FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BB/LBC/2022/2018**
Property	:	**Unit 27, Sky Studios, 147 Albert Road, London E16 2JN**
Applicant	:	**Sky Studios RTM Company Limited**
Representative	:	**Sebastian Reid instructed by Lazarev Cleaver LLP**
Respondent	:	**Resat Mehmet Bilgin**
Representative	:	**Self**
Type of application	:	**Determination of an alleged breach of covenant: s168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal member(s)	:	**Judge Hargreaves** **Sarah Phillips MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR on 25th November 2022**
Date of decision	:	**19th December 2022**

DECISION

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The decision of the Tribunal is that for the following reasons the Respondent has breached the covenant in paragraph 4, Fourth Schedule to the lease dated 19th October 2001 made between Hollywood Limited and Senol Boratac.

REASONS

1. All references are to pages in the Applicant's trial bundle (A/) or the Respondent's (R/) except for the Applicant's skeleton argument which was handed in by Mr Reid at the hearing (though emailed to the Tribunal prior to the hearing).

2. The Respondent is the assignee of the above-described lease, having taken an assignment of the residue in 2008. Unit 27 is designed as a work-live unit. The Respondent says he lived in the property until 2017 since when he has let it to two tenants, sisters. He now lives in another flat in Battersea. There is no dispute about the Applicant's power to exercise the landlord's management powers pursuant to *s71 CLRA 2002*.

3. The lease is at A/26 of the bundle. At A/27 is an outline plan of the Unit. Pursuant to clause 3, the tenant's covenants are contained in the Fourth Schedule. The relevant part of paragraph 4 of the Fourth Schedule (A/40) is very simple and straightforward and states that the tenant is obliged *'To allow the Landlord and its respective agents to enter the Unit at any reasonable time for the purpose of inspecting the state of repair and condition …'*. Mr Reid agreed that the purpose of any visit is to inspect *'the state of repair and condition'*. Otherwise, except for the requirement that a visit must be at a *'reasonable time'*, there are no conditions as to the type of notice or request to be given to the tenant. The Respondent says he did not receive the Landlord's application for entry in letter form (sent to him at the property), but clearly received it in email form, so nothing turns on that. The rest of paragraph 4 provides for steps to be taken if the Landlord then decides to serve any notice in respect of any discovered want of repair or condition. But this application, issued in February 2022, is limited to the question which is whether, given the requests we outline below and the Respondent's responses (which amount to a refusal to provide entry), the Respondent is in breach of the covenant relied upon. At no time has he provided entry to the Applicant to the property. The fact that he has instructed his tenants to email the Tribunal to confirm that the Tribunal can have entry is irrelevant (R/2), and their support for his case that the only works he carried out in January 2021 consisted of the replacement of the boiler with a new condensing type (which required the installation of a flue, and scaffolding to access the property which is on the third floor), does not assist him now: the covenant gives the Applicant rights of entry on request, not the Tribunal.

4. The Tribunal heard oral evidence from Christine Wong, a director of the Applicant, in support of her witness statement (A/22). She was a

calm, thoughtful and impressive witness who had an explanation and answer for the Respondent's questions and whose evidence we accept without hesitation. It follows that the Applicant's case as put in her witness statement and the statement of case/application, is made out (A/15-17).

5. By contrast, the Respondent had basically ignored the Tribunal's directions about preparing evidence and documents, but we treated the whole of his bundle as his evidence and Mr Reid cross-examined him on that. The Respondent kept hitting a metaphorical wall in this case: he did not appreciate the simplicity of the alleged breach of covenant, and sought to introduce what in our judgment are extraneous factors, allegations and evidence by way of background and defence which might be background to poor relations between the parties but certainly provide no defence. The point of a covenant like this is to provide clarity and evidence about '*the state of repair and condition*', not to prove breaches of covenant concerning repair and condition *before* entry is required, or as a condition of providing it.

6. The Respondent's position was that he had exchanged letters with the managing agents in the first half of 2021 concerning alleged noise emanating from the property and suspected weed smoking by his tenants (R/2-6) and that he thought the issues were resolved; accordingly, he suggests, the Applicant, dissatisfied with the managing agent and the outcomes in relation to the noise and weed allegations, decided to pick on him by seeking to enter the property unfairly and for no reason. Had the Applicant sought entry because of the weed/noise allegations then the Respondent might have had a defence, but the Applicant is able to show that this is not the case. So the noise/weed allegations are irrelevant to the narrow issue relied upon by the Applicant and any amount of protest by the Respondent that these are non-issues or resolved, simply do not assist him. Similarly, the idea that suggesting legal proceedings is an over-reaction is no answer to the alleged breach.

7. The same point applies to the Respondent's assertions that the only works he carried out to the property in early 2021 concerned the replacement boiler (see eg R/8). The point is that he instructed a contractor who erected scaffolding to the third floor without permission and as Mr Reid submitted, that was rather a red flag to the Applicant which then wanted entry to the flat to check its repair and condition. Arguing that this was all that the Respondent had done is no answer to the provisions of the covenant.

8. To emphasise the breach, the Applicant made at least three requests for entry, on 19th July 2021 (A/62 by solicitors), 5th August 2021 (A/65 by solicitors), 30th August 2021 (A/71 by Christine Wong). Because so much time was spent by the Respondent challenging the content of these requests and explaining his own defensive position, we will deal with the correspondence as it developed though strictly

speaking it is unnecessary: we accept Mr Reid's submission that all three letters amount to a request to inspect at a reasonable time within paragraph 4 Fourth Schedule, and all were refused.

9. The first request was dated 19th July 2021 requesting access at 2pm on 3rd August 2021. The Respondent refused access for various reasons none of which could be justified bearing in mind the flat was occupied and covid-safe access could have been arranged. See the Applicant's statement of case paragraphs 8, 9, 10. The failure to provide access in the circumstances amounts to a refusal for the purposes of the covenant.

10. The second request was by email dated 5th August 2021 inviting the Respondent to provide three alternative dates for an inspection before the end of August. The Respondent did not provide access but explained on 7th August what his position was about the boiler replacement.

11. On 30th August 2021 the Applicant gave the Respondent a further opportunity to respond to the request for access by arranging it before 9th September. The Respondent challenged the request without granting it on 6th September 2021.

12. In our judgment the refusal to respond to each of these reasonable requests by granting access amounted to a breach of the relevant covenant. In the circumstances the Applicant was entitled to request access to check the state of repair and condition of the flat. The Respondent's attempts to introduce extraneous issues by way of defence and diversion make no impact on the Applicant's case which is made out.

Judge Hargreaves
Sarah Phillips MRICS
19th December 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).