FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00ML/LBC/2018/0027
Property	**:**	48a Saxon Road, Hove, East Sussex BN3 4LF
Applicant	**:**	Mrs. Maureen Lane and Mr. Edmond Warner
Respondent	**:**	Mr. James Quinn
Type of Application	**:**	Determination of an alleged breach of covenant
Tribunal Member(s)	**:**	Mr R A Wilkey FRICS (Chairman) Mr. N. Robinson FRICS (Valuer Member)
Date of Directions	:	15 October 2018
Date of Decision		14 December 2018

DECISION AND REASONS

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 to keep and maintain the front and rear gardens included in this demise at all times in a neat and tidy condition (Clause 3(O) – first part)

The Tribunal determines that no breach of covenant has occurred in respect of the second part of (Clause 3(O)) which states "at all proper times to keep flowers shrubs or small bushes planted therein".

The Tribunal also determines that no breach of covenant has occurred in respect of item 6 of the First Schedule which states "No lessee shall in any way encumber or interfere with the access to or egress from or place or leave rubbish upon any part of the Building used in common with the other lessees of the building nor allow any motor vehicle cycle perambulator cart bath-chair invalid carriage or other vehicle refuse receptacle or thing or any goods or package belonging to such lessee or his or her servants or agents to be placed or remain upon any part of the said building used in common with the other lessees.".

Background

1. An application by Edmond Warner and Maureen Lane, was made on 6th September 2018 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. The applicants are the freeholders of the building and live in the first floor flat.

2. Directions were issued by the Tribunal on 15th October 2018. Item 5 of the Directions stated "The application is to be determined on the papers **without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013** unless a party objects in writing to the Tribunal within 28 days of the date of the directions.

3. No request was made for an oral hearing and the Tribunal made its decision based upon the inspection and the written submissions from the parties.

The lease

4. The Tribunal had a copy of the lease of the ground floor flat, 48 Saxon Road, Hove ("the Flat"). It is dated 20th January 1964 and is for a term of 999 years at a rent of £1 per annum.

5. Insofar as is relevant to this application, the lease provides for the tenant's covenants as follows:

   Clause 3(0): To keep and maintain the front and rear gardens included in this demise at all times in a neat and tidy condition and at all proper times to keep flowers shrubs or small bushes planted therein

   Item 6 of the First Schedule states: No lessee shall in any way encumber or interfere with the access to or egress from or place or leave rubbish upon any part of the Building used in common with the other lessees of the building nor allow any motor vehicle cycle perambulator cart bath-chair invalid carriage or other vehicle refuse receptacle or thing or any goods or package belonging to such lessee or his or her servants or agents to be placed or remain upon any part of the said building used in common with the other lessees.

Inspection

6. The members of the Tribunal inspected the property on the morning of Friday 14th December 2018 in the presence of Mrs. Maureen Lane and Mr. Edmond Warner (Applicants) and Mr. James Quinn (Respondent) It was a very cold day in mid-December.

7. The building is a semi-detached house which was probably built in about 1928 and is currently arranged as two self-contained flats. Each flat has its own external entrance at the front of the building.

8. In recent years, part of the front garden has been surfaced with a "brick on edge" finish to provide off road parking exclusively for the first floor flat. This parking area extends over part of the front garden demised to the ground floor flat. We are told that this work was carried out with the consent of Mr. Quinn who was present at the inspection and did not disagree. The remainder of the front garden is used exclusively by the Respondent and is the subject of this application.

9. The rear garden has been sub-divided to provide garden areas for each flat. The Applicants have a right of way to access their part of the garden. An external metal staircase leads down from the first floor flat to the concrete are at ground level which leads to the section of garden allocated to the first floor flat.

10. A shared concrete path against the side of the building connects the front and rear gardens. Part of the concrete area by the rear corner of the building is the former location of a shed and the land on which it stood is demised to the Respondent.

11. The Tribunal inspected the parts of the property which are the subject of this application and noted:
    (a) The front section of garden used exclusively by the tenant of the ground floor flat is being maintained in an indifferent but broadly adequate manner.
    (b) Items of gym equipment are lying beneath the metal staircase at the rear of the building.
    (c) The side passage leading from front to back was unobstructed.

    No inspection was made of the rear garden as both parties agreed that it was being properly maintained and was not in dispute.

Written submissions

12. The Tribunal has been provided with a bundle of documents comprising copies of correspondence and photographs. The Tribunal has read all the submissions and it is apparent that there is a history of disagreement regarding the allegations and other matters. The supplied papers make frequent reference to issues which are not part of this application and they have not been considered by the Tribunal.

Landlord's viewpoint

- A witness statement dated 18th November 2018 submitted by the applicants disputes the respondent's assertion that he has always maintained his garden. Photos…show that during the dates of 30th July 2018 and 28th October 2018 the garden was overgrown and untidy
- Due to our concern about the breach we wrote to Mr. Quinn on 29th July 2018 and again on 13 August 2018 (copies of letters enclosed) …We assert that the clause was again breached during the period 21st June 2016 and 12th July 2016. It can also be seen in the photos…that the yellow containers were in situ between 30th July 2018 and 6th September 2018 when Mr. Quinn states that the waste was regularly emptied by Mr. Gilmour.
- In relation to breach Lease covenant 6 the photograph…dated 20th October 2018 shows property belonging to Mr. Quinn still not removed from the communal area despite being asked to do so … (copies of letters enclosed)
- A letter dated 22 June 2017 from Mark Bowles (Landlord's agent) states "No visible work has been carried out to the shed, the condition of which has now deteriorated to a point where it is probably beyond practical repair, leaving demolition as the only realistic option. The freeholders are not content to allow the situation to remain unresolved for much longer, please therefore be advised that in the absence of appropriate action on your part by 7th July 2017, a contractor will be instructed to remove the structure". It goes on to say "…the lease requires the gardens to be kept in a neat and tidy

condition; if, for example, weeds are simply to be cut down rather than treated or removed, this will need to be done on a sufficiently frequent basis to ensure a presentable appearance is maintained at all times"

