



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

Case Reference : MAN/00BN/LBC/2015/0003

Property : 55, Humberstone Avenue, Hulme,
Manchester M15 5EE

Applicant : City South Manchester Housing Trust
Represented by : Knox Ellis Solicitors

Respondent : Mr.Cae Os

Type of Application : Commonhold & Leasehold Reform Act
2002 Section 168(4)

Tribunal Members : Judge C.Wood
Mr.D.Bailey

Date of Decision : 19 May 2015

DECISION

ORDER

1. The Tribunal determines that breaches of the covenants contained in clauses 6.2, 6.3 and 6.6.1 of the lease dated 9 October 2006 and made between The Council of The City of Manchester (1) and the Respondent (2), ("the Lease") have occurred.

BACKGROUND

2. By an application dated 3 February 2015, ("the Application"), the Applicant sought a determination from the Tribunal that breaches of certain covenants contained in the Lease had occurred, pursuant to section 168(4) of the Commonhold & Leasehold Reform Act 2002, ("CLRA"). The Application referred expressly to the covenants contained in clauses 6.2, 6.3, 6.4, 6.6.1, 6.7, 6.11, 6.14 and 6.15 of the Lease.
3. Directions dated 6 March 2015, ("the Directions"), were issued by the Tribunal and the following evidence was submitted by the parties:
 - 3.1 Applicant's submissions dated 25 March 2015 together with supporting documentation, including, without limitation, witness statement of Mr. B Seers dated 25 March 2015, ("the First Statement"), and the report and schedule of dilapidations of Mr. J Kershaw dated 8 October 2014, ("the Report");
 - 3.2 Respondent's submissions dated 15 April 2015 together with supporting documentation;
 - 3.3 Witness statement of Mr. B Seers dated 24 April 2015, ("the Second Statement").
4. By e-mail dated 25 March 2015, the Respondent requested a hearing of the Application which was scheduled to take place on Friday 8 May 2015 at 12:30pm at the Tribunal's offices at IAC, 1st Floor, Piccadilly Exchange, 2, Piccadilly Plaza, Manchester M1 4AH.

LAW

5. Section 168 of CLARA provides as follows:
 - (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925...in respect of a breach by a tenant of covenant or condition in the lease unless subsection (2) is satisfied.
 - (2) This subsection is satisfied if-
 - (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
 - (b) the tenant has admitted the breach, or
 - (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that a breach has occurred.
 - (3)
 - (4) A landlord under a long lease of a dwelling may make an application to a [leasehold valuation tribunal] for a determination that a breach of covenant or condition in the lease has occurred.

- (5) But a landlord may not make an application under subsection (4) in respect of a matter which-
 - (a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (b) has been the subject of a determination by a court, or
 - (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
6. The meaning of a "long lease" for these purposes is as set out in sections 76 and 77 of CLRA.

HEARING

7. The Applicant was represented by Mr. B Seers, and Mr. Lewis of Knox Ellis, Solicitors. The Respondent attended in person and was supported by Dr. Foley. The start of the hearing was delayed at the request of the parties in order to allow negotiations between them to continue.
8. At the outset of the hearing, Mr. Lewis requested the Tribunal to reassure the Respondent that a determination of a breach of covenant by the Tribunal would not lead to his immediate eviction from the Property.
9. Whilst confirming to the parties that a landlord under a long lease may not serve a notice under section 146(1) of the Law of Property Act 1925 in respect of a breach of covenant or condition unless the conditions in section 168(2) are satisfied, the Tribunal noted that it appeared from the evidence submitted to it by the Applicant that the Application is the first step in forfeiture proceedings.
10. Mr. Lewis acknowledged this to be the case but said that it had been explained to the Respondent that, if a determination was made by the Tribunal that a breach or breaches of covenant had occurred, this would be the first step in a long process, in which the next step would be the issue of a notice to remedy the breaches. The notice would include a reasonable time in which to remedy the breaches, and even if there was a failure to comply with the notice, the Respondent could then apply for relief from forfeiture.
11. With regard to the evidence regarding the breaches of covenant, Mr. Lewis referred the Tribunal to the Application at page 31, and to the Report (pages 55-83). The Tribunal requested that the Applicant specify in respect of which of the covenants listed in the Application it was seeking a determination. The Applicant again requested that the hearing be adjourned at 1.25pm in order to discuss this request with the Respondent.
12. On resumption at 1.50pm, the parties confirmed to the Tribunal as follows:
 - 12.1 the Respondent accepted that there were breaches of the covenants contained in clauses 6.2 and 6.3 of the Lease. Specifically the Respondent confirmed that:

