

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

**IN THE MATTER OF SECTION 168 (4) OF THE LEASEHOLD AND
COMMONHOLD REFORM ACT 2002**

REFERENCE: LVT/0028/11/17

PROPERTY: 17A Colwyn Crescent, Rhos on Sea, Colwyn Bay, LL28 4RG

LANDLORD: Mrs. Wenda Lowenthal

TENANT: Karen Roberts

TRIBUNAL: Mr. Andrew Grant
Mr. Neil Martindale
Mr. Eifion Jones

DECISION

1. The Tribunal determine that the failure to repair the verge boards and the roof of the property is a breach of clauses 2 (ii), 3 and Paragraphs 7 and 10 of the Third schedule to the Lease.
2. The Tribunal determine that the failure to repair the chimney stack and chimney pots is a breach of clause 2 (iv) of the Lease.
3. The Tribunal determine that the failure to repair the drain pipes serving the property is a breach of clause 2 (ii) of the Lease.
4. The Tribunal determine that failure to keep the property insured is a breach of clause 9 of the Third schedule of the Lease.
5. The Tribunal determine that the failure to pay the Ground rent is a breach of clause 1 of the Lease.

REASONS

1. This is an application by Mrs. Wenda Lowenthal ("The Applicant") which is made pursuant to section 168 (4) of The Commonhold and Leasehold Reform Act 2002 wherein The Applicant seeks a determination by the Tribunal that a breach of a covenant contained in a lease has occurred.

Background

2. Mrs. Lowenthal is the Freehold owner of a property known as and situate at 17 Colwyn Crescent, Rhos on Sea, Colwyn Bay LL28 4RG ("the Property").
3. The Property is a semi - detached House which has been converted into 2 separate flats.
4. One flat is situated at Ground Floor Level. This is number 17. The other is situated at First Floor Level and is number 17A.
5. The Ground Floor Flat ("GFF") is retained and occupied by the Applicant and her family.
6. The First Floor Flat ("FFF") is occupied by Karen Roberts. ("the Respondent").
7. The Respondent occupies the FFF pursuant to the terms of a long lease made between Francis Alexander Royle and Dorothy May Royle of the one part and Alfred Francis Mather of the other part. The Lease commenced on the 28th August 1986 for a term of 999 years ("the Lease")
8. The Respondent acquired the lease on or about the 3rd May 2016.
9. The Applicant contends that the Respondent has broken several of the covenants contained within the Lease under which the Respondent holds the Property.

The Application

10. On the 17th November 2017 the Applicant submitted an application to the Tribunal seeking a determination that the Respondent, in breach of the terms of the lease, had
 - a) Allowed the verge board, roof and chimney of The Property to fall into disrepair;
 - b) Allowed the drains serving the FFF to become blocked;
 - c) Failed to arrange a policy of insurance in respect of the FFF.

11. The Application was received by the Tribunal on the 21st November 2017.
12. Directions were issued by the Tribunal on the 27th November 2017.
13. The matter was listed for hearing on the 16th March 2018.

The Inspection

14. The Tribunal met at the property at 9-30 am on the 16th March 2018.
15. Present at the inspection were Mr. and Mrs. Lowenthal and their solicitor, Mr. Edmondson.
16. The Respondent did not attend the inspection. However, the Respondent was represented at the inspection by Ms. Russell Dunn and Ms. Rebecca Pickering. Ms. Russell Dunn was employed by Conwy Council and was a member of the Vulnerable adult team. She had been assisting the Respondent with the matter. Ms. Pickering was an independent advocate who was also assisting the Respondent.
17. They explained that the Respondent was aware of the inspection but did not want to attend as she was unwell.

The Hearing

18. The hearing was held at The Colwyn Bay Town Council Offices, Rhiw Road, Colwyn Bay, LL29 7TE.
19. The Applicant was represented by their solicitor, Mr. Gareth Edmondson. The Respondent was represented by Ms. Russell Dunn. Also present were Ms. Pickering, Mr. Kirkham and Ms. Scott. Both Mr. Kirkham and Ms. Scott were friends of the Respondent from the local church. They had both been assisting the Respondent in relation to this issue.
20. The Tribunal had before it the following documents - A copy of the application dated the 17th November 2017 together with supporting papers, The Applicant's witness statements dated the 11th December 2017 and the 8th March 2018 with attachments and a copy letter from the Gloddaeth United Church, Llandudno dated the 9th December 2017 sent on behalf of the Respondent.
21. At the outset of the hearing Ms. Russell Dunn informed the Tribunal that she wanted to have the matter adjourned. She explained that her application was based upon the fact that the Respondent was not well and had been unwell for some time. She said that she would like the hearing to be adjourned to enable the Respondent to see further medical experts.

