LEASEHOLD VALUATION TRIBUNAL for WALES

IN THE MATTER of Number 2 Usk Road New Inn Pontypool Torfaen NP44 8AJ (the Property) and Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 (the Act)

APPLICANT Mr Jack Hanbury -Tenison

RESPONDENT Mr Alan James Lewis

The Applicant made an Application under Section 168 (4) of the Act on the 10th May 2012 for an Order that a breach of covenant or condition contained in the Lease hereinafter mentioned has occurred

The Lease

A Lease dated the 9th March 1937 made between Arthur Moss and Charles Wilfrid Lindley Meynell (1)and Rupert Grimes Davies (2) whereby the Property together with other premises were demised to the Lessee for the term of 99 years from the 1st January 1936. The Property is shown on the Plan on the Lease as Plot 46 and the leasehold estate is now registered in the name of the Respondent under Title Number CYM 455633. The freehold reversion is now vested in the Applicant.

The Lease contains, inter alia, the following covenants :-

Clause 5 And also will as often as need shall be without being thereunto required and also whenever thereunto required by the Agent or Surveyor of the Lessors paint whitewash and keep in substantial repair and condition such messuages or dwellinghouses and buildings and all other buildings and walls connected therewith or upon the said land.And will construct proper and sufficient glazed tile drains under the said premises and will do such other works as may be necessary for the purpose of properly and effectually draining the said premises and will cleanse and keep the same and all sinks and privies belonging thereto in good repair and condition

Clause 6 And will also permit the Lessors and the Agent and Workmen of the Lessors at all reasonable times to enter upon the demised premises and view the condition thereof and of any defects or wants of repair there found and to give or leave on the premises notice in writing for the Lessee to repair and amend the same within three calendar months after such notice and will within three calendar months make good such defects or wants of repair

Clause 9 And also will not carry on or permit to be carried on any offensive trade or business on the said demised premises or do or suffer to be done in or upon the said premises any act or thing which shall or may be or become a nuisance damage annoyance or inconvenience to the Lessors or the lessees or tenants of the Lessors or the owner or occupier of any adjoining or neighbouring property

The Inspection

Prior to the Hearing we inspected the Property in the presence of the Applicant, his Solicitor Mrs Ffion James of JCP Solicitors, Swansea and Mr Selway, his Barrister - at- law. The Respondent was not present at either the Inspection or the Hearing and hence we were unable to gain access to the interior of the Property. The gardens to both the front and rear of the Property were completely overgrown and we had difficulty circumnavigating the dwelling. The Property fronts a busy main road and the gate and gate pillars were in poor condition as were the steps leading down to the dwelling.The roof was in need of repair as there were broken and cracked tiles, the two front bay windows were in poor condition as was the window frame to the toilet at the rear. However, the other rear windows and the back door and the guttering and rain water goods had all been replaced ,approximately ten years ago by our estimation. The pebble dashed render was cracked and had broken off in places and the front door had been boarded up. The Property had curtains or other window coverings and so we were unable to view the interior. Immediately following the Inspection we were joined by the occupier of Number 4 Usk Road who complained about intrusion of rats onto his premises. We were unable to assist and directed him to the Council's Environmental Health Officer.

The Property is a detached bungalow built circa 1937 with good sized gardens to front and rear.There was no parking area within the curtilage nor was there any roadside parking immediately in front of the Property.

Statutory Notices

Torfaen County Borough Council had served a Prohibition Order pursuant to Sections 20 and 21 of the Housing Act 2004 on Mrs Gwenith Lewis (the previous Lessee and Mother of the Respondent) on the 26th September 2008. The Order detailed the Category 1 Hazards and they included rising and penetrating damp, disrepair to the roof structure in that the roof was bowing to the rear and there were slipped hip tiles and the Council stated that because of water penetration it was uncertain about the

structural integrity of the roof. It continued that there was insufficient heating throughout the house in that there was only a coal fire to the rear living room, a portable gas fire in the front living room and an electrical bar heater for the remainder of the Property. The Council also required the Lessee to replace defective timber framed windows to the front elevation and to replace the half glazed timber combination front door. The Council also considered that the floor covering in the kitchen was in poor condition and a trip hazard.Furthermore there was a collapsed ceiling in the front bedroom and a hole in the kitchen ceiling, the rear bedroom ceiling consisting of polystyrene tiles was bowing, the bathroom suspended timber floor had partially collapsed and the timber floor boards located directly behind the Water Closet were rotten. Finally, the Council noted that the electrical installation was very old with the sole electrical socket in the kitchen being in disrepair and with the pendant light fitting in the kitchen also being in poor condition.

Whilst we were unable to inspect any of these hazards, save as regards the roof, the bay windows and the front door, it was evident that none of the hazards had been rectified. Mrs Lewis died some time prior to July 2009 as on the 16th July 2009 the Property was vested in the Respondent.

On the 7th January 2009 the Council served Notice on Mrs Lewis's Estate requiring that the property be effectively secured against unauthorised entry by boarding up the front door. On the 19th April 2011 the Council gave Notice to the Respondent requiring him to clear the garden area of overgrowth capable of harbouring rodents. It should be noted that the Notice was served on the Respondent at an address in Cwmbran.Similarly an Abatement Notice was served on the Respondent at his Cwmbran address on the 6th May 2011 to remove the household refuse from the garden.

