



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

Case Reference : **LON/00AW/LBC/2022/0025**

Property : **Basement and Ground Floor Flat,
42 Ulverdale Road, London SW10
0SR**

Applicant : **SAFRAM HOLDINGS LIMITED**

Representative : **Hazel Jackson**

Respondent : **Hazel Lyon-Farrell**

Representative : **No attendance**

Type of Application : **For a determination under section
168(4) CLRA 2002**

Tribunal Members : **Judge W Hansen (chairman)
Mr J Francis**

**Date and venue of
Hearing** : **29 September 2022 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **29 September 2022**

DECISION

Determination of the Tribunal

The Tribunal determines that breaches of the covenants contained at Clauses 2(2), 2(4), 2(5), 2(6), 2(9), 2(14) and 2(18) of the Lease dated 9 July 1993 have occurred.

Reasons

1. This is an application for a determination under s168(4) of the Commonhold Leasehold Reform Act 2002 that the Respondent (tenant) is in breach of covenant.

Background

2. The Respondent is the lessee of the basement and ground floor flat (“the Flat”) of 42 Ulverdale Road, London, SW10 0SR (“Property”). The Flat was demised to her predecessor in title under a lease dated 9 July 1993 for a term of 99 years from 25 March 1993 and is registered under title number BGL7539 (“the Lease”).
3. The Applicant contends that the Respondent is in breach of multiple covenants in the Lease including, in particular, those for (i) repairing and maintaining the premises, and (ii) for the payment of insurance premiums and seeks a determination that breaches of the covenants at clauses 2(2), 2(4), 2(5), 2(6), 2(9), 2(14) and 2(18) of the Lease have occurred.
4. The Tribunal does not propose to set out each of those covenants. They are standard covenants relating to the payment of insurance premiums, the tenant’s repairing and decorating obligations, the obligation to permit inspection on reasonable prior written notice, the tenant’s obligation not to make alterations or additions without consent and not to do anything which causes damage, nuisance, annoyance or inconvenience to the freeholder or the other tenants.
5. The Applicant is the registered freehold proprietor of the Property registered under title number NGL298580 (and has been the proprietor since 17 October 2010). The Property is comprised of two residential flats as follows:
 - (i) The upper flat comprises the first and second floor and is let to a tenant by the Claimant on an Assured Shorthold Tenancy (“Upper Flat”) and is not the subject of this application;
 - (ii) The Flat is demised to the Respondent who has been the tenant since 6 April 2000.
6. However, the Flat appears to have remained unoccupied since 2015. The Respondent has not responded to the Application and the Applicant does not know the current whereabouts of the Respondent

(despite having instructed an enquiry agent to attempt to find her). On 22 December 2021 the agent reported that his attempts to trace the Respondent using multiple UK databases had failed.

7. Against that background, it is unsurprising that there has been no response whatever to this application from the Respondent. We are, however, satisfied that it is appropriate to proceed with the hearing. The Respondent's address as shown in the Proprietorship register for title number BGL7539 continues to be the Flat address and reasonable attempts to locate her at an alternative address have failed.

Findings

8. Before bringing the present application, the Applicant made requests and sought facilities to inspect the Flat. There was no response to those requests. As a result the Applicant sought and obtained an injunction from Wandsworth County Court permitting inspection and the Applicant sent in a Mr Snellings, FRICS, to inspect. He inspected the Flat on 19 July 2021 and has prepared a detailed Report dated 7 December 2021 outlining his findings. He came to the Tribunal and verified his Report. We accept his evidence.
9. We do not intend to repeat the contents of his Report. However, we will identify the breaches of the principal repairing and decorating covenants which were as follows:
 - 1 In the front bedroom of the Flat; there is damp to the plasterwork and to the timber skirtings and a failure of the damp proof course. The carpet is marked and soiled. The following items are also in disrepair: the-sash window; timber shutters; internal door leading to the hallway and doors to the fitted wardrobe. The window glazing is dirty.
 - 2 In the hallway. the carpet is soiled and marked and there is disrepair to the internal door.
 - 3 In the rear reception room, there is damp to the timber lining of a window. The following items are also in disrepair: the sash window; the doors to a fitted cupboard; radiator valve cap; door to the cellar. The carpet is soiled and worn. The window glazing is dirty. Internal doors to the hallway and kitchen are missing.
 - 4 In the rear kitchen. there is disrepair to the plasterwork and to the skirting caused by damp. The following items are also in disrepair: the window; the floor tiling around the boiler location due to a failure of the damp proof membrane; doors to the kitchen unit cupboard. The window and door glazing and kitchen units are dirty. The kitchen units and worktop are badly stained or soiled.