22. The Tribunal asked if the Respondent was aware of the proceedings and understood what they were about and the possible consequences.
23. Ms. Russell Dunn said that the Respondent was aware of the proceedings and whilst she knew what they were about she found it difficult to deal with the claim as it made her unwell. The Respondent had been receiving help as she had been unwell for some time.
24. The Tribunal asked what would be gained from adjourning the matter. It said that the matter had been on-going for some time and questioned what benefit would be derived from delaying the hearing.
25. Ms. Russell Dunn submitted that it would give the Respondent some more time to deal with the matter with help.
26. The Tribunal invited submissions from Mr. Edmondson on the point. He said that he objected to the application for an adjournment. He said that this was not a complicated matter. He submitted that the Respondent knew what it was all about as she has recently instructed a builder to view the condition of the roof with a view to providing an estimate. He further submitted that he could see no real purpose in delaying the proceedings.
27. Regulation 15 (1) of the Leasehold Valuation Tribunals (Procedure) Wales Regulations 2004 permits The Tribunal to adjourn a matter either upon its own initiative or at the request of the parties. Regulation 15 (2) stipulates that the Tribunal should only allow an adjournment where the Tribunal considers it reasonable to do so.
28. After taking some time to consider the matter the Tribunal reached the decision that it would not be reasonable to adjourn the hearing. The Tribunal were satisfied that the Respondent was aware of the claim and what it was about. The reasons advanced in support of the request for an adjournment were not considered sufficient to justify delaying the proceedings.
29. The Tribunal went on to consider each issue in turn.

Verge board, roof, chimney and drains

30. The Applicant alleged that in allowing the verge boards, roofing tiles and chimney to fall into disrepair, the Respondent was in breach of the Covenants in her Lease.
31. The Applicant referred the Tribunal to the particular clauses of the Lease upon which they sought to rely namely, clauses 2(ii), 2(iv), clause 3 and Paragraphs 7 and 10 of the Third Schedule to the Lease. The particular clauses read as follows –

1. Clause 2 (ii) – “All other portions of the building including the roof but excepting the chimney stacks and chimney pots above the intersection with the tiles are included in the demise and shall be repaired and maintained by the lessee or his successors in title.”
 2. Clause 2 (iv) – “The chimney stacks and chimney pots above the intersection with the tiles of the roof including the lead flashing thereof at such intersection shall be deemed to be owned jointly by the lessee or other lessee for the time being of the first floor flat and the retained premises and shall be repairable and maintainable at the joint and equal expense of the lessee and the lessors.”
 3. Clause 3 – “The lessee... hereby covenants with the lessors and their successors in title that the lessee and their successors in title will at all times hereafter observe and perform the covenants restrictions and stipulations set forth in the Third schedule hereto...”
 4. Paragraph 7 of the Third schedule to the Lease – “ Not to do or permit or suffer to be done in on or upon the first floor flat anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the lessors or other owners or occupiers for the time being of the retained premises or neighbouring owners or occupiers or whereby the insurance of the building for the time being effected by the lessors or other owners or occupiers for the time being of the retained premises may become void or voidable or whereby the rate of premium may be increased.”
 5. Paragraph 10 of the Third schedule to The Lease – “To maintain the structure of the first floor flat in such a state of repair and condition as shall at all times hereafter ensure the maintenance of support and protection to the retained premises and the adjoining property.”
32. Mr. Edmondson referred the Tribunal to the first witness statement of the Applicant and in particular to the report which was attached to the statement which was from a firm of chartered building surveyors called Hampton Lewis dated the 10th October 2017. He went through each item in the report highlighting the findings of the surveyor in respect of each complaint.
 33. In addition to the above he submitted that as far as the roof and chimney was concerned the extent of disrepair was evident from a visual inspection of the property.
 34. As regards the blocked drain he referred to the report from T.T Drainage and plumbing Services Limited dated the 7th September 2017 which was appended to the first witness statement of the Applicant which confirmed that a displaced joint in the drain was causing the blockage.

