



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

Case Reference : **LON/00AK/LBC/2019/0009**

Property : **34A Selborne Road,
London N14 7DH**

Applicant : **Lynne Charlotte Roche**

Respondent : **Andrew Mark Yates**

Type of Application : **Breach of covenant**

Tribunal : **Judge Nicol
Mr MC Taylor FRICS**

Date of Decision : **16th April 2019**

DECISION

The Tribunal determines that the Respondent has breached clauses 4(5), 4(6)(i), 4(6)(ii) of his lease and paragraphs 3 and 6 of the First Schedule.

The Tribunal's reasons

1. The Applicant is the Respondent's landlord at the subject property. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent has breached the following clauses of his lease:-

4. THE Lessee hereby covenants with the Lessor as follows:-

- (1) To pay the reserved rent on the days and in the manner aforesaid
- (5) From time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain amend and keep the demised premises (as hereinbefore defined) including the roof and all new buildings which may at any time

during the said term be erected on the demised premises or any part thereof and all additions thereto and all fixtures therein and appurtenances thereof with all necessary reparations cleansing and amendments whatsoever

(6) Without prejudice to the generality of the foregoing covenant:

(i) Once in every third year of the said term to paint all the exterior of the maisonette and all additions thereto and replacements thereof usual or proper to be painted with two coats of good oil and white lead paint or other suitable paint of equal quality in a proper and workmanlike manner

(ii) Once in every seventh year of the said term to paint all the interior of the maisonette and all additions thereto and replacements thereof usual or proper to be painted with two coats of good oil and white lead paint or other suitable paint of equal quality in a proper and workmanlike manner and also at such times as last aforesaid to grain varnish whitewash colour and paper all such parts of the interior of the maisonette as are usually or properly to be so treated

THE FIRST SCHEDULE above referred to

(Restrictions and Stipulations)

1. Not to use the maisonette or permit or suffer the same to be used for any purpose whatsoever other than as a private residence
 3. Not to do or permit or suffer to be done upon the demised premises or in or upon any part of the building or the land anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Lessor or his successors in title the owners or occupiers for the time being of the remaining maisonette in the building
 6. Not to keep any animal in the maisonette nor to permit any singing or instrumental music therein or permit or suffer to be used a wireless set gramophone or other musical or talking machine or instrument or loud speaker so as to be audible in any adjoining flats if the occupiers or occupier thereof objects thereto
2. It is important to note that the Tribunal's role under the Act is to determine simply whether there have been breaches of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture is irrelevant at this stage.
 3. The subject property is a maisonette on the first and second floors of a three-storey converted semi-detached house. The Applicant, as well as

being the freeholder of the house is the lessee and occupant of the ground floor flat.

4. The problem in this case is that the Respondent has gone missing. He used to live in his flat but he apparently became unemployed and sublet the property to a number of occupants. The last time the Applicant saw him was about four years ago when, at the Applicant's invitation, he attended at the property and agreed to pay half the cost of a treatment for mice infestation.
5. The occupants of the subject property have changed. There have been up to 8 at any one time, although there are only two at the moment. The Tribunal inspected the property on the morning of 16th April 2019 and met the two current occupants, Ms Collette Creary-Myers and Mr Michael Sai. They claimed not to have seen the Respondent recently and to have stopped paying any rent due to his lack of responsiveness over complaints of disrepair.
6. The Applicant has the Respondent's email address and mobile telephone number. She is convinced they are still active because it is apparent he is active on the communication app, WhatsApp, and emails are not bounced back. He also appears to be connected to an active blog about Arsenal football club. However, no amount of emails or texts have produced any response.
7. The Applicant has been in contact with the Respondent's mortgagee and they are fully aware of the Applicant's allegations and these proceedings.
8. Both the London Borough of Enfield and the Tribunal have written to the Respondent at the subject property without any response. In particular, following an inspection on 10th October 2018, Enfield wrote to the Respondent on 14th January 2019 setting out a series of problems with the subject property, including a complete lack of any fire safety measures.
9. The Respondent has not taken any part in these proceedings and did not attend the hearing on the afternoon of 16th April 2019. However, the Tribunal is satisfied that he has chosen to remove himself from the opportunity for any such involvement and it is appropriate to proceed in his absence.
10. The Applicant alleges breaches of each of the above quoted clauses of the Respondent's lease:
 - 4(1) The Applicant provided ample evidence that the Respondent has failed to pay the ground rent. However, the Act is concerned with steps to be taken prior to the service of a notice under section 146 of the Law of Property Act 1925 which requires such a notice to give a lessee the

opportunity of remedying any breaches of covenant. Under subsection (11), section 146 does not affect the law relating to forfeiture or relief in case of non-payment of rent.

- 4(5) On inspection, the Tribunal observed a number of items of disrepair, including evidence of penetrating damp into the rear rooms, the poor condition of the rear roof and the poor condition of the windows, both inside and out. According to the Applicant, the Respondent has not lived at the property for 8 years and she has not seen any decorator or other contractor attending for any purpose. Therefore, the Tribunal is satisfied that the Respondent is in breach of clause 4(5) of his lease.
 - 4(6)(i) It is clear from the most cursory inspection of the exterior window frames that there has been no attempt to decorate the exterior for considerably longer than 3 years. Therefore, the Tribunal is satisfied that the Respondent has breached clause 4(6)(i).
 - 4(6)(ii) It was clear on the Tribunal's inspection that there had been no decoration to the interior of the subject property in recent years. Together with the Applicant's evidence of the lack of activity, the Tribunal is satisfied that the Respondent has breached clause 4(6)(ii).
 - Paragraph 1 of the First Schedule The evidence is that the subject property has been used as a private residence at all times, albeit overcrowded for some of the time. There is no prohibition in the lease on subletting or using the property as a house in multiple occupation. Therefore, the Tribunal is not satisfied that the Respondent has breached paragraph 1 of the First Schedule.
 - Paragraphs 3 and 6 of the First Schedule With as many as 8 occupants at one time, it is perhaps inevitable that there would be some degree of nuisance. There is apparently a lack of adequate sound insulation and the Applicant was particularly bothered by loud noise from music and computer games, including in the small hours. She found the common front entrance door open on one occasion and, with the constantly changing roster of occupants, has understandably felt unsafe. She was met with accusations of harassment when she tried to address the nuisance. It is the Respondent's fault for neglecting his responsibilities as lessee and landlord. The Tribunal is satisfied that he has breached paragraphs 3 and 6 of the First Schedule, albeit that those breaches are historic. The Applicant says the nuisance has abated since the occupancy has reduced to only two people.
11. In the circumstances, the Tribunal is satisfied that the Respondent has breached clauses 4(5), 4(6)(i), 4(6)(ii) and paragraphs 3 and 6 of the First Schedule to his lease.

Name: NK Nicol

Date: 16th April 2019