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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : LON/00AG/LBC/2015/0073

Property : Flat 4, 1 St Cuthberts Road,
London, NW2 3QJ

Applicant : St Cuthberts Road (RMC) Ltd

Representative : Mr Hutchins of Counsel

Respondent : Marcia Harper

Representative : Did not attend and was not
represented

Type of Application : Determination of an alleged breach
of covenant

Tribunal Members : Judge I Mohabir
Mr M Cairns MCIEH

**Date and venue of
Hearing** : 2 November 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 11 January 2016

DECISION

Introduction

1. This is an application made by the Applicant under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that the Respondent has breached various covenants and/or conditions in her lease.
2. The Respondent is the leaseholder of the property known as Flat 4, 1 St Cuthberts Road, London, NW2 3QJ (“the property”) pursuant to a lease dated 8 June 1988 granted to the Respondent by Sidney Kreiger for a term of 125 years from 25 March 1988 (“the lease”).
3. By an application dated 3 August 2015, the Applicant, through its managing agent, applied to the Tribunal seeking a determination that the Respondent had variously breached one or more of the covenants in the lease as particularised in a notice purportedly served on her under section 146 of the Law of Property Act.
4. On 27 August 2015, the Tribunal issued Directions following a case management hearing on that day, which was not attended by the Respondent. She has also failed to comply with any of the Directions as at the hearing date.

Procedural

5. At the hearing, the Applicant applied for and was granted permission that the allegations of breach set out in the section 146 Law of Property Act 1925 notice and relied upon in box 5 of the application be struck out and substituted by the allegations of breach set out in the report of Mr Walsh MRICS, BSc (Surv)Dip Env Econ dated 15 October 2015. Permission was also granted under regulation 19(2) of the Tribunal Procedure (First-Tier) (Property Chamber) Rules 2013 to rely on the report of Mr Walsh.
6. The Tribunal did not consider that the Respondent was prejudiced by this late amendment to the application because it seems that she had

been served with a copy of the hearing bundle on 19 October 2015, which contained a copy of Mr Walsh's report.

7. For convenience, the allegations of breach set out at pages 8 to 15 of the report of Mr Walsh, which is annexed to this Decision ("the alleged breaches"). Any reference in this Decision is to the internal numbering of this document.
8. At the hearing, the Applicant conceded that:
 - (a) it was not proceeding with the initial allegation of breach of covenant for non-payment of rent.
 - (b) the absence of a shower screen¹ and movement of part of the loft floor did not amount to disrepair and did not amount to breach of a covenant in the lease.

Lease Terms

9. The covenants in the lease that the Applicant alleges have been breached are found in clauses 3.03 and 3.05. These provide:

“3.03 At all times throughout the term to keep the demised premises and all fixtures and fittings therein and additions thereto in good and substantial repair and condition.

3.05 At the expense of the Lessee to do and execute all such works and to comply with all requirements as are or may be lawfully directed by any Act or Acts of Parliament now and hereafter to be passed or by any Government Local statutory or other competent body or authority to be done or executed in respect of the demised premises whether by the owner or occupier thereof...”

Decision

8. The hearing in this case took place on 17 June 2015 following the Tribunal's earlier inspection of the property. The Applicant was represented by Mr Hutchins of Counsel. The Respondent did not attend and was not represented.

¹ see pages 7 and 15 of the report

9. The Tribunal heard evidence from Mr Walsh as to the findings made in his report. In questioning by the Tribunal, he accepted that some of his findings such as the provision of a shower screen did not fall within the repairing obligation in clause 3.03 of the lease. Mr Walsh also accepted that the health and safety matters he commented on in his report fell outside the ambit of this application. He said that these had been included for the sake of completeness.

10. In conclusion, Mr Hutchins submitted that, save for those matters referred to in paragraph 8 above, the alleged breaches were:
 - (a) jointly or severally breaches of clause 3.03 of the lease; and/or
 - (b) in the alternative, joint or several breaches of section 11 of the Landlord and Tenant Act 1985 and/or section 4 of the Defective Premises Act 1972 and, as such, amounted to a breach of clause 3.05 of the lease.

11. Based on its inspection of the property and the evidence contained in the report of Mr Walsh, which was unchallenged, the Tribunal found each of the alleged breaches amounted variously to a breach of clause 3.03 and/or clause 3.05 of the lease. Of course this finding does not extend to those matters referred to in paragraph 8 above.

Judge I Mohabir
11 January 2016

Alleged Breach of Covenant

Flat 4, 1 St Cuthberts Road, London NW2 3QJ

Lease covenant	Breach of Covenant	Repair required	Estimate
<p>3:03 at all times throughout the term to keep the demised premises and all fixtures and fittings therein and additions thereto are in good and substantial repair and condition</p> <p>3:05 At the expense of the lessee to do and execute all such works and to comply with all requirements as are or may be lawfully directed by any act or acts of Parliament now or hereafter to be passed by any government local authority or other competent body or authority to be done or executed in respect of the demise premises whether by the owner or occupier thereof including without prejudice to the foregoing</p>	<p>The mastic seal around the bath abutment is no longer effective.</p>	<p>Remove the bath panel and check that the legs are well seated on a good timbers. Fill the bath. Remove all existing mastic work. Apply a white mould resistant bath silicone to the bath abutment with a continuous and even joint along all abutting surfaces.</p>	<p>£90</p>

