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HM COURTS & TRIBUNALS SEVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (Breach of Covenant)

Case No.	**CHI/29UN/LBC/2012/0019**
Property:	**Flat 9** **2-8 Athelstan Road** **Margate** **Kent** **CT9 2BF**
Between:	
	Ms S. Tamiz ("the Applicant")
	and
	Mr. G. Martin ("the Respondent")
Date of Hearing:	**22nd October 2012**
Members of the Tribunal:	**Mr. R. Norman** **Mr. R. Athow FRICS MIRPM** **Mr. T.J. Wakelin**
Date Decision Issued:	**2nd November 2012**

FLAT 9, 2-8 ATHELSTAN ROAD, MARGATE, KENT CT9 2BF

Decision

1. The Tribunal found that there had been a breach of the covenant contained in Paragraph 9 of Part I of the Fifth Schedule to the lease in that Mr. G. Martin ("the Respondent") had not permitted the duly authorised agent of Ms S. Tamiz ("the Applicant") to enter into and upon Flat 9 (described in the lease as Flat 21), 2-8 Athelstan Road, Margate, Kent CT9 2BF ("the subject property").

2. No order is made as to costs.

Background

3. The Applicant is the lessor of the subject property and has made an application under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition in the lease has occurred so that Section 168 (2) of that Act can be satisfied and the Applicant may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease. The Respondent is the lessee of Flat 9.

4. With the application dated 9th July 2012 the Applicant supplied:
(a) A copy of the lease of Flat 21, 2-8 Athelstan Road, Cliftonville, Margate.
(b) A document headed "Applicant's Statement of Case" made by Ms Francis a trainee solicitor with Judge and Priestley LLP, the Applicant's solicitors. In that document it was stated that in the lease Flat 9 was referred to as Flat 21.
(c) A copy of a letter dated 25th May 2012 from the Applicant's Solicitors to the Respondent.
(d) Copies of two emails dated 25th May 2012.

5. In the Applicant's Statement of Case the following breach was alleged:

Paragraph 9 of Part I of the Fifth Schedule to the lease provides:

"To permit the Lessor the Lessor's Managing Agents and their duly authorised Surveyors or Agents with or without workmen at all reasonable times by appointment (but at any time in case of emergency) to enter into and upon the Flat or any part thereof for the purposes of rectifying any lack of repair causing or likely to cause loss or damage to any other flat or part thereof in the Building or viewing and examining the state of repair thereof or of the Flat"

The nature of the breach was said to be that the Applicant's solicitors had written to the Respondent on 24th May 2012 (the letter was in fact dated 25th May 2012) requesting access to the subject property at 4:30 pm on Wednesday 6th June 2012. The letter contained a request that the Respondent contact the writer of the letter to confirm whether or not he would be able to arrange access on that date or to put forward alternative dates within 7 days from the date of the letter. The letter was also sent by email and a copy of delivery notification was produced.

6. Directions were issued on 16th July 2012 which included the following:

(a) A requirement that the Applicant by the 15th August 2012 send four copies to the Tribunal and one copy to the Respondent of any further written statement of case in addition to her Trial Bundle already received with the Application. Also that if necessary she should also send with her statement copies of any additional documents on which she relied in support of her case.

(b) A requirement that if the Respondent wished to contest this application he must by the 12th September 2012 send to the Tribunal four copies of a written statement setting out his grounds for doing so and that by the same date he must also send a copy of that statement to the Applicant.

7. In response to the Directions the Tribunal received a letter dated 13th August 2012 from the Applicant's solicitors enclosing four copies of a witness statement made by Mr. Pedram Tamiz, the Applicant's son, in support of the application. In the letter it was confirmed that a copy of the statement had been "...served on the Respondent by email and the address noted in the application." Also enclosed with the letter dated 13th August 2012 was a copy of an email dated 9th July 2012 from the Applicant's solicitors to gareth@newspaceuk.com together with an email reply of the same date from Gareth Martin [gareth@newspaceuk.com] stating the following:

"Because I dont have the money, time or inclination to argue with you or your client over this crappy flat any longer – I'm letting the lender repossess it. Give your client the good news. She and Pedram can give each other a big pat on the back for a job well done."

