



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

Case Reference : CHI/45UB/LBC/2019/0023

Property : Flat 13a Tudor Mansions, Riverside Road,
Shoreham by Sea, BN43 5RB

Applicant : 11-13 Tudor Mansions (Freehold)
Management Company Limited

Representative : Dean Wilson LLP

Respondent : Richard James Shapley

Representative : N/a

Type of Application : Determination of an alleged breach of
covenant

Tribunal Member(s) : Judge J A Talbot

Date of Directions : 16 July 2019

Date of Decision : 24 October 2019

DETERMINATION

Determination

The Tribunal determines pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant of the lease has occurred, namely, that the Respondent has refused to give access to the rear garden of Flat 13a on reasonable notice for the purpose of erecting scaffolding and carrying out repairs, in breach of Clause 2(10) and 2(11) of the lease.

The Application

1. An application on behalf of the landlord, 11-13 Tudor Mansions (Freehold) Company Limited, was made by solicitors Dean Wilson LLP on 6 June 2019 for a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act) that a breach of covenant contained in the Respondent’s lease has occurred.
2. Directions were issued by the Tribunal on 16 July 2019. The Applicant complied with the Directions. Dean Wilson provided a statement of case, a witness statement from Jessica Jane Fletcher of managing agents Priors, and documents in support. The Respondent, Mr Shapley, has not complied with the Directions or responded in any way to the Application.
3. Neither party requested an oral hearing so the Tribunal considered the matter on the papers. An inspection is not necessary.

The lease

4. The Tribunal had a copy of the lease of Flat 13a Tudor Mansions (“the Flat”). It is dated 26 November 1985 and is between (1) Peggy Alberta Florence Berryman and (2) Jeffrey Leslie Cox and Mary Jean Haskins, as varied by a Deed of Variation dated 1 November 2010 between (1) Oakcastle Limited and (2) Samantha Marie Seager and Nicholas Durant for a term of 99 years from 26 November 1986.
5. Insofar as is relevant to this application, the lease provides for the tenant’s covenants as follows:

Clause 2(10): The Lessee will permit the Lessor and the Lessees or occupiers for the time being of the other flats in the said property and any person or persons authorised by them respectively at reasonable times upon giving forty-eight hours prior notice except in the case of an emergency to enter upon any part of the demised premises for the purpose of making altering repairing cleansing or maintaining any sewers gutters drains water pipes electric wires or gas pipes in

connection with or for the accommodation of such other flats in the said property or the remaining parts thereof ...

Clause 2(11): The Lessee will permit the Lessor and the lessees or occupiers of the other flats in the said property and their respective agents or workmen at any time or times during the said term at reasonable times in the day-time upon giving 48 hours prior notice except in the case of an emergency to enter upon the demised premises for the purpose of cleansing or executing repairs or alterations or maintenance to the other flats in the said property or the remaining parts thereof ...

The Law

6. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows:-

No forfeiture before determination of breach

(1) 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.

(2) This subsection is satisfied if -

- (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
- (b) the tenant has admitted the breach, or
- (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that a breach as occurred.

Background facts

7. Flat 13a is a ground floor flat at the property 11-13 Tudor Mansions, which is a two-storey building containing four flats. The Respondent, Mr R J Shapley, is the lessee of Flat 13a. The rear garden of the property is included in the demise to Flat 13a. Flat 13b is directly above.
8. Dean Wilson LLP, solicitors for the Applicant landlord, submitted that Mr Shapley, failed on three occasions to allow access to the rear garden of his flat by contractors and agents appointed by the Applicant and the lessees of Flat 13b, to allow scaffolding to be erected at the rear of the property to enable certain works to be carried out.
9. The works are required for the lessees of flat 13b to conclude the installation of a new bathroom by connecting to the existing soil pipe serving the building, and to replace some windows. These works have been planned with the managing agents to coincide with necessary maintenance works to the waste pipe and guttering above it, with the

aim of minimising disruption to Mr Shapley and to ensure efficiency for the Applicant, which is a tenant-owned management company.

10. Dean Wilson provided copy correspondence to support the Applicant's case that letters had been sent to Mr Shapley addressed to Flat 13a on 25 January 2019 by the managing agents Priors, and on 19 March and 16 May 2019 by Dean Wilson, requesting access on 7 February, 29 April and 20 May respectively. Mr Shapley was informed in the last letter that the scaffolding would be removed by 28 May.
11. On each occasion Mr Shapley has failed or refused to give access. On 20 May at 9am the scaffolders contractors, AGR Scaffolding Ltd, attended on site, but were denied access. Dean Wilson submitted that therefore he was in breach of Clause 2(10) and 2(11) of the lease, which requires him to permit access for these purposes.
12. Mr Shapley has given no reason either to Dean Wilson or to the Tribunal, as to why he refused to give access. The only evidence from him is an email to Dean Wilson dated 22 March (quoting their reference from their letter of 20 March which he must have received) stating that he had not received "proof of the agreement between them [the property agent] and the freeholder, failing to do so is a criminal offence".
13. Dean Wilson replied to Mr Shapley by email of 25 March that they were "confused" by the email, which did not address their letter of 19 March, nor had he confirmed that access would be provided on the requested dates. They pointed out that the Applicant was not obliged to disclose the terms on which Priors were instructed and this had no bearing on his obligations under the lease to allow access.

Consideration

14. The Tribunal carefully considered all the written evidence and submissions. The Tribunal was satisfied on the balance of probabilities that a breach of the lease had occurred. This is because the Tribunal accepted the evidence and submissions made by Dean Wilson on behalf of the Applicant.
15. The terms of Clause 2(10) and 2(11) are quite clear. The lessee is obliged under the covenant to allow access, on at least 48 hours' notice, to either the landlord or the other lessees, for the purpose of carrying out repairs, cleansing or maintenance to the property or the other flats. These works include works to pipes and guttering, as in this case. There is no provision for the lessee to refuse access.
16. It is equally clear that Mr Shapley was given reasonable notice (more than 48 hours in fact) in writing by both Priors and Dean Wilson on three occasions, and each time failed or refused to give access, even when the scaffolders arrived at the appointed time on 20 May. He has not given any explanation for this. It appears that he may have some

disagreement with the Applicant over the appointment of the managing agents, but Dean Wilson are correct to say that this does not affect his obligations under the terms of the lease.

17. Tribunal is therefore satisfied that a breach of Clause 2(10) and 2(11) has occurred. The Tribunal accordingly makes the determination as set out above at the start of this Decision.

Judge J A Talbot

Dated 24 October 2019

Rights of Appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the regional office which has been dealing with the case.
 2. The application must arrive at the Tribunal office within 28 days after the Tribunal sends to the person making the application the written reasons for the decision.
 3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
 4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the person making the application is seeking.
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