- (i) since 2006, the Respondent had caused damage to the Property which had not been made good in breach of the covenant contained in clause 6.2; and,
 - (ii) he had not kept the interior of the Property in good and decorative repair and condition and had failed to discharge his responsibility for all interior repairs and maintenance in breach of the covenant contained in clause 6.3;
- 12.2 that the Applicant, with the Respondent's consent, had withdrawn the Application in respect of alleged breaches of the covenants contained in clauses 6.4, 6.7, 6.11, 6.14 and 6.15 of the Lease;
- 12.3 the question whether there had been a breach of clause 6.6.1 of the Lease was in dispute. The parties confirmed that they wished the Tribunal to make a determination in respect of clause 6.6.1.
13. Under clause 6.6.1 the Lessee covenants "Not to make any alterations to the structure or main timbers of the Premises nor permit nor suffer injury thereto". It is the Applicant's contention that, in carrying out the works to remove the chimney breast at the Property, the Respondent had permitted or suffered such "injury".
14. In support of the Applicant's contention, Mr. Lewis referred the Tribunal to page 64 of the Report and, in particular, to the second paragraph where Mr. Kershaw states, "While removal of some of the internal walls might not pose any problems for the overall structural stability of the dwelling/building, in my opinion removal of a part of the chimneybreast has a destabilising effect on the structure as a whole. Removal of some supporting piers for the concrete beams over must also have weakened the structural integrity of the building".
15. In response the Respondent stated that none of the works carried out at the Property constituted "alterations to the structure or main timbers" of the Property. In particular, he stated that no concrete stands had been removed, and none of the walls which had been removed were load-bearing. Further, Mr. Kershaw's opinion (set out in paragraph 13 above) was challenged; the Report was not a structural survey and the Respondent disputed the accuracy of the assumptions which had been made as to the structural consequences of the works carried out. The reference to the existence of "supporting piers" was also questioned unless it was a reference to the chimneybreast itself.
16. Mr. Lewis acknowledged that, whilst the cited statements in the Report may be inconclusive as to whether the works constituted "alterations to the structure or main timbers of the Property", it was clear that, as a result of the works to the chimneybreast, injury had been caused to the structure of the building as a whole. Mr. Lewis also referred the Tribunal to photographs 17 and 18 at pages 76 and 77 showing the situation following the chimneybreast works.
17. During the hearing, the Respondent asked if the Tribunal would allow him to submit a report that he had commissioned regarding the current condition of the Property. The Applicant objected to this. Having regard

to the Respondent's failure to submit this report in accordance with the Directions notwithstanding the Respondent's statement in correspondence dated 25 March 2015 to the Tribunal that he was intending to obtain an independent survey, and the Applicant's objection to its inclusion, the Tribunal decided not to allow its inclusion.

REASONS

18. The Tribunal noted that the Lease comprised "a long lease of a dwelling" for these purposes.
19. With regard to the covenants contained in clauses 6.2 and 6.3, subsection (2) of section 168 is satisfied by the Respondent's admissions to the Tribunal that he had breached the covenants.
20. With regard to the covenant contained in clause 6.6.1, the Tribunal was satisfied that the works to the chimneybreast comprised (i) alterations to the structure of the Property; and (ii) that the Respondent had permitted and/or suffered injury to the Property as a result. In reaching this determination, the Tribunal took into account, in particular, Mr. Kershaw's evidence in the Report of the nature of, and effects, of the works carried out at the Property to the chimneybreast and the photographs of the chimneybreast works carried out at the Property.