- A further letter dated 25th August 2017 from Mr. Bowles to Mr. Quinn states "…more than fifteen weeks have passed since you were called upon to repair your dilapidated shed but you have not done so, nor have you removed it. The sheet of board you placed over the shed last month, in addition to being incapable on its own of functioning as an effective roofing material, does nothing to address the concern that the structure appears to be relying on the freeholders' fence to prevent it from collapsing. As you have taken no effective steps to remedy the situation in the two months since you were advised a contractor would be brought in to dismantle the shed, the instruction will now be issued and you will be invoiced for the cost of disposal in due course.

Lessee's viewpoint

- Two sets of photographs are included which give an overview of the front garden at various times of various years.
- A letter dated 9th November 2018 from Mr. Quinn to the Applicants denies the allegations of breach.
- He has always maintained his garden with a variety of shrubs and flowers dependent on the season.
- The recent summer heatwave can cause damage to the most heat tolerant shrubs and flowers and this did stress a couple of my plants…
- Your photos…show my green waste after weeding the garden and digging to remove a couple of deceased rooted shrubs… In addition this year I also purchased plant feed to support the low moisture caused by the heat.
- The waste container bag…in my garden…contained the garden waste from my gardening sessions. These were regularly emptied by Ian Gilmour and returned to me to refill with my garden waste. This is confirmed by an undated letter from Ian Gilmour at appendix 1

- Photo 5 reflects some equipment that was not placed there by me. The…removal of the garden shed on 11/10/17…held in my property and had always been in the communal garden area since I moved into the property. I had received a letter from you asking for a repair of the shed which had been damaged by the weather, being a qualified carpenter, this repair was completed with new materials at my full expense prior to the…removal of the shed while I was absent from the property. I trust you will…clarify with your agent…who removed the equipment from the shed and left it in the common area so you can follow the matter up with the correct individuals. I continue to wait for a resolution from you to replace the shed.
- Mr. Quin again asserts that he has not breached covenant 6 in the First Schedule to the lease.
- The property is opposite Wish Park which is full of activity all year round… hence the general leaves and odd bits of rubbish can get blown around our street. Since the removal of your front garden wall to allow a driveway I have noticed the increase in litter from your drive resting in my garden and this is picked up by me as and when necessary. Included at appendix 2 are 5 pictures of my garden taken over the last couple of months and they show my well-attended garden.

13. In addition to the above, the bundle includes a copy of the lease and a coloured plan which shows the areas of garden that are used exclusively by the tenant of the ground floor flat. These areas include a coloured rectangle at rear where the shed formerly stood.

Consideration

14. The Commonhold and Leasehold Reform Act 2002 gives no guidance on how a Tribunal should approach the question of whether a breach of the lease has occurred in these circumstances and we have no jurisdiction under this application to deal with allied implications such

as any subsequent application for forfeiture under s.146 of Law of Property Act 1925.

15. The Tribunal takes the wording of the provisions in the relevant sections of the lease as having their natural meaning. With this in mind, the requirement to " keep and maintain the front and rear gardens included in this demise at all times in a neat and tidy condition" is onerous on a strict interpretation.

16. The English Oxford Living Dictionary defines "neat" as "Arranged in a tidy way; in good order" and "Having a pleasing appearance; well formed"

17. The Tribunal determines that it has no option but to find that there has been a breach of this part of the covenant. Although the decision may be considered subjective, it would not be correct to state that the garden is in a neat and tidy condition.

18. Notwithstanding the above finding, the Tribunal carefully considered the matter and the further observations are relevant to this aspect:

    (a) The Tribunal Members examined the front gardens of several similar houses nearby and the condition of the subject garden is not significantly worse
    (b) We would have hoped that a degree of common sense would prevail but we feel we have no choice but to make the determination we have, based on the wording of the lease, as it forms the contract between the parties.
    (c) As a generalisation, the standards required will vary depending on the type and location of the property. If this were the relevant criterion, the front garden would be in acceptable condition and no breach would have occurred.

19. We take a different view with regard to the second part of this provision which requires the tenant "at all proper times to keep flowers shrubs or small bushes planted therein"

20. It is clear from the supplied correspondence that the tenant has purchased shrubs and carried out work to maintain them as required. In this connection, we draw attention to the undated letter from Ian Gilmour under appendix 1

21. In coming to our decision, we were influenced by the words in the lease which stated "at all proper times". The inspection was in mid-December on a cold day. This would seem to be covered by these words in the sense that this is an example of the time of year when it might not be appropriate to keep the garden stocked.

22. With regard to the alleged breach of Item 6 of the First Schedule, the circumstances are that the items which are alleged to be causing an obstruction were placed there by workmen acting for the Applicant and this was admitted during the inspection. It seems disingenuous at best for the Freeholder who arranged for the items to be placed in the shared passage to aver that it is the responsibility of the tenant of the ground floor flat to remove them

23. Having regard to all the above, the Tribunal makes the determinations as set out above at the start of this Decision.

Appeals

24. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

25. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

26. 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 the time limit, or not to allow the application for permission to appeal to proceed.

27. 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 party making the application is seeking.

28. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.