



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

Case Reference : CHI/00HN/LBC/2023/0008

Property : Flat 7 Amersham Court, 30 Marlborough Road, Bournemouth, Dorset, BH4 8DH

Applicant : Amersham Court Freehold Limited

Representative : Mrs Della David (Director)

Respondent : David Arthur Alfred Furlonger
Brenda Marion Furlonger

Representative : ----

Type of Application : Breach of Covenant S168(4) Commonhold and Leasehold Reform Act 2002

Tribunal Members : Mr D Banfield FRICS, Regional Surveyor
Mr C Davies FRICS
Mr E Shaylor MCIEH

Date and place of hearing : 12 October 2023 at Havant Justice Centre

Date of Decision : 18 October 2023

DECISION

The Tribunal finds that the Respondents are not in breach of their repairing covenants under the lease.

Background

1. This is an application by the Freeholder seeking an Order under S168 (4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached covenants in their lease.
2. The issue is in respect of where responsibility lies for repairs to the balcony to Flat 7.
3. Judge Dobson ordered a joint expert's report to be provided as to the condition of the balcony and this has been provided.
4. Mediation was offered but not taken up by the parties.
5. A hearing was held at Havant Justice Centre on 12 October 2023 attended by Della David a Director of the Applicant company and the Respondents David and Brenda Furlonger. Also in attendance were Yvonne Fairchild a Director of the Freehold Company and Emma Powell an observer.
6. A number of issues of disagreement had been referred to in the bundle and at the commencement of the hearing the Tribunal said that the sole matters it would be considering were the defects identified in the expert's report and the terms of the lease in respect of liability for repairs.
7. In accordance with directions an electronic bundle had been provided and reference to page numbers therein are indicated by [*]. Mrs David had not brought the electronic bundle but had paper copies of the relevant extracts she wished to refer to.

The Lease

8. The Second Schedule [108] defines "The Reserved Property" as including "All those the main structural parts of the buildings forming part of the Property including the roofs foundations and external parts thereof (but not the glass of the windows of the Flats nor the interior faces of such external walls as bound the Flats and garages)"
9. The Third Schedule [108] defines The Premises" (i.e. the flat) and excludes "the main structural parts of the building of which the said Flat and garage form part including the roofs foundations and external parts thereof but not the glass"
10. "The Sixth Schedule" [110] contains the Lessee's covenants including "3. The Lessee shall to the satisfaction in all respects of the Lessor's Surveyor for the time being keep the Premises and all parts thereof and all fixtures and fittings therein and all additions thereto in a good substantial and tenantable state of repair decoration and condition"

11. “The Seventh Schedule [116] contains the Lessor’s responsibilities which include at clause 4 “keep the Reserved Property and all fixtures and fittings therein and additions thereto in a good and tenantable state of repair

The Expert’s Report

12. Messrs Ellis Belk’s expert report [87] confirms that the first and second floors have reinforced concrete floor slabs which cantilever out to form a balcony for each flat [91]. It is pertinent to note that the flat (Flat 3) occupied by the Applicant’s representative is situated directly below the flat (and therefore also the balcony) occupied by the Respondents (Flat 7).
13. In its conclusion the following findings are made;
 - Flat 7’s tiled finish is in very good condition with no visible defects. Nevertheless, there is evidence the balcony is leaking in one visible location and there is evidence of similar leaks on other balconies. I cannot say for certain that the leak is ongoing, however even if it is not currently leaking, there are obvious defects in the design and installation of the balustrading stanchion bases which tells me that leaks are very likely to reoccur.
 - I strongly suspect evidence of leaks to other balconies I looked at are caused by the same problem.
 - The lead flashings on the outside edge of the balcony have inadequate overlap and this may also be a contributory factor.
 - The Flat 3’s living room is at risk of water penetration from Flat 7’s balcony because the cavity tray and waterproof upstand serving Flat 7’s balcony is missing / too low. However I am not aware of any issues at the moment.