- 5 In the bathroom and W.C. the bath, toilet and wash basin are badly soiled or stained. The glazing to the windows are dirty. There is damp to the WC, plasterwork in the window reveal and to the timber window. There is damp to the wall tiling in the bathroom. The following items are also in disrepair: the pull switch to the light in the bathroom and the casement window in the bathroom. The lining paper is peeling away in the bathroom and W.C.
- 6 In the cellar the dry lining to the walls are damp.
- 7 The garden has not been maintained, with overgrown vegetation preventing access to inspect some the external walls. h. As to the external parts of the Flat, there is disrepair to various mortar joints on the flank wall of the rear of the Flat and in the brickwork near the bathroom window and beneath the bay window. The concrete to the bay roof is badly cracked. The concrete yard area is cracked. The following items are also in disrepair: the rear party fence wall; the rainwater pipe at the left-hand side of the bathroom window and the soil pipe to the left-hand side of the door. There is a build-up of moss in the yard area and on the brickwork near the bathroom window that requires removal. The air bricks to the front bay beneath the reception window require cleaning to ensure ventilation.
- 8 Mechanical and electrical installations. The electrical installation is not compliant with the British domestic electrical installation standards and require remedying. The position of the flue to the boiler does not comply with the Gas Safety Regulations and should be repositioned. Because there is a gas appliance in the reception room it is recommended that ventilation is provided.
- 9 Internal decoration. The decorations to the interior of the Flat are in very poor condition and have not been painted, papered, grained or varnished within the last 5 years.
- 10 External decoration. The decorations to the exterior of the Flat are in very poor condition and have not been painted, grained or varnished within the last 7 years.
- 11 The written evidence of Ms Belmonte, the managing agent, which we accept is that there has been no payment of ground rent or insurance premium since 2016.

- 12 Ms Belmonte also gives evidence, which we accept, that she has received numerous complaints in relation to the Flat throughout 2017-2019. For example, in August 2017, the tenant of the Upper Flat reported that there was an overgrown tree in the rear garden of the Flat blocking light to the Property. In June 2018, a neighbour complained that plants in the rear garden of the Flat were damaging a boundary wall. Further, in August 2019, neighbours and tenants of the Upper Flat complained of an infestation of mice or rats that may have been caused by a lack of cleaning/maintenance to the Flat.
- 13 There has been no further inspection of the Flat since Mr Snellings' visit in July 2021. However, we are satisfied that the Flat remains unoccupied and that no one has undertaken any works to remedy any of the numerous breaches identified by Mr Snellings in his report.

Conclusions

- 14 S168(4) of the Commonhold Leasehold Reform Act 2002 provides that "*a landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for a determination that a breach of a covenant or condition in the lease has occurred*".
- 15 The Respondent is clearly in breach of multiple covenants in the Lease.
- 16 In breach of clause 2(4) of the Lease, there is clear evidence of disrepair summarised above in no less than six rooms in the Flat. In addition, there are aspects of disrepair identified in the garden, the mechanical and electrical installations, and the internal and external decoration.
- 17 In breach of clause 2(5) of the Lease, the decorations to the exterior of the Flat are in very poor condition and have not been painted, grained, or varnished in the last seven years.
- 18 In breach of clause 2(6) of the Lease, the decorations to the interior of the Flat are in very poor condition and have not been painted, papered, grained, or varnished within the last five years.
- 19 In breach of clause 2(9) of the Lease, the Respondent has not permitted the Applicant to access the Flat. All requests to enter have been unanswered and the Applicant had to apply for an injunction in 2021 to gain entry into the Flat.

- 20 In breach of clause 2(14) of the Lease, a fitted cupboard has been installed to the left of the door to the hallway without the Lessor's consent.
- 21 In breach of clause 2(18) of the Lease, the vegetation in the garden has become overgrown and amounts to an annoyance and inconvenience to both the residents of the Upper Flat by blocking light into the building, and to the Applicant because it has hindered the Applicant's ability to inspect the Flat.
- 22 In addition, the Respondent has breached clause 2(2) of the Lease by failing to pay her contribution to the insurance premiums paid by the Applicant for keeping the Flat insured. The Applicant has paid for the Property to be insured against the usual risks and has sought contribution of 1/3 of the premium from the Respondent. The Applicant has served the following demands on the Respondent for her contribution to the insurance premium:
- a. 23/08/16 in the sum of £339.26;
 - b. 21/10/17 in the sum of £248.33;
 - c. 03/09/18 in the sum of £260.93;
 - d. 10/09/18 in the sum of £239.55;
 - e. 05/09/20 in the sum of £258.83;
 - f. 28/08/21 in the sum of £298.81.
23. These sums remain outstanding.
24. For those reasons we determine that breaches of Clauses 2(2), 2(4), 2(5), 2(6), 2(9), 2(14) and 2(18) have occurred.

Name: Judge W Hansen

Date: 29 September 2022