In December 2011 the Council brought the matter to the attention of the Applicant by referring to the above Notices and expressing the opinion that ,apart from the building physically deteriorating, it was likely to be subject to vandalism. Thereafter, the Applicant attempted to resolve matters by encouraging the Respondent to meet his repairing obligations under the Lease, offering to purchase his leasehold estate and advising that in the alternative there would be no choice but to take steps to forfeit the Lease.

Correspondence

The Applicant wrote to the Respondent on the 28th November 2011, requesting his proposals for remedying the breaches and following a meeting on the 2nd December 2011 urged him to take action. There was a follow-up letter on the 16th December 2011 and again on the 9th February 2012 in which a formal request for access to the Property was made.On the 4th April 2012 and the 9th May 2012 the Applicant's Solicitors wrote to the Respondent in an effort to avoid legal proceedings, the Respondent having failed to attend an arranged meeting on the 5th April 2012 and a subsequent meeting that the Applicant had sought to arrange. There was one further meeting on the 30th May 2012 when the Respondent was accompanied by Myfanwy Parfitt of Age Concern.The Applicant also wrote to the Respondent's Solicitors on the same date in which he tried to arrange an appointment for the Respondent to meet his Solicitors.

The Law

Section 168 (1) to (5) inclusive of the Act states:-

(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 (c.20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied

(2) This subsection is satisfied if –
   (a) it has been finally been 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 the breach has occurred

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of a period of 14 days beginning with the date after that on which the final determination is made

(4) A landlord under a long lease may make an application to a leasehold valuation tribunal for a determination that a breach of a 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 determination by a court, or
   (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement

The Hearing

The Hearing took place at Pontypool Active Living Centre on the 14th August 2012.The hearing was attended by the Applicant, his Solicitor and his Barrister.The Applicant confirmed the accurancy of his Witness Statement.Mr Selway referred us to the bundle of documents comprising the Application Form and exhibits, internal memoranda of the Pontypool Estate Office dated the 21st December 2011 and 10th January 2011 and the Witness Statement of the Applicant together with the exhibits..Mr Selway then referred us to Clauses 5,6 and 9 of the Lease.As regards Clause 5 he pointed out that the lessee's covenant was to keep the property in good repair and that the Respondent had breached this covenant. He ran through the defects noted at the Inspection and said that this meant that the property was not in a condition consistent with its age and character.Mr Selway also referred us to the hazards listed in the Prohibition Order and invited us to accept that whilst we were unable to inspect the interior, these defects and hazards were still present and formed further evidence of the breaches of covenant.He pointed out that the purpose of the Prohibition Order was to prevent anyone residing in a property unfit for human habitation and to enable the Respondent and his late Mother to be rehoused.He emphasised that Prohibition Orders were only issued in cases of severe defects and hazards.

As regards Clause 6 of the Lease Mr Selway referred us to the Applicant's letter of the 9th February 2012 to the Respondent in which access to the Property was requested for the purpose of preparing a schedule of defects and he pointed out that despite a number of approaches the Applicant had been unable to gain access, resulting in a breach of this covenant.

As regards Clause 9 of the Lease Mr Selway referred us to the Abatement Notice in respect of a Statutory Nuisance under Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 regarding the boarding up of the front door, and the Notice under Section 4 of the Prevention of Damage by Pests Act 1949 requiring the clearance of the garden to prevent the harbourage of rodents, which he contended evidenced a clear nuisance and that these matters had caused annoyance or inconvenience to neighbours as evidenced by the occupier of Number 4 Usk Road at the Inspection when he had complained about rat infestation.

Mr Selway concluded by stating that the Applicant had made every endeavour to persuade the Respondent to remedy his breaches of covenant and that the Applicant had no alternative but to seek an Order under Section 168 of the Act as the Local Authority were concerned over the condition of the Property and had, on the 14th December 2011, written to the Applicant expressing concern that " the longer a property sits empty, not only does it physically deteriorate and cost more to renovate, but its market value decreases, and eventually becomes subject to vandalism and similar acts of antisocial behaviour "

Our Findings

1. Clause 5 of the Lease. Our external inspection revealed a clear breach of the repairing covenants.We also concluded that the defects and hazards revealed by the Prohibition Order were still applicable and relevant as it is inconceivable that the Respondent has carried out any remedial repairs.
2. Clause 6 of the Lease. We are satisfied that the Applicant has made every reasonable effort to gain entry and has failed through the lack of response by the Respondent.Accordingly there has been a breach of this covenant.
3. Clause 9 of the Lease. We are again satisfied that the failure by the Respondent to positively respond to the Prohibition Order, the Abatement Notice and other Statutory Notices has resulted in a breach of this covenant in that a nuisance has arisen both to the Applicant and adjoining owners or occupiers.

The Applicant, as Landlord, has acted very fairly and responsibly throughout and is entitled to the Order sought.

Our Decision

In accordance with Section 168 (4) of the Act we determine that breaches of the covenants and conditions set out in Clauses 5,6 and 9 of the Lease have occurred and we so Order.

This Tribunal made its decision on the 14th August 2012

DATE: 17th August 2012 CHAIRMAN