The Hearing

14. Mrs David said the issue had been going on for 30 years ever since the balconies were fitted with flashing and gutters. She disagreed with the expert report in that no other balconies suffered from leaks. Mrs David said that the balcony refurbishment work conducted in 2009 cured the leak for a period of time and that the installation of stanchions in 2016 had nothing to do with the crack in the slab. The company had paid to replace tiles where damaged by the stanchion installation. The company had also funded the increase in height of the flashing where it proved to be inadequate.
15. Mrs David accepted that the slab and its repair was the responsibility of the company but as the tiles had been installed by a lessee she considered that they were the lessees’ responsibility to repair. She said that the crack had been in existence for a number of years but had been filled and was no longer visible. Mrs David referred to the solicitor’s

advice received [34] which stated, “There is no specific provision in the lease as to who is responsible for the maintenance and repair of the balcony.”

16. In her statement dated 30/08/23 [28] Mrs David said that “All owners of their flats have since 1975 assumed the responsibility for the upkeep of their balconies” and “Other residents over the many years have all tiled their balconies and been responsible for any cost”.
17. Mrs David said that all she required was a definitive decision as to the party responsible for repairing the balconies to enable certainty to be given to existing and prospective lessees.
18. Mr Furlonger said that he agreed with the expert survey and that there was a crack in the balcony slab – he said the filled crack was visible in a photograph [98]. Previous surveys also referred to the existence of the crack. He says that the tiles are decorative and not part of the waterproofing system.
19. Mr Furlonger said that where tiles are removed to effect a repair to the underlying slab then it would be the Applicant’s responsibility to replace them. He referred to two First-tier Tribunal decisions which supported this assertion.

DECISION

20. Although this dispute appears to have generated considerable disagreement between the parties at essence it is the construction of the lease which is the determining factor in the Tribunal’s decision. The Applicant accepts that the slab is the freeholder’s responsibility to maintain and both parties agree that there is a longstanding crack in the balcony floor slab.
21. Mrs David says that the balcony tiling is the responsibility of the lessee and the Tribunal agrees as far as that relates to the choice of tiling or indeed whether any tiling is provided or the original bare slab being left unadorned.
22. The expert report refers to the tiling as being “in very good condition with no visible defects.” The Tribunal accepts this opinion and in the absence of any identified defect there are no repairs required to be undertaken by the Respondent lessee.
23. The expert report indicates that whilst there are no current leaks such an occurrence is “very likely to reoccur.” The likely cause is said to be the installation of the balustrading stanchion into the structural slab and as such the Tribunal determines that this forms part of the structure and any repair thereof is the responsibility of the Freeholder. Although the report does not refer to a crack in the slab it is agreed by both parties that one exists and that it is of long standing. Being located

in the slab the Tribunal confirms that any repairs undertaken will be the responsibility of the Freeholder.

24. Turning now to which party will have responsibility for reinstating the tiles following any repairs to the underlying structural slab the Tribunal is guided by but not bound by the two FtT decided cases referred to (CHI/ooHP/LSC/2022/0002 and CHI/ooHP/LSC/2020/0099) both of which determined that works consequential to carrying out repairs to the structure by the freeholder were the freeholder's responsibility to reinstate.
25. The Tribunal agrees and determines that works consequential to repairs undertaken by the Applicant to satisfy its repairing obligations are the Applicant's responsibility to make good.
26. In making its determination the Tribunal is not endorsing any particular course of repair, its responsibility being to decide whether, if any particular course of repair is undertaken, which party shall be responsible for the costs.
27. In summary therefore, the Tribunal determines that works to the structural slab forming the base of the balcony and any consequential repairs to the tiling are the responsibility of the Applicant.
28. **The Tribunal finds therefore that the Respondents are not in breach of their repairing covenants under the lease.**

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 by email to rpsouthern@justice.gov.uk 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.