



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

Case Reference : **CHI/29UN/LBC/2019/0016**

Property : **Flat 7, Majestic Court, Lewis
Crescent, Margate, Kent, CT9 2LH**

Applicant : **Majestic Court Management
Company Ltd**

Respondent : **Richard and Deborah Eaton**

Type of Application : **Section 168 2002 Act**

Tribunal Members : **Judge D Dovar
Mr R Athow FRICS MIRPM**

**Date and venue of
Hearing** : **28th August 2019, Margate**

Date of Decision : **2nd September 2019**

DECISION

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Introduction

2. This an application under section 168 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') for the determination of breach of covenant said to arise from the Respondents refusal to allow the Applicant access to the property ('the Flat'), which is agreed to be necessary in order to carry out structural repairs to the building containing the Flat ('the Building').
3. The Tribunal inspected the Flat and Building on the morning of the hearing and was permitted access to the kitchen area of the Flat.
4. The Building was originally 3 adjoining five-storey houses which, it is understood, were converted into self-contained flats in the 1970's. The Building is of traditional design and construction and is thought to have been built about 125 – 150 years ago. It is situated just back from the seafront on a low cliff overlooking Walpole Bay, about 1 mile from the town centre. It has a mixture of brick and rendered & colourwashed elevations under a tiled roof. The Flat is situated on the top floor in what was originally the roof space, but it is understood to have been altered into living accommodation at the time the Building was converted into flats.
5. The Problem area within the Building is the flat roof over the kitchen area of the Flat. When inspected externally the end of an RSJ was observed, and it was in an advanced state of decay with very little of the central web remaining. From the photographs provided by the Applicant this deterioration continued into the main structure of the Building for almost the full width of the supporting wall which appeared to be at least 12"

thick. The proposal was to cut away a portion of the defective RSJ and attach a new section of similar size. The surveyor had designed a suitable replacement which would not extend into open space like its predecessor, this preventing a repetition of the current problem. To implement these works access is required to the Flat from where the works can be undertaken. External works will need to be undertaken from scaffolding.

Lease Terms

6. By a lease dated 23rd October 2007, the Flat was demised for a term of 999 years from 25th March 2004. That lease was granted on the same terms as a previous lease dated 7th April 1977 by which the Flat was demised for a term of 99 years from 25th March 1976. That lease provided the following:

a. By clause 3 and paragraph 10 of Part 1 of the Fifth Schedule, the tenant covenanted

'To permit the Lessor and The Lessor's Surveyor or Agents with or without workman and others at all reasonable times upon prior notice in writing to enter into and upon The Demised Premises or any part thereof for the purposes of repairing any part of The Property.... PROVIDED THAT The Lessor shall make good all damage to The Demised Premises and to the fixtures ... goods or effects installed therein or affixed thereto caused by the carrying out of any work ... '

- b. The Lessor by clause 4 and paragraph 1 of Part 1 of the Sixth Schedule covenanted to keep in good repair and decoration the structure of the Property including all walls, timbers, joists and beams of the floors ceilings and roof.
7. The Lease also by the First Schedule sets out a number of definitions, including:
 - a. The Demised Premises, being the Flat; and
 - b. The Property, being the building of which the Flat forms part and which will be referred to in this decision as the Building.

Background

8. The Applicant is the current registered proprietor of the freehold of the Building and the Respondents of the term of the lease of the Flat.
9. The Applicant says it needs access to the Flat in order to carry out structural repairs to the Building the Respondents accept that this is the case and want the works carried out, however, for various reasons, they have refused access to date.
10. This application was made on 23rd April 2019 and directions were given on 5th and 18th June 2019; the latter listing this matter for an oral hearing at the request of the Respondents. In accordance with those directions, the parties filed their evidence.
11. Mr Powell, director of the Applicant company in a witness statement dated 18th June 2019, set out the works that were required to the Building in

particular that a leak had occurred which upon investigation was caused by structural issues with the roof which require attention. The Applicant employed a surveyor, Mr Belcher who has investigated the issue. Mr Powell says that the Applicant requested access by notice dated 4th March 2019, but that that was refused.

12. That notice requested access on Monday 1st April 2019 for two weeks in order to facilitate structural repairs to the Building from the Flat. Reference was made to the parts of the Fifth Schedule set out above. The notice also stated that any damage would be made good and invited them to contact either the surveyor or the Applicant if they had any queries.
13. A statement, dated 24th June 2019, has also been provided by Mr Belcher who is a chartered building surveyor with 11 years post qualification experience. He states that he was instructed to investigate a leak at the Building and carried out an inspection of the high level brickwork. On doing so, he identified a defect within the roof structure of the Flat in that a RSJ beam has been weakened due to exposure to the elements and he considered that it required urgent remedial works to avoid localised collapse.
14. He was allowed access by the Respondents on 4th October 2018 when he carried out an internal investigation. He then sets out how relationships deteriorated after that with the result that the Respondents requested payment and compensation for access, which was refused until the works had been completed and so they have refused to permit access since then.

