



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

Case Reference : CHI/00HH/LBC/2019/0013

Property : 1 Park Mews, Marina Park, Brixham,
Devon TQ5 9AY

Applicant : C A Church Ltd

Representative : Remus Management Ltd

Respondent : Mr S C Hancock

Representative :

Type of Application : Determination of an alleged breach of
covenant

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 8 August 2019

DECISION

Decisions of the Tribunal

It is determined that the Lessee, Mr S C Hancock is in breach of Clause 2(3) of the lease dated 19 November 1963. Title Number DN42253

The Application

1. The Applicant landlord seeks 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 Applicant asserts that the Lessee has allowed the property to fall into disrepair.
2. By Directions dated 23 May 2019 the Tribunal indicated that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal’s Procedural Rules 2013 unless a party objected in writing within 14 days. No objection has been received and the application is therefore determined on the papers.
3. The Directions required the Lessee to serve a statement indicating whether he admitted the alleged breach and if not his reasons for opposing the application. The Applicant was then to reply before preparing a bundle of all the relevant documents for the Tribunal to consider in making its determination.

The Lease

4. The lease is dated 19 November 1963 between M P Kent Limited and Evelyn Maude Wardley Littlewood and is for a term of 999 years. The Proprietorship Register indicates that the Lessee since 23 November 1999 has been Stephen Clive Hancock. The Lessee’s covenants relevant to this application are;
 - a. Clause 2 (3) requires the Lessee “To repair and keep the demised premises (except for the painting of the outside elevations) and every part thereof in tenantable repair throughout the term hereby granted.....”
 - b. Clause 1 refers to “ALL THAT piece or parcel of land edged Red on the plan annexed hereto and which said piece or parcel of land forms part of the Lessor’s Marina Park Estatetogether with the dwellinghouse erected thereon and known or intended to be known as Number 1 Park Mews Marina Park Brixham aforesaid (hereinafter referred to as “the demised premises”

The Evidence

5. At pages 14 and 15 of the hearing bundle the Applicant’s statement refers to disrepair including a window sill falling onto the communal roadway from the front elevation in 2014 following which a Want of Repair Notice was served. Attempts were made to arrange a meeting without success. Concerned residents contacted Torbay District Council’s Environmental Health as they were concerned about the living conditions. Due to the involvement of the local authority the Applicant did not pursue the matter at the time. No further contact was made due to other ongoing litigation until in February 2019 a further Want of Repair Notice was served.

6. Photographs are displayed at pages 58 to 65 showing dilapidated windows, one with a missing sill, what appears to be a soffit with evident holes and an area of flat roof completely covered in plant growth.
7. In a letter dated 7 May 2019 the Respondent refers to his lack of funds to carry out work beyond the leaking roof being replaced, his ill health and his intention to sell the house as quickly as possible. He also refers to matters concerning a planning application in 1991 and that the original lease of 1963 had been replaced in 1966/1967. He states that the original lease no longer has any validity.

Discussion and Decision

8. By his letter of 7 May 2019 the lessee appears to accept that the property is in disrepair but that his financial position does not permit him to rectify the position.
9. Mr Hancock asserts that the 1963 lease is no longer in force. The Official copy of register of title dated 24 May 2019 however confirms that the lease is dated 19 November 1963 as described in paragraph 4 above.
10. I am satisfied that from the evidence presented that that the property is in disrepair and determine that the lessee, Mr S C Hancock is therefore in breach of Clause 2(3) of the lease dated 19 November 1963. Title Number DN42253.

D Banfield FRICS

8 August 2019

RIGHTS OF APPEAL

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

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

S.168 No forfeiture notice before determination of breach

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.