



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

Case reference	: MAN/ooBY/LBC/2022/0011
Property	: Flat 1, 10, Longmoor Lane, Liverpool L9 0EF
Applicant	: Leanne Lismore
Respondent	: Christopher Cobb
Type of Application	: Application to establish Breach of Covenant: Section 168(4) Commonhold and Leasehold Reform Act 2022
Tribunal Members	: Mr J Rimmer Mr I James
Date of Decision	: 4 May 2023
Order	: For the reasons set out herein the Tribunal determines that there have been breaches of the covenants created by Clauses 2(1), 2(6), 3(1) and 3(2) of the lease.

DECISION

BACKGROUND

- 1 The Applicant is the freehold owner of the property at 10, Longmoor Lane Liverpool. It is situated in a terrace of similar properties in an area of Liverpool known as “The Black Bull” after a well known local public house.
- 2 The property comprises a ground floor retail unit and, above this, two storeys of residential accommodation. The latter is accessed via a rear door approached from the yard to the property which in turn is reached via side and rear alleyways.
- 3 The Applicant acquired her freehold interest in the building in November 2011. At that time the residential accommodation was, and remains, the subject of a lease dated 22nd September 2011 for a period of 250 years at a premium and an annual ground rent of £100.00. The respondent is the assignee of the lease and his ownership was registered by HM Land Registry on 22nd April 2016, apparently in respect of an assignment dated 3rd September 2012.
- 4 The Applicant alleges a number of breaches of covenant in respect of the lease which are set out in due course below.
- 5 Section 168 Commonhold and Leasehold Reform Act provides
 - (1) A landlord under a long lease of a dwelling may not serve a notice under Section 146(1) Law of Property Act 1925... 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 finally been determined upon an application under subsection (4) that the breach has occurred
 - (b) ...
 - (c) ...
 - (3) ...
 - (4) A landlord...may make an application to the appropriate tribunal for a determination that a breach of covenant or condition of the lease has occurred.

The Allegations

- 6 The Applicant identifies in her submissions to the Tribunal the following breaches of covenant alleged to have occurred:
 - (1) Clause 2 (1) – the tenant covenants with the lessor to pay the rent hereby reserved if demanded at the time and in the manner...and not exercise or seek to exercise any right or claim to hold rent or claim to legal or equitable set-off.

- (2) Clause 2(5) -In accordance with the tenant's covenants in that behalf hereinafter contained to repair decorate and make good all defects in the repair decoration and condition of the Demised Premises of which notice in writing shall be given by the lessor to the tenant within two calendar months next after the giving of such notice.
- (3) Clause 2 (6) – not at any time to make any alterations in or additions to the Demised premises or any part thereof or to cut maim alter or injure the walls or timbers thereof or alter the lessor's fixtures therein.
- Clause 2 (13) – not at any time to do or permit or suffer to be done any act matter or thing on or in respect of the Demised Premises which contravenes the provisions of the Town and Country Planning Act 1990 or any enactment amending or replacing the same and to keep the lessor indemnified against all claims demands or liabilities in respect thereof.
- Clause 3(1) a covenant, separate from that in Clause 2(6), to repair maintain keep uphold and renew the Demised premises and all parts of the same...in good and substantial repair and condition.
- Clause 3 (2) to keep the exterior and interior of the glass within the windows clean on a regular basis.
- **Inspection**
- On the morning of 21st April 2023 the Tribunal inspected the flat and found that it comprised the two uppermost storeys of a 3 storey building accessed from a stairway at the rear of the building. The lobby accessing the stairway also gave access to the rear of the ground floor business premises. The upper storeys consisted of 4 separate bedsitting rooms with both kitchen and bathroom facilities in each. There were two such dwellings on each floor accessed from common landings and staircases.
 - The flat was in extremely poor condition which suggested it had been allowed to deteriorate over a considerable period of time. Pigeon infestation had occurred to such an extent that the Tribunal regarded the premises as insanitary. There was evidence of considerable damage to fittings and fittings, together with water penetration, most significantly to the third storey front bay.
 - The property is convenient for the local commercial area of Walton Vale and fronts onto the A506 Longmoor lane, a significant arterial road from Liverpool to Kirkby.
- **Evidence and Submissions**
- The Applicant provided a short statement in support of her contention that there had been breaches of the relevant covenants and supported this with her evidence to the Tribunal at the hearing conducted at the Civil and Family Court Centre in Liverpool, which followed the inspection. She asked the tribunal to consider what it had seen during the course of its inspection.
- Although the Respondent did not attend the hearing, notwithstanding that he had notified the tribunal office of supporting witnesses and provided his availability, he did provide written representations which addressed both the

