FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UE/LBC/2023/0024
Property	:	Lower Minnickfold Place, Anstie Lane, Dorking, Surrey RH5 4LS
Applicant	:	Gary Puckett
Representative	:	
Respondent	:	Jodechi Morton & Eliot Morton
Representative	:	Mr Beetson, counsel
Type of Application	:	Breach of Covenant S168(4) Commonhold and Leasehold Reform Act 2002
Tribunal Members	:	Regional Judge Whitney Ms J Dalal
Date of Decision	:	4 July 2024

DECISION

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Background

1. The Applicant seeks an Order under S168 (4) of the Commonhold and Leasehold Reform Act 2002 that the Respondents have breached covenants in their leases. The details of the breaches are set out in section 5 and 13 of the application form. The application was made on 5 August 2023.

2. The Tribunal issued directions listing the matter for an in person hearing at Havant Justice Centre. Further the production of a bundle was required.

3. An electronic hearing bundle consisting of 192 pdf pages was provided and references in [ ] are to the pdf page numbers.

Hearing

4. The hearing took place at Havant Justice Centre on 19th April 2024. The hearing was recorded.

5. Below is a synopsis only of the principal events at that hearing. The Applicant appeared in person. The Respondents both attended and were represented by Mr Beetson of counsel. The Tribunal had before it the bundle, videos and a skeleton argument on behalf of the Respondent.

6. Mr Puckett presented his case relying upon his statement of case filed [23-37]. He contended at the hearing for breaches in respect of the following:

    a. Timely chimney sweeping
    b. Refusal of regular property inspections
    c. Completion of the external decorations

7. Mr Puckett took the Tribunal though his statement and the documents upon which he sought to rely.

8. He was then cross examined.

9. Mr Puckett accepted only two chimneys out of the 4 were in use. However the others should be in his opinion vented to allow the flue to be swept from time to time as not they were not sealed.

10. Mr Beetson put to Mr Puckett that access was not requested in accordance with the terms of the lease. Mr Puckett stated requests were by email.

11. Mr Puckett denied he had prevented decorator undertaking works [83]. Mr Puckett stated that the works were being undertaken during the bird nesting season so he could not cut back foliage. He believed the works could still be undertaken and the decorator could have worked around the foliage [147].

12. Mr Puckett accepted that after the issue of this application he had demanded that the Respondents pay their share of the costs of insurance and that money was paid by the Respondents.

13. Mr Beetson called Mr Morton to give evidence. He confirmed his statement was true and accurate [92-98].

14. Mr Puckett cross examined Mr Morton.

15. Mr Morton stated he believed two of the chimneys had been bricked up prior to him and his wife purchasing their flat. He believed it was impossible to sweep.

16. Mr Morton explained they moved out of the flat in 2015 and back in in 2017 but he cannot find a copy of the certificate for that period. He accepted however there may have been more than 12 months between inspections at times.

17. Mr Morton stated he paid to have the Eastern elevation decorated but they could not do all the works. He stated the decorators were on site for 3 and a half weeks. Mr Morton stated he wanted a high standard of finish.

18. Mr Beetson stated that in his submission there was no requirement for a certificate to be provided from a professional body. In any event given the length of time it is not surprising that all cannot now be found. The Respondent submits that annual checks are adequate.

19. In respect of the two bricked up chimneys he submitted these are not chimneys which require sweeping.

20. Turning to the question of access in his submission the requests are defective. Not less than 3 days' notice in writing is required. He submits that an email is not in writing and the solicitors' letters are not adequate. In his submission given the relationship has clearly broken down it is for the Applicant to comply 100% with the letter of the lease.

21. On the question of decoration in his submission the vast majority has been completed and to a good standard. It is only the Eastern elevation in dispute and he suggests from the photographic evidence it is clear that it is in a reasonable state. Further he submits it is clear work could not be done due to the foliage in the Applicants grounds.

22. Mr Beetson submits there is a clear waiver which we should take account of. The insurance is reserved as rent and was demanded after the application was issued and was paid on 22nd December 2023 as admitted by Mr Puckett. In his submission we should take account of this and find any breach has been waived.

23. Mr Puckett provided a brief reply and the hearing ended.

Decision

24. We thank Mr Puckett and Mr Beetson for their submissions.

25. It was clear to this Tribunal that the parties were at logger heads. We heard from both Mr Puckett and Mr Morton. Mrs Morton was in attendance throughout. At the end of the hearing we did remind the parties that whatever decision we reached they need to find a way to move forward. Mr Puckett is the landlord and the lease affords him rights and responsibilities. Both sides would be well advised to consider matters carefully to prevent any escalation in hostilities which frankly will help no one.

26. It is appropriate that we make a general comment upon the evidence. Mr Puckett presented his case and gave his evidence in calm and measured tones. Mr Morton in contrast was defensive throughout and often did not answer questions in a straight forward manner, trying to provide the information he wanted to get across and not answer the question posed. In making this point about Mr Morton's evidence we do take account of the fact that this is a typical response in such cases of allegations of this type. It is a case which may be categorised as a neighbour dispute.

27. We have considered all documents within the bundle and the lease [84-91]. We consider each alleged breach in turn.

28. First the allegation that the Respondent has not complied with clause 2(7):

"2(7) To sweep and thoroughly cleanse the chimneys of the flat at such times as may be necessary and so that not more than twelve months elapse between any two successive cleanings"

29. We find that there is no requirement for the Respondent to produce certificates or have a professional sweep the chimney. However a prudent leaseholder would do so to avoid dispute. Generally, the Respondents have done so. Various certificates are provided for the period 2015 – 2023 [39-47]. It is accepted by the Respondents that they have only swept the two chimneys with open fireplaces.