15. In response Mr Eaton has provided a witness statement in which he sets out the number of times in which he arranged for access, only for the dates to be changed at the last minute. The Flat is rented out and he says that this has caused difficulties and anxiety to his tenant.
16. He says he permitted access for the works on 10th October 2018, 17th January and finally 16th April 2019; albeit that that last consent was subject to the condition outlined above. As a result of this, the Respondents deny that they are in breach of paragraph 10 of the Part 1 of the Fifth Schedule.
17. He states that he never received the notice of 4th March as it was sent to an old email address that he no longer uses and that he had notified the Applicant of his new email address on 11th January 2018.
18. The remainder of his statement is not relevant to the issue, but does demonstrate the animosity between the parties (and/or Mr Powell) which may be in part the cause of the difficulties with access.
19. The correspondence provided to the Tribunal shows the following exchanges relating to access:
 - a. On 4th March 2019, notice was given by the Applicant to the Respondents that access would be required for two weeks from 1st April 2019. There is a query whether the Respondents received this notice;
 - b. On 22nd March, the Respondents wrote suggesting access for two weeks from 7th April subject to the receipt of responses to various

requests and payment of £300. They also raised concerns about how the process had been handled so far. The sums related to the cost of repairs to damage said to have been caused by the Applicant's workmen;

- c. On 2nd April 2019, Mr Belcher emailed Mr Eaton giving notice that access was required from 16th to 20th April 2019. The Respondents refused access for those dates, but permitted access for two weeks from 7th April;
- d. The Respondents, then on 9th April agreed access from 16th April, but subject to:
 - i. answers as to why the timeframe for the works had been shortened;
 - ii. proposals as to compensation;
 - iii. provision of contractor details and insurance;
 - iv. payment of £300 for repairs and court fees due to previous damage caused in August 2018.
- e. On 10th April 2019, Mr Belcher requested access from 15th April for up to five days and stated that he would provide all necessary information once access had been confirmed. The response on 11th April was equivocal at best, with more than a little hint of sarcasm; for example, when enquiring who the builder was to be, Mr Eaton said 'is it Bodgit & Scarper Builders' or even '*Olley's Oddjobs*';

- f. Further emails were exchanged on 11th April, but no progress was made with regard to access.
- g. On the morning of 15th April, Mr Belcher emailed stating that the builder was on stand-by and he needed confirmation that he could start the works. The Respondents reiterated the requests made above as a condition for access that day. Two further emails that morning went no further, with the final one from Mr Eaton stating

‘regretfully, under the current circumstances, I am not prepared to allow access to my property.’

Submissions

- 20. The Applicant contended that the lease allows access on reasonable notice and does not permit the tenant to stipulate any terms as a condition of providing access.
- 21. The Applicant confirmed that if there was any damage or expenses caused to the tenant then they would pay them, but only after the work had been carried out and after the expenses had been incurred. They relied on the various notices requiring access starting with the March notice and then the subsequent ones given through April, all of which were met with conditional responses.
- 22. The Respondents confirmed that they agreed that works were needed. They also confirmed that they had no issue that the timing proposed was reasonable or that they had been given prior notice. Had they been given

the information as to the name of the contractor, the insurance details and received payment of £300, then access would have been given on 15th April. They considered that in light of the various changes in dates from the Applicant going back to October 2018 and January 2019 and the damage that had already been caused, they were entitled, in a wider sense, to place these conditions on access.

23. They were not able to assist the Tribunal to identify how paragraph 10 of Part I of the Fifth Schedule accommodated access being granted conditionally.

Consideration and conclusion

24. The Tribunal considers that there has been a breach.
25. The wording of the paragraph is clear, it requires prior notice for access at a reasonable time in order to carry out repair works. None of that was in dispute. The Respondents were unable to show how it permitted them to attach any preconditions. Even if there were any doubt about that, the proviso to the paragraph provides the comfort to the tenant in that the landlord is responsible for making good any damage after access has been permitted.
26. In light of that, the Respondents attempt to place conditions on access amounted to a refusal of access and put them in breach of covenant. Whilst the Tribunal had some sympathy with the Respondents given the damage that had occurred in the past and the changing of dates, that did not, under the terms of the lease permit them to refuse access as they did.

Whatever their misgivings about providing access, they had some comfort from the proviso contained in paragraph 10 that the Lessor must make good any damage occasioned by the works; a sentiment that was reiterated before the Tribunal by the Applicant.

27. Further, the fact that unconditional access had been permitted in October 2018 and January 2019, but not taken up, does not absolve the responsibility to give access later.
28. Accordingly, the Tribunal determines that there were breaches of clause 3 and paragraph 10 of Part I of the Fifth Schedule of the Lease on both 11th and 15th April 2019. Prior notice for access at reasonable was given on 10th and then again on 15th April 2019 but refused. There may also have been a breach arising from the conditional access that was offered in response to the 4th March 2019 notice, but it is unclear whether that was ever received and whether in fact ultimately access was required for that date.

Judge Dovar

Appeals

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.

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.

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.