8. The Tribunal received from the Applicant's solicitors a letter dated 16th August 2012 enclosing four copies of a paginated bundle. The bundle contained nothing which had not already been sent to the Tribunal and the Respondent but was produced to assist. In the letter it was stated that the Applicant had been made aware that the subject property was due to be repossessed by the Respondent's mortgagee on the 18th October 2012 and that the Applicant's solicitors had written to the mortgagee's solicitors notifying them of the hearing.

9. The Tribunal has received nothing from the Respondent in respect of this application.

Inspection

10. On 22nd October 2012 the Tribunal in the presence of the Applicant and Mr. Tamiz inspected the building of which the subject property forms part. There was no appearance by the Respondent or by anybody on his behalf. Mr. Tamiz had a key and opened the door of the subject property. He and the Applicant went inside but the Tribunal remained on the landing.

11. The subject property is approached by steps from the street to the front door of the building. Inside is a hallway with stairs leading to flats on other floors and landings outside the doors of flats. The Flat now numbered 9 is on the second floor.

Hearing

12. The hearing was attended by the Applicant represented by Mr. Becker of counsel and Mr. Tamiz. Evidence was given by the Applicant and Mr. Tamiz and submissions

were made by Mr. Becker. That evidence and submissions together with all the documents provided on behalf of the Applicant were considered by the Tribunal. Nothing was received from the Respondent and there was no appearance by the Respondent or by anybody on his behalf.

13. Mr. Tamiz confirmed the contents of his statement and added that

(a) The Respondent had lived in the subject property at the commencement of the lease but had then let the subject property and had managed it and other flats. More recently he had employed a letting agency: Green Knights. However the subject property appeared now to be vacant.

(b) The Respondent had not provided any new address to which correspondence should be sent.

(c) He understood that the Respondent's mortgagee had taken proceedings to enter into possession of the subject property but that an attempt had been made to change the locks at the flat currently known as Flat 21, as that was the number of the subject property in the lease. However, the subject property is now known as Flat 9. As a result he was not sure of the present position as to the possession proceedings. The Applicant gave evidence as to the change of number of the subject property. Her evidence as to when the change took place was not clear.

14. Mr. Becker made an application for the Respondent to pay £500 towards the costs of the Applicant. The application was made under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the basis that the Respondent had acted vexatiously or abusively in connection with the proceedings in that there had been a lack of engagement by the Respondent and that his email dated 9th July 2012 showed contempt for the proceedings. Mr. Becker accepted that the Respondent's failure to attend the inspection or the hearing would not be enough to justify an order for costs being made against him but he submitted that the Respondent should have engaged with the process.

Reasons

15. The Tribunal noted the contents of the statements produced and the documents exhibited thereto and the evidence given at the hearing and accepted on a balance of probabilities that the Respondent had been made aware of the proceedings by letter and by email. Clearly he had received the email enclosing the application and other documents as within minutes he had replied by email stating that he was letting the lender repossess the subject property.

16. The Tribunal was satisfied on a balance of probabilities of the following:

(a) That the Applicant's solicitors had written to the Respondent a letter dated 25th May 2012 requesting access to the subject property at 4:30 pm on Wednesday 6th June 2012.

The letter contained a request that the Respondent contact the writer of the letter to confirm whether or not he would be able to arrange access on that date or to put forward alternative dates within 7 days from the date of the letter. The letter was also sent by email and a copy of delivery notification was produced.

(b) That the Respondent had not replied to that letter and had not permitted Mr. Tamiz, the duly authorised agent of the Applicant to enter into and upon the subject property and that consequently he was in breach of the covenant contained in Paragraph 9 of Part I of the Fifth Schedule to the lease.

(c) That although the Applicant's evidence was unclear as to when the subject property had been renumbered from Flat 21 to Flat 9, the parties were referring to the same physical property and there was no misunderstanding.

17. The Tribunal's power to order payment of costs is contained in paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides that a leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings (limited to £500) in certain circumstances. Those circumstances include where he has, in the opinion of the leasehold valuation tribunal, acted vexatiously or abusively in connection with the proceedings. The application for costs was made on that basis but the Tribunal found on a balance of probabilities that although the Respondent had not engaged with the proceedings, he had not acted vexatiously or abusively and consequently no order for costs would be made.

(Signed) R. Norman

R. Norman
Chairman