Alleged Breach of Covenant

Flat 4, 1 St Cuthberts Road, London NW2 3QJ

Lease covenant	Breach of Covenant	Repair required	Estimate
<p>generality due compliance with the terms and conditions of all planning and bylaw consents granted in respect of the demise premises and at all times to indemnify and keep indemnified the lessor against any non-compliance or non-observance thereof and to repair to the lessor on demand any costs charges or expenses which may be incurred by the lessor in respect of any such works are requirements provided however that nothing in this sub-clause shall entitle of the lessee to make any alteration in order to the demise premises except in accordance with the provisions of the next following sub-clause hereto</p>			

Alleged Breach of Covenant

Flat 4, 1 St Cuthberts Road, London NW2 3QJ

Lease covenant	Breach of Covenant	Repair required	Estimate
As above	<p>The bath taps are fitted with a shower attachment. There are numerous bowls in the bathroom which suggest water being thrown over the bathers. There is no obstacle to water from these processes being thrown onto the floor. This is implicated in some of the water damage referred to below.</p>	<p>Provide and fix a shower screen rail and shower screen competence along the frontage of the bath. These to be positioned so that the curtains fall inside the bath.</p>	£130
As above	<p>A panel of tiling on the bathroom external wall has fallen off which will result in water ingress.</p>	<p>Hack off the existing tile mastic. Provide and fit new 150 mm x 150 mm tiles, similar to the existing. Fix and grout same using a waterproof tile adhesive and a waterproof grout. Lay to match the line and level</p>	£100

Alleged Breach of Covenant

Flat 4, 1 St Cuthberts Road, London NW2 3QJ

Lease covenant	Breach of Covenant	Repair required	Estimate
		of the existing.	
As above	On the landing wall immediately outside the bathroom there is a panel of blown plaster. The top of the blown plaster coincides with the bottom of the bath, or the mastic is removed.	Hack off blown render on the panel on the landing outside the bathroom wall back to bare brickwork. Rake open brick joints. Re-render, skim and set. Include for dubbing out to a of existing work.	£200
As above	The area beneath the kitchen sink leaks. On the occasion of inspection I felt a dip at the bottom of the U bend. The occupier has placed a receptacle to receive the sink waste drips.	Renew the waste pipe from the underside of the sink through to the outfall pipe. Renew the sink overflow pipe. Test same and provide a copy of the plumbers report.	£60
	The kitchen base unit are loose. The worktop is loose and	Overhaul the kitchen base units and adequately secure same	

Alleged Breach of Covenant

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Lease covenant	Breach of Covenant	Repair required	Estimate
As above	<p>sagged to the rear of the sink unit.</p> <p>The mastic seal is broken for much of the length of the kitchen worktop. The worktop and base units are badly fixed.</p>	<p>to the wall at the rear.</p> <p>Renew the worktop and ensure a good fix to the base units and to the rear wall. Refit the sink unit. Apply a continuous and even mastic seal to all worktop abutments with the walls. Apply a continuous mastic seal to the stainless steel sink unit abutment with the worktop.</p>	£500
As above	<p>The windows are demised. The kitchen rear window is rot affected and the window is life expired.</p> <p>The store room rear window is rot affected and of the window is in</p>	<p>Take out and renew the kitchen rear window. The replacement windows should be doubled glazed to comply with building control requirements.</p> <p>Overhaul of the store</p>	

Alleged Breach of Covenant

Flat 4, 1 St Cuthberts Road, London NW2 3QJ

Lease covenant	Breach of Covenant	Repair required	Estimate
	<p>poor condition, with occasional rot affected timbers.</p> <p>The front facing window permits water ingress and there is evidence of some wet rot.</p> <p>The bathroom window is degraded.</p>	<p>room window.</p> <p>Overhaul the living room front facing windows.</p> <p>Overhaul the bathroom window.</p> <p>On all windows fit width restrictors so that the windows may not be opened by more than 100 mm.</p>	<p>£3900</p>
<p>As above</p>	<p>There is no hot water provision in this flat.</p> <p>We understand that hot water has not been available for several months.</p>	<p>Shut off the electrical installation and drain the hot water installation. Fit a new electric immersion and bring this circuit to compliance with current requirements.</p>	<p>£250</p>

Alleged Breach of Covenant

Flat 4, 1 St Cuthberts Road, London NW2 3QJ

Lease covenant	Breach of Covenant	Repair required	Estimate
	<p>We noted that hot water is being provided for bathing from several kettles in the lounge.</p> <p>This overloads the electrical installation and there is a severe risk of scalding to the occupiers and of leakage through the floor through to the flats beneath.</p>	<p>Commission and test the hot water installation for good operation.</p>	
<p>As above</p>	<p>There is an electric radiator high in the bathroom wall. There are burn and scorch marks over and behind of this radiator.</p> <p>This radiator does not comply in that it gets too hot and it is too</p>	<p>Provide and fit a new warm air heating device. The device will be fitted on the wall for the list from the bath to comply with current NIC EIC requirements. Include for rewiring and for a new twin pole switch.</p> <p>Upgrading existing or provide and fit a heating</p>	<p>£300</p>