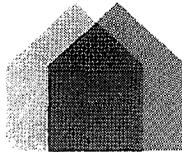


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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SECTION 168(4)

Reference: LON/00AJ/LBC/2007/0007

Property: 17 Marina Court, Marnham Crescent, Greenford, Middlesex,
UB6 9SS

Applicant: London Borough of Ealing

Respondent: Mrs Ishrat Nazir

Appearances: Mrs Audrey Clark (Home Ownership Manager – Ealing Homes
Ltd)
Mrs J O'Dea (Home Ownership Officer, Ealing Homes Ltd)
For the Applicant

Mr S Nazir
For the Respondent

Tribunal Members: Mr S Shaw LLB (Hons) MCI Arb
Mr P S Roberts Dip Arch RIBA
Mr D J Wills ACIB

Date Application: 30 January 2007

Date of Hearing: 23 March 2007

Date of Decision: 30 March 2007

DECISION

INTRODUCTION

1. This case involves an application in respect of 17 Marina Court, Marnham Crescent, Greenford, Middlesex, UB6 9SS ("the property"). The application is made by the London Borough of Ealing ("the Applicant") which London Borough owns the freehold of the property. By assignment, Mrs Ishrat Nazir ("the Respondent") is the owner of the long leasehold interest in the property, pursuant to the terms of a lease dated 28 November 1994. The property is let for a term of 130 years from 1 January 1981.
2. The application is for a determination, pursuant to the provisions of Section 168(4) of the Commonhold and Leasehold Reform Act 2002, to the effect that there has been a breach of covenant or condition of the lease referred to. Directions were given by the Tribunal on 8 February 2007.

THE HEARING

3. The matter came before this Tribunal on 23 March 2007. On that occasion the Applicant was represented by Mrs Audrey Clark and Mrs J O'Dea. Both of these ladies work within the Home Ownership Department of Ealing Homes, which is the trading name of Ealing Homes Ltd. Ealing Homes Ltd carries out management duties in respect of the housing stock of the Applicant local authority. The Respondent was not present in person but was represented by her husband, Mr S Nazir.
4. The Applicant had set out its case in a Statement of Case dated 30 January 2007. In the Directions referred to, the Respondent had been directed to prepare, amongst other documents, a Statement of Case in response to the Applicant's case, setting out the grounds for opposing the application, and this was to be supplied by 9 March 2007. In fact no such statement of case in response by the Respondent was prepared or served by that date. Instead, a statement by the Respondent, dated 17 March 2007, was faxed to the Tribunal and the Applicant on 22 March 2007 and received by the Tribunal on the morning of the hearing. It should be mentioned that after the Applicant's

case had been outlined (which will be referred to in more detail below), the Tribunal gave the parties the opportunity to talk with each other with a view to the possible settlement of this case. Notwithstanding the fact that the parties appeared to have achieved a good understanding of how best to proceed for the future, the Applicant, as is its entitlement, informed the Tribunal that it wished the Tribunal to go on to make a finding on the application, so as to preserve its position in the event that for any reason the matter proved problematic.

THE APPLICANT'S CASE

5. The Applicant is the freehold owner of the property. Previous tenants of the property exercised their entitlement under the right to buy legislation, and as a result, a lease dated 28 November 1994 was granted to those tenants for a term of 130 years from 1 January 1981. In or about October 2000, Mrs Nazir purchased that lease, thus becoming the leasehold owner. The Respondent granted an underlease to Ealing Housing Ltd, dated 22 September 2003, for a term of five years. Although the Tribunal, in the Directions referred to above, directed the Applicant to produce a full copy of that lease, the Applicant does not have a full copy and Mr Nazir was also unable to produce a copy for the Tribunal.
6. As is understood by the Tribunal, from the information provided by the parties at the hearing, Ealing Housing Ltd has no corporate connection with the Applicant, but is either a Housing Association or some other company dealing with social housing. That company pays a regular monthly rent to the Respondent, and in turn the company puts various occupiers into the premises as tenants or licensees, these persons being referred to the company largely by the Applicant itself. It is a separate entity from the Applicant and the Applicant's own managers, namely Ealing Homes Ltd, which has a similar name, is otherwise not to be confused with Ealing Housing Ltd.
7. The long lease held by the Respondent contains a covenant at Clause 3 whereby the lessee covenants –

"(1) with the lessor to observe and perform the obligations and regulations set out in the Sixth Schedule."