30. Mr Morton did accept in his evidence that more than 12 months may have elapsed between sweeps being undertaken. Certainly looking at the certificates it appears between October 2019 and November 2022 there was no sweep undertaken. No specific evidence was provided as to when Mr Morton says a sweep if any took place. For an earlier period in 2017 Mr Morton believes he may have misplaced the certificate and we accept his evidence on this point.

31. Turning to the chimneys which should be swept we are satisfied that the flat benefits from 4 chimneys. This was not in dispute. What is said is that two do not require sweeping as there are not used for fires with the actual fire places having been sealed at some point in the past.

32. We are satisfied that whilst the actual fireplaces themselves are sealed the chimneys remain in place. They have not been sealed off and as a result we find under the terms of the lease they should be swept. As Mr Puckett explained openings could be made to allow access for sweeping and in fact in one of the photographs evidence of a vent in the chimney breast was seen. There was no suggestion the lease had been varied so that it was only the chimneys used for fires should be swept. We find that all 4 chimneys should be swept annually under the lease terms.

33. Whilst we find this to be the case we would urge the parties to come to a sensible variation to deal with this point.

34. As a result of our above findings we are satisfied that there is a breach of Clause 2(7) of the lease.

35. The next point to consider is the refusal of inspections pursuant to clause 2(9) of the lease [87] which states:

"2(9) Permit the landlord and her duly authorised agents with or without workmen and others twice a year upon giving three days previous notice in writing at reasonable times to enter upon and examine the condition of the flat and thereupon the landlord may serve upon the tenant notice in writing specifying any repairs necessary to be done and require the tenant forthwith to execute the same..."

36. Mr Morton agrees he will not allow Mr Puckett access. He states he will allow a surveyor access. Further it is asserted no proper request in accordance with the lease has been given. Mr Beetson suggests an email is not sufficient.

37. Mr Puckett relies on various solicitors letters and emails, in particular an email dated 10th February 2022 [48] titled "Item10".

38. We are not satisfied that a notice which complies with the lease has been given. We find that an email would be sufficient given the Respondent appears content to communicate with the Applicant using that medium. We are satisfied an email is notice in writing when an email address has been provided by one party to the other for the purpose of communication without any stated reservation.

39. However we agree with Mr Beetson that it is for the Applicant to comply strictly with the terms of the lease and specify an exact date and time (such time being in our judgment during a normal working day). We do not accept that the Applicant has done so. His requests are general requests for access only. Whilst the email [48] arguably refers in general terms to a date more than 3 days hence it does not give a specific date and this is in our judgment a requirement of any such notice so that what is being requested is clear to the reasonable receipient.

40. To assist the parties we do however make clear that if the Applicant gives not less than 3 clear days notice in writing he is personally entitled to inspect and if the Respondent refuses such access this may be a breach of the lease.

41. Next is the question of external decorations under clause 2(4):

"2(4) To keep the exterior of the flat properly decorated but only in black and white such decoration to be carried out in every fifth year of the term in a proper and workmanlike manner all outside wood and ironwork to be given three coats at least of good oil paint and with every outside painting to restore and make good the brickwork and outside stonework where necessary"

42. It appears to be accepted by the Respondents that no decoration works were undertaken until about 2021. Re-decoration works were undertaken but it appears to be agreed between the parties that the eastern elevation was not decorated. The Respondents contends this is the Applicants fault and the Applicant contends works could have been undertaken.

43. In the normal course of events one would expect neighbours to work together to agree when and how such works were to take place. That presumes there is no dispute as here. Given the admission the Eastern elevation has not been decorated there is prima facie a breach as clearly this has not been decorated for more than 5 years (and possibly for a significantly longer period). We have considered the reason for the same. We have taken account of the various photographs and evidence given. Whilst it may be the Eastern elevation is in a reasonable state of decoration the covenant requires decoration in every fifth year of the term. We accept it may have been more difficult we do not accept that the eastern elevation could not have been decorated.

44. We find that the Respondents have breached clause 2(4) in not decorating the whole of the exterior in accordance with that clause of the lease.

45. This then leaves the question of waiver? Mr Beetson contends that Mr Puckett has waived any breach.

46. We find, and Mr Puckett accepted in his evidence, that the Applicant did demand insurance rent after the issue of this application (the application was issued in August 2023). The demand was made in November 2023. Such sum was paid by the Respondents in December 2023.

47. Mr Beetson referred us to Paragraph 91 of Stemp v 6 Ladbroke Gardens Management Ltd [2018] UKUT 375 (LC). He submitted this gave us a discretion as to whether or not we consider the question of waiver.

48. In our judgment on the facts of this case we should consider the question. We agree we have a discretion as to whether or not the question of waiver is a matter we should consider. We find that the Applicant has waived the breaches which we have found the Respondent had committed as set out above.

49. We do so principally on the basis that the demand was made after this application was issued. We find it is clear that in so doing the Applicant had no intention of forfeiting the Respondent's lease and so a waiver had occurred.

50. This means whilst we have found that breaches had occurred the Applicant is not entitled to take any further steps to forfeit the lease as a result of the same the Applicants having waived the breach.

51. We finish by reminding the parties that they need to find a way of working together. This building consists of two flats. The Applicant and his family live in one and the Respondent in the other. It is the case that as Landlord the Applicant does have various rights which if the properties were separate freehold houses would not exist. The Respondents must comply. It is plain relations are difficult and we would urge the parties to consider some form of mediation as both will be the poorer if litigation continues.

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

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.