



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

**Case Reference** : CHI/21UD/LIS/2019/0003  
CHI/21UD/LBC/2019/0001

**Property** : Basement Flat, 10 Magdalen Road,  
St Leonards-on-Sea, TN37 6EG

**Applicant** : Magdalen Road Residents Association  
Limited

**Representative** : Daniel Muckle

**Respondent** : Jeffery Perry

**Representative** : N/A

**Type of Application** : Section 168(4) of the Commonhold and Leasehold  
Reform Act 2002 and section 27 A of the Landlord and  
Tenant Act 1985

**Tribunal Members** : Judge S Lal

**Date and venue of  
Hearing** : 3 May 2019

**Date of Decision** : 3 May 2019

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**DECISION**

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**Application**

1. The matter was subject to Directions issued on 8<sup>th</sup> January 2019.
2. The Tribunal has been provided with a Bundle of 224 pages which it has read. The Bundle was prepared by the Applicant only. It contained within it the relevant lease. No written response has been received from the Respondent in accordance with the above Directions.

3. The Tribunal noted that the matter was listed for telephone CMH on 24 January 2019 following earlier Directions issued by Judge Tildesley OBE on 8 January 2019. The Respondent did not participate in the telephone CMH and in fact no communication has been received from him.

### **The Issue**

4. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable for 2016, 2017 and 2018. The Applicant alleges that the Respondent owes £4311.88.
5. The Applicant also seeks a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent is in breach of various covenants contained in the lease dated 12<sup>th</sup> May 1986 between (1) Muriel Beatrice Perkins and (2) Roger Cole which was assigned to the Respondent on 17<sup>th</sup> February 1998 (the "Lease").

### **The Case for the Applicant**

6. The Applicant is the freeholder of 10 Magdalen Road which comprises four flats. The Respondent is the leasehold owner of the basement flat. The Applicant claims that the Respondent has failed to comply with his obligations to pay service charge pursuant to clause 2(3)(a) of the Lease on the dates set out in clause 2(3)(c) of the Lease, namely 24<sup>th</sup> June and 25<sup>th</sup> December each year. The applicant claims that the amount outstanding is £4,311.88.
7. In addition, the Applicant claims that the Respondent is in breach of the following provisions of the Lease:

Clause 1 - obligation to pay the annual rent of £25 which amounts to £787.50

Clause 1 - obligation to pay the further rent which amounts to £1,590.26

Clauses 2(4) and 2(6) - repairing obligations

Clause 2(5) - local authority obligation

Clause 2(8) - notice obligation

Clauses 2(9) and 2(1) – repairing access obligation

Clause 2(16) – nuisance obligation

Clause 2(17) – insurance obligation

Clause 2 (21)(b) – pet obligation

Clause 2 (21)(e) – water obligation

Clauses 2 (23)(a)(i) and (ii) – damage obligation.

8. On 7<sup>th</sup> December 2017 and 15<sup>th</sup> June 2018, the Applicant sent a section 146 Law of Property Act 1925 Notice to the Respondent outlining the nature of the breaches referred to in paragraphs 6 and 7 above and requiring the Respondent to allow access to the property for an inspection within 7 days, carry out the repairing obligations within 30 days, either occupy or let the property within 30 days and pay all amounts outstanding within 31 days.

9. Mr Daniel Muckle, a Director of the Respondent, has provided the Tribunal with a detailed witness statement outlining the history of this case and containing supporting evidence for the alleged breaches outlined in paragraphs 6 and 7 above. Mr Muckle has explained that the property was inspected by the Applicant's surveyor in 2014 and it was reported to be in a poor condition and in need of considerable repair. He also noted that he believes the property has been unoccupied since early 2013. Furthermore, Mr Muckle has pointed out that the Respondent has failed to allow further inspections of the property and has failed to comply with numerous notices to repair, decorate and make good the defects to the property.

