



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

Case Reference : **CAM/26UG/LBC/2019/0001**

Property : **24 Wyedale, London Colney, St
Albans AL2 1TG**

Applicant : **Rosmar Limited**

Representative : **Howard Kennedy LLP**

Respondent : **Ms Jean Norriss**

Representative : **Photiades Solicitors**

Type of Application : **S168(4) Commonhold and
Leasehold Reform Act 2002 –
determination whether a breach of
covenant or condition in the lease
has occurred**

Tribunal Members : **Judge John Hewitt
Regional Judge Bruce Edgington**

Date of Decision : **20 February 2019**

DECISION

The issues before the tribunal and its decisions

1. The single issue before the tribunal was whether a breach of certain covenants in the lease has occurred.
2. In the event it was not disputed that those breaches of covenant had occurred.
3. The decision of the tribunal is that breaches of covenants set out in clauses 2(3), 3(1) and 3(2) (paragraph 2 of the Second Schedule) have occurred.
(The full text of those covenants is set out in the Schedule to this decision.)
4. The reasons for this decision are set out below.

General Background

5. The Property is a ground floor flat in a purpose-built block of 36 flats. The subject lease is dated 19 September 1980. It was granted by Esherfield Properties Limited to Richard David Norriss and the respondent Jean Norriss (Ms Norriss) for a term of 99 years from 29 September 1979. On 29 June 1983 Ms Norriss was registered at HM Land Registry as sole proprietor of the lease.
6. Material covenants on the part of the lessee are set out in the Schedule to this decision, but can be conveniently summarised as follows:
 - Clause 2(3) to carry out internal redecorations;
 - Clause 2(15) to permit entry to the landlord and its surveyor to inspect;
 - Clause 3(1) to keep the flat in good and tenantable repair and condition; and
 - Clause 3(2) to perform and observe the obligations and restrictions set out in the Second Schedule as regards:
 - Paragraph 2 Not to do or permit a nuisance, annoyance to the landlord, the management company or occupiers of other flats;
 - Paragraph 4 Not to throw dirt, rubbish, rags or other refuse into the sinks, baths or lavatories in the flat; and
 - Paragraph 14 To clean the interior of the windows of the flat at least once a month.
7. On 21 January 2010 the applicant was registered at HM Land Registry as the proprietor of the freehold interest and is the landlord.
8. In 2017 the applicant made an application to the tribunal pursuant to s168(4) of the Act in which it sought a determination that breaches of certain covenants in the lease had occurred. Case Reference CAM/26UG/LBC/2017/0003 was allocated to the application. A hearing chaired by Judge John Hewitt was held on 1 August 2017. Most of the breaches alleged to have occurred were admitted by Ms Norriss. The decision is dated 7 August 2017. That decision records that breaches of the covenants set out in paragraph 6 above had occurred.

9. Subsequent to the August 2017 determination the applicant served on Ms Norriss a notice pursuant to s146 Law of Property Act 1925 and on 7 December 2017 commenced court proceedings against Ms Norriss – Claim Number D01WD692. The applicant sought to forfeit the lease and recover possession of the flat.
10. A defence and counterclaim was filed. Ms Norriss sought relief from forfeiture.
11. The court proceedings were compromised in the form of a Tomlin order. It was made 24 September (and drawn 5 October) 2018. The order records that Ms Norriss is granted relief from forfeiture and that the claimant discontinued the claim. It also records an agreed position on costs. The Schedule to the order records a number of matters including an obligation on the part of Ms Norriss to engage contractors to clear accumulated possessions stored in the property and to address other matters specified in the s146 notice.
12. The applicant takes the view that whilst some clearance and cleaning up has been carried out it is insufficient. Given that the court proceedings were finally concluded (as opposed to stayed on terms) the applicant takes the view it needs to start the formal process again.
13. Thus, the present application was filed with the tribunal on 23 January 2019. The applicant sought a determination that since the August 2017 hearing breaches of covenants 2(3), 2(15), 3(1) and 3(2) - as regards paragraphs 2 and 14 of the Second Schedule had occurred. The applicant considered that the breaches had been admitted in the court proceedings and it stated in the application form that it would be content with a paper determination.
14. The tribunal sent to Ms Norriss a letter dated 31 January 2019 seeking information about her position with regard to the application so that appropriate directions might be given. By a letter dated 14 February 2019 Photiades Solicitors – who had acted for Ms Norriss in the court proceedings replied. The gist of that letter was that it was admitted some breaches of covenant had occurred since the August 2017 hearing but it was denied that breaches of clause 2(15) and 3(2) – paragraph 14 were continuing. A copy of that letter was sent to the applicant’s solicitors – Howard Kennedy. The applicant was invited to withdraw the complaint about those two breaches, in which case Ms Norriss’ solicitors said that [we] “... *ask that the matter can proceed by consent with our client admitting the continuing breaches of clause 2(3), clause 3(1) and clause 3(2) – paragraph 2 only.*”

That letter also made clear Ms Norriss’ wish to remedy the breaches as soon as possible and outlined the medical and practical help Ms Norriss was receiving to that end.

15. By letter dated 15 February 2019 Howard Kennedy informed the tribunal that the applicant was prepared to withdraw the allegations of

breaches in relation to clause 2(15) and clause 3(2) – paragraph 14. The letter went on to request the tribunal to determine the application on the papers.

16. In the circumstances set out above and with the consent of both parties we determine that since the August 2017 hearing breaches of covenants set out in clauses 2(3), 3(1) and 3(2) (paragraph 2 of the Second Schedule) have occurred.

Dated 20 February 2019
Judge John Hewitt

The Schedule **Material provision of the lease**

2(3) Once in every seven years of the term and also during the last three months or at the sooner determination thereof paint all the inside wood and iron work usually painted of the Flat with two coats of good paint in a proper and workmanlike manner and afterwards varnish the parts usually varnished and also whitewash and paint or paper all ceilings and walls as the same are now whitened painted or papered.

(15) Permit the Lessor and the Company and their respective Surveyors and Agents with or without workmen at all reasonable times upon reasonable notice during the said term to enter upon and examine the condition of the Flat and thereupon the Lessor or the Company may serve upon the Lessee notice in writing specifying any repairs necessary to be done and for which the Lessee is directly responsible under the covenants hereinbefore contained and requiring the Lessee forthwith to execute the same and if the Lessee shall not within two months after the service of such notice commence and proceed diligently with the execution of such repairs then to permit the Lessor and the Company and their respective Agents to enter upon the Flat and execute such repairs and the costs thereof shall be a debt immediately due from the Lessee to the Lessor or the Company as the case may be and shall be forthwith recoverable by action

3(1) Keep the Flat and all walls party walls sewers drains pipes cables wires timbers floors and ceilings and appurtenances in good and substantial and tenantable repair and condition and in particular to afford all necessary support shelter and protection to the parts of the Block other than the Flat ...

(2) Perform and observe all and singular the obligations and restrictions set out in the Second Schedule hereto

The Second Schedule

2. Not to do or permit to be done any act or thing in or upon the Flat or any part thereof or any part of the Property which may be or

grow to be a damage nuisance or annoyance to the Lessor or the Company or any of the occupiers of other parts of the Estate or to the neighbourhood

4. Not to throw dirt, rubbish, rags or other refuse into the sinks, baths or lavatories in the flat

14. To clean the interior of the windows of the Flat at least once a month

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.