant seeks an order for costs, although he does not make clear the grounds on which he thinks a costs order against the Respondent should be made. The Tribunal's powers to make orders for costs are governed by rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The general principle (set out in rule 13(1)(b)) is that the Tribunal may only make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings before the Tribunal. In the present case, it is difficult to see how the Respondent can be said to have acted unreasonably given that it has not been possible to locate him. I therefore conclude that the Tribunal has no power to make an order for costs and I refuse the application for such an order.