



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

Case Reference : **CHI/43UD/LBC/2018/0029**

Property : **33 Badger Close, Guildford, GU2 9PJ**

Applicant : **Elizabeth Mary Brunelli**

Representative : **Rawlins Day Solicitors**

Respondent : **Neville Paul Bean**

Type of Application : **s.168, 2002 Act**

Tribunal Members : **Judge D Dovar**

Date of Decision : **4th March 2019**

DECISION

Introduction

1. This is an application under s.168 of the Commonhold and Leasehold Reform Act 2002 for a determination of breach of leasehold covenant.
2. The application is dated 10th October 2018. Directions were given on 13th November 2018 at which the parties were notified that this application would be dealt with without a hearing under rule 31 of the Tribunal Procedure Rules 2013 unless either party objected. Neither party has objected and this determination has been made without a hearing; but after a site view.
3. The Respondent has played no part in the proceedings and has not complied with any of the directions. The Respondent does not live at the Property and it is not occupied. The Applicant, having originally sent the application to the Property, eventually instructed enquiry agents to locate the Respondent and then personally served him at his work in Guildford. There is a statement from a process server, dated 28th November 2018, in which he says that he handed the application, directions and related correspondence to the Respondent on 26th November 2018. He enquired as to the Respondent's residential address, but the Respondent declined to provide that, stating instead that post could be sent to the Property.

Inspection

4. The Tribunal inspected the Property which includes a lower ground floor maisonette with a garden at the rear and a garage located on an adjacent street. Mr Munns in a statement in support of the application says that it is believed that the Property has been derelict since 2015. This was more than borne out on the inspection.
5. In terms of the maisonette, although access was not provided, externally it was clear that the windows were rotten, with loose glass and substantial vegetation having taken root, such that that a small tree or vine had grown internally. Internally, plaster had been hacked away and the generally the interior, as far as could be seen from outside, was in a very poor state.

6. The garden was overgrown with debris scattered around and the garage was missing a roof. There was also a car inside the garage with a tree growing through the engine.

Lease Terms

7. By a lease dated 20th March 1970, the Respondent's predecessor in title was demised the Property for a term of 150 years from 1st January 1969. The demise is described in the First Schedule as number 33, which is the lower maisonette, the garden immediately to the rear as well as the garage which is located on an adjacent street.
8. The tenant covenanted by clause 2 to observe and perform the obligations in the Fourth Schedule and by clause 3 to observe and perform those in the Fifth Schedule.
9. The Fourth Schedule provides for the tenant:
 - a. '3. To keep the Property in good and substantial repair ...'; and
 - b. '4. To do all those works which under or by virtue of any Act of Parliament or Rule of Law are directed or are necessary to be done on or in respect of the Property ...'
10. The Fifth Schedule provides for the tenant to observe and perform the restrictions in the Seventh Schedule and not to suffer or permit any non-observation or non-performance of any of them. The Seventh Schedule in turn provides:
 - a. '1. The Property shall not be used for any purpose whatsoever other than as a private dwellinghouse and garage in one occupation only; and in particular :- '(a) the Garage shall not be used otherwise than for housing private motor cars motor cycles ordinary cycles perambulators gardening tools and equipment and similar items ...'
 - b. '2. The garden shall not be neglected but shall be kept at all times clean tidy properly cultivated and the grass neatly cut.'

11. The Applicant is the successor to the landlord under the lease and is registered as the freehold proprietor of the building containing the Property.

Breaches

12. The Application and supporting evidence contends that there are numerous breaches which arise out of the condition of the Property. As well as the absence of the roof to the garage and the derelict state of the remainder of the structure, it is said that there is a failure to decorate and keep the interior of the Property in repair, a failure to maintain the windows and a failure to maintain the exterior rain water goods and finally that the electrical circuitry needs checking and overhauling.
13. Given the evidence and following the site inspection, the Tribunal finds that the following breaches of covenant are made out:
 - a. A breach of clause 2, by reason of a breach of paragraph 3 of the Fourth Schedule in that the following were not in good and substantial repair:
 - i. The windows and frames of the maisonette;
 - ii. The internal walls; and
 - iii. The garage, both the roof, structure and door.
 - b. A breach of clause 3, by reason of a breach of paragraph 2 of the Seventh Schedule in that the garden has been neglected, is not clean and tidy and the grass is not neatly cut.
14. There was insufficient evidence before the Tribunal to substantiate the other breaches alleged; namely the failure to maintain the rainwater goods or the need to check and overhaul the electrical circuitry. Further, there was no separate obligation in the lease to decorate the interior of the Property.

Judge D Dovar

Appeals

1. 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.
2. 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.
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 party making the application is seeking.