specific allegations relating to the covenants in question and also the history of this matter and the position in which he had found himself after he had acquired what he thought was the lease of a single flat.

- He also indicated that he was contemplating proceedings against the Applicant, although the document he suggested was a draft of a letter before action appeared to relate to entirely different parties and an entirely different property. In any event it is the Tribunal's duty merely to establish if breaches of covenants or conditions have occurred, not to conduct a trial of other issues that may affect how such breaches might be viewed.

- **Conclusions**
- **Covenant to pay rent**

- The Applicant alleges that rent has not been paid. The Respondent does not suggest that there has been payment. On the evidence submitted there are arrears. The covenant at clause 2(1) of the lease does however require that there has been a demand for that rent. The Applicant supplied copies of demands going back to 2016. That is before she acquired the freehold. On the evidence submitted those demands have not been met and there is a breach of covenant. The parties should however note the observations at paragraph 17, below.

- **Covenant to repair make good and decorate in clause 2(6)**

- The state and condition of the premises are poor. Internally it is in a state of near dereliction. It is however a condition of the lease that the tenant is in breach of the covenant only if he fails to make good and repair within two months of being required to do so in writing. There is no such evidence of this requirement having been notified in writing and the breach cannot be established.

- **Covenant to repair in Clause 3(1)**

- Unlike the covenant in clause 2(6) there is no prerequisite for written notice to be given to ensure compliance. This covenant is made between the lessor and the tenant for the benefit of "The Owners": these being defined in the lease as tenants of the ground floor retail unit holding that demise under substantially the same lease terms as relate to the subject flat. Although there is at present no such owner the covenant is made between the lessor and the tenant and a failure to comply with its requirements has been established.

- **Not to make alterations in or additions to the premises etc**

- It is clear from the evidence of both parties that the flat has been altered from a single dwelling to 4 bedsits with associated internal kitchens and shower rooms with wcs. The Tribunal is satisfied that this is in contravention of the covenant within the lease. The evidence suggests that the work was done by a developer of the property prior to the assignment of the lease to the Respondent. There has been a breach of this covenant, but the attention of the parties is drawn to paragraph 17, below.

7

Not to contravene Town and Country Planning requirements

The Tribunal is of the view that the internal works to the flat, without alterations to the exterior of the premises may breach certain regulatory requirements relating to building regulation but they are not such as to contravene planning requirements and this covenant has not been breached.

8

To keep clean all exterior and interior glass

Again, the Tribunal is satisfied from the inspection it carried out that this cleaning has not been carried out for a considerable period of time. Unlike the covenant relating to repair there is no requirement of prior notice to the tenant and this breach is established.

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There is however one observation that the Tribunal should raise with the parties that should be subject to their future consideration. The Respondent purchased the flat in 2016. He is not the original lessee and the relationship between him and the Applicant in respect of covenants in the lease is subject to the provisions of the Landlord and Tenant (covenants) Act 1995 and in particular Section 23 thereof. This section particularly limits in certain circumstances the liability of an assignee of a lease for breaches of covenant that occur before the assignment of the lease.

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The Tribunal has already noted, at paragraph 5, above, that the application under Section 5(6) Commonhold and Leasehold Reform Act 2002 relates only to the determination of the question as to whether a breach of covenant or condition in the lease has occurred. The Tribunal does not determine the effect of that breach as between the current parties to the lease.

J R Rimmer
Tribunal Judge
4 May 2023