35. In his submissions, Mr. Edmondson acknowledged that there was a joint responsibility to repair the chimney stack and chimney pots. He submitted that his client had tried to discuss the matter with the Respondent but to no avail.
36. In Response (and on behalf of the Respondent) Ms. Russell Dunn said that last year an Enforcement Notice had been served upon the Respondent by Conwy Council and that some works had been carried out to the property in consequence. However, she was unable to specify which works had been carried out.
37. Ms. Russell Dunn went on to say that she acknowledged that there was disrepair at the property.
38. Having considered the evidence the Tribunal determines that the complaints are justified and accordingly the Respondent is in breach of clauses 2(ii), 2 (iv) and clauses 7 and 10 of the Third Schedule to the Lease.

Insurance

39. Mr. Edmondson submitted that the Respondent had failed to arrange a policy of insurance for the FFF and that as such she was in breach of clause 9 of the Third schedule to the Lease which reads as follows –

“ At all times to insure and keep insured the first floor flat against loss or damage by fire and the usual comprehensive risks in the joint names of the lessors and the lessee or their successors in title with the same insurance company with which the retained premises is insured to the full replacement value thereof and to make all payments necessary for the above mentioned purposes within fourteen days after the date the same shall respectively become due and to produce to the lessors and their successors in title not more than once in every year on demand the policy or policies of such insurance and the receipt for every such payment. “
40. The Tribunal asked Mr. Edmondson how he knew that no policy of insurance was in place. At that point the Applicant stated that she had specifically asked the Respondent if she had any insurance and that the Respondent had said “no”. She (the Applicant) then said that she had arranged cover for both properties even though it was the Respondents responsibility to insure her own flat.
41. The Tribunal invited submissions from Ms. Dunn on the issue but she said that she had no information about the insurance position.
42. Accordingly, having heard the evidence the Tribunal determines that in the circumstances the Respondent is in breach of clause 9 of the Third schedule to the Lease.

Ground rent

43. The Applicant further asserted that the Respondent had failed to pay the annual ground rent in the sum of £10 and it was now arrears.
44. The Tribunal enquired whether such rent had been demanded. The Applicant confirmed that it had.
45. The Tribunal asked if Ms. Russell Dunn had any information concerning the ground rent but she confirmed that she had no information about this aspect.
46. Having considered the evidence the Tribunal is satisfied that the Ground rent has not been paid. Accordingly, The Respondent is in breach of clause 1 of The Lease.

Other matters

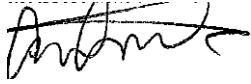
47. The Tribunal asked whether Mr. Kirkham or Ms. Russell would like to say anything on the matter.
48. Mr. Kirkham said that he had tried to help the Respondent when she received The Tribunal application. He said that he went with the Respondent to a local solicitor who advised her to sell the property. He said that she was unable to get any legal aid and the solicitor advised in a free interview.
49. Mr. Kirkham went on to say that he had not spoken with the Respondent for a few weeks now.
50. Ms. Russell said that she had recently tried to get in touch with the Respondent but without success. She said that she last spoke with the Respondent about 2-3 weeks ago. She said that the Respondent realised that she was responsible for the repairs but she was upset because she did not have the money to pay for the repairs.

Decision

51. The Tribunal determines that the failure by the Respondent to repair the verge boards, roof tiles, chimney stack, chimney pots and the drain that serves the FFF is a breach of clause 2 (ii), 2 (iv) and paragraphs 7 and 10 of the Third schedule to the Lease.
52. The Tribunal determines that the failure to pay the ground rent is a breach of clause 1 of the Lease.

53. The Tribunal determines that the failure to obtain a policy of insurance in respect of the FFF is a breach of clause 9 of the Third schedule to the Lease.

Dated the 11th day of April 2018.

A handwritten signature in black ink, appearing to read 'Andrew Grant', written over a horizontal dashed line.

Andrew Grant
Chairman