8. At the Sixth Schedule to the lease, there are provisions to the following effect:

"18. Not to permit or suffer to be done on the demised premises any act or thing which may be or become a nuisance or inconvenience to the lessor or any of the owners or to the owner or occupier of any adjoining or neighbouring property ...

22. Not to permit any water or liquid to soak through the floors of the demised premises or suffer dirt rubbish rags or refuse or any corrosive or harmful substance to be thrown into the sinks bath lavatories cisterns or waste or soil pipes in or serving the demised premises and in the event of such happening without prejudice to the lessors other rights under this lease immediately at the expense of the lessee to rectify and make good all damage and injury thereby caused"

9. On the occasion of the subletting to Ealing Housing Ltd, the Respondent was requested by the Applicant to complete a form headed "Subletting Leasehold Properties" giving details of the forwarding address of the leaseholder. The address given by the Respondent was "137 Elm Drive, North Harrow Middx HA27 BZ". The Respondent was also asked to provide details of any agent who may be managing the letting. No such details were provided on the form by the Respondent. Finally, the Respondent signed a declaration to the effect that she would *"ensure that my tenants do not cause any form of nuisance to other residents."*
10. The Applicant's Statement of Case sets out a history of repeated water penetration from the property to the property below at No 7 Marina Court. The leasehold owner of No 7 Marina Court is a Mrs Dowden. Appended to the Applicant's Statement of Case is a lengthy series of correspondence documenting the fact that Mrs Dowden has suffered repeated and significant leakages of water from the property into her flat from approximately early 2005 right up until February of this year.

11. It is not necessary for the purposes of this Decision to record those allegations in detail, but suffice it to say that the leakages have been very substantial, have forced her out of her bedroom, have caused very significant damage to the interior of her property and furniture, fixtures and fittings, and have moreover caused her much distress and discomfort. She has repeatedly written to the Applicant in an effort to have the position remedied and the Applicant in turn has repeatedly written to the address supplied by the Respondent at Elm Drive, North Harrow. However, the Respondent has never replied to any of these letters.
12. On one occasion the Applicant succeeded in obtaining access to the property and carried out remedial works, through contractors, to stop the water leakage. Apparently a valve from the washing machine had been left uncapped and there is a suggestion in the correspondence that the occupants of the flat above have repeatedly allowed connecting pipes to reconditioned washing machines to leak water within the flat and thereafter through to the flat below. Indeed Mr Nazir in his evidence to the Tribunal candidly admitted that he had visited the premises recently. He had himself witnessed evidence of water leakages (although they had stopped by the time he saw the property) and the property itself had been left in such a state as to be, in his opinion, unfit for human habitation.
13. The result of the conduct of the present occupiers of the property has been that for a period of some two years, Mrs Dowden in the property below has been subjected to repeated and serious leakages into her flat and all the consequent unhappiness which that must have brought about. Efforts to contact the Respondent have proved fruitless because there were no replies from the address which they had left the Applicant for contact purposes, and efforts to contact them by telephone had met only with an answerphone and no returned calls.
14. Mr Nazir referred the Tribunal to the statement from his wife, the contents of which he expanded in evidence to the Tribunal. He explained that in December 2004, his wife and he had gone to live in Dubai, in the Far East. He and his wife have a portfolio of about twelve properties, all or several of

which are let to housing associations of a similar kind to Ealing Housing Ltd. He told the Tribunal that he had set up and paid for some scheme with British Gas called "British Gas Three Star Cover" which enabled the occupants to call British Gas 24 hours a day with regard to any heating or boiler issues. His understanding was that that scheme would cover maintenance issues relating to electricity, pipes or leakages. Unfortunately he had not brought a copy of that contract to the Tribunal, and informed the Tribunal that he did not think that it would be relevant.