### **The Respondent's Case**

10. The directions issued by the Tribunal on 8<sup>th</sup> January 2019 recommended that the application would benefit from a case management hearing to determine whether the parties can settle any of their disagreements. In any event, the Respondent has not provided the Tribunal and the Applicant with any statement in writing outlining which parts of the application he agrees with and which part he disagrees with. As noted he did not take part in the telephone CMH.

### **The Tribunal's Decision**

#### **S27A of the 1985 Act**

11. In accordance with the terms of clause 2(3)(a) of the Lease, the Respondent is obliged to pay "*one quarter of the Landlord's costs of keeping the building in a good and substantial state of repair, maintenance and decoration in accordance with the Landlord's covenant contained in Clause 3(3)(a) hereof*". It is clear from the paperwork that the Respondent has not honoured his service charge obligations for a number of years. There is nothing in the paperwork to indicate that the amounts charged are in any way unreasonable.
12. The Tribunal therefore determines that the Respondent is in breach of clause 2(3)(a) of the Lease and liable to pay the outstanding amount of £4,311.88 under S27A of the 1985 Act.

#### **Breaches of Covenant**

13. As far as the other alleged breaches are concerned, the Applicant has provided extensive details of each individual breach and the notices which have been sent to the Respondent requiring him to remedy the breaches. No such remedies have been made to the state of the property and no monies in respect of annual rent or further rent, as outlined in the Lease, have been paid by the Respondent.

14. Given the fact that the Respondent has not provided a statement to refute any of the allegations, it is difficult for the Tribunal to decide other than in favour of the Applicant in respect of all of the alleged breaches.
15. Specifically, the Tribunal has had regard to the witness statement of Mr Muckle and it finds the following:
- Breach of Clause 1-Annual Rent and Further Rent. The Tribunal finds that the Respondent has never paid any such rent as described. There is no evidence that rents have ever been paid.
  - Breach of Clauses 2(4) and 2(6)- Repairing obligation. The Tribunal has seen no evidence that the Respondent has ever carried out any of the relevant obligations in respect of the repair of the premises.
  - Breach of Clause 2(5)- Failure to Contribute-There is no evidence to support a finding that the Respondent has ever contributed.
  - Breach of Clause 2(8)- Failure to Comply with Notices-The Tribunal finds that Respondent has failed to comply with the relevant notices dated 7 May 2013. 7 April 2014. 6 May 2014, 8 June 2014, 19 June 2014, 12 April 2015 and 6 March 2017.
  - Breach of Clause 2(1) and 2(9)- Repairing Access Observation-related to the above there is no evidence that the Respondent has ever allowed repairing access to the subject premises and therefore the Tribunal finds this breach proved.
  - Breaches of Clause 2(16)- Nuisance. The Tribunal finds proved that in September 2017 there was credible evidence of blocked drains as well as rubbish at the front and rear of the subject premises which lead to complaints of rats and other vermin and could quite properly be described as nuisance. The Tribunal was provided with photographic evidence of the same.
  - Breach of Clause 2(21)(b)-Keeping pets-The Tribunal finds proved that the evidence suggests as more likely than not that the Respondent kept a dog at the subject premises.
  - Breach of Clause 2(21)(e)- Water Escape-The Tribunal finds proved that water was allowed to escape from the subject premises. It found the evidence in the witness statement of Mr Muckle to be credible.
  - Breach of Clause 2(23)(a)(i) and (ii)- Damage to the Building- The Tribunal is satisfied as a consequence of its findings in relation to Clause 2(4) and 2(6) above that the Respondent has failed to repair and make good the subject premises.

16. The Tribunal therefore finds that the Respondent is in breach of the above covenants in accordance with section 168(4) of the Commonhold and Leasehold Reform Act 2002.
17. The Tribunal notes that no notice under Section 146 of the Law of Property Act 1925 may be served unless it has been determined that such breaches have occurred and therefore the Applicant will have to serve a fresh Section 146 Notice.
18. The Tribunal makes no other order.
19. 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. 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.
20. 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.
21. 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

Judge S. Lal