15. He went on to explain to the Tribunal that he had expected that if anything "*went wrong*" in the premises, Ealing Housing Ltd would contact British Gas pursuant to the maintenance agreement he had set in place or, alternatively, the persons in actual occupation would do so. He now accepts that they failed to do so. He also accepted that it was a mistake on his part not to give the Applicant new details for contact purposes, either in the form of some agent in this country, or at the very least, the contact details of himself and his wife in Dubai.
16. He suggested that the Applicant should itself have contacted Ealing Housing Ltd (which the Housing Department of the Applicant would have known enjoyed a sublease and was accommodating occupiers probably referred to it by the Housing Department of the Applicant). He accepted however that it was understandable that the Applicant would endeavour to contact him or his wife at the address they had provided to the Applicant. When asked who in fact was living at the address at 137 Elm Drive, he told the Tribunal that the property had been vacant for some 18 months. He had no real explanation as to why he had not updated the details of contacts supplied to the Applicant. He also appeared unable to explain why he had been able to adjust the standing order which he had set up with the Applicant for payment of service charges, ground rent and other bills, the variation of which would have been notified to him at that address and which information apparently had filtered through to him in some way. It appeared, although it was not properly explained, that the Respondent's son had for a period of time lived at the

address and would occasionally visit to deal with any post which arrived, but that this was irregular and occasional only.

17. In both the written statement presented to the Tribunal by the Respondent herself and in the oral evidence given by Mr Nazir on her behalf, it was accepted that there had been a breach of the covenant in the underlease not to permit or suffer to be done any act which might become a nuisance or inconvenience to the occupier of an adjoining or neighbouring property. The written statement records that *"to ensure that a breach of the lease does not occur again, my son will now act as the sole point of contact ..."*
18. Contact details are then given together with an email address and phone number. Mr Nazir expressed regret about the suffering to which Mrs Dowden had been put, and the Tribunal judged this regret to be genuine. He said that, in effect, he had felt let down by Ealing Housing Ltd, and he had tried to arrange a meeting with a director of that company in the short time that he had had since his return from Dubai. The Director was presently on holiday but as soon as he returned, he expected to have a meeting with him, during which meeting he would arrange either to have the present occupiers cease occupying the premises, or in some way radically to change or terminate his agreement with Ealing Housing Ltd. He assured both the Applicant and the Tribunal that he would not be returning to Dubai before ensuring that the problems associated with this property had been resolved.

THE DECISION OF THE TRIBUNAL

19. On the admitted facts, the Tribunal is satisfied that there has been a breach of the provisions of Clause 3, Schedule 6, paragraph 18 of the lease and that the Applicant has permitted or suffered to be done on the demised premises, acts which have been a nuisance and inconvenience to the occupier of an adjoining property. By subletting in the manner indicated, the Applicant has created a situation in which she has permitted her subtenant to install persons who have undoubtedly mistreated the property and also acted with scant regard for adjoining occupiers. The Tribunal formed the view that the Applicant, through her husband, Mr Nazir, was genuine in the regret

expressed in her statement, and before the Tribunal, and in their resolve to improve communications between themselves and the Applicant. Further, and in particular, steps are being put in place to deal effectively with the present occupiers so that the constant disruption which Mrs Dowden has experienced can be brought to an end.

20. It would of course be open to the Applicant to go with such a finding to the County Court to seek forfeiture of the lease, but Mrs Clark indicated, in the view of the Tribunal very sensibly, that there were no plans to take such steps at present, and that the Applicant proposed monitoring the position with the Respondent's husband to ensure that the present unhappy situation is finally resolved to everybody's satisfaction. The finding of the Tribunal is thus that there has indeed been a breach of covenant of the kind indicated and for the reasons indicated. It is to be hoped that the Applicant now can and will take control of the situation, failing which she would be at risk of a further application to the County Court which would prejudice the further continuation of her own lease.

Legal Chairman: S Shaw



Dated: 30th March 2007