Y **TRIBIWNLYS EIDDO PRESWYL**

RESIDENTIAL PROPERTY TRIBUNAL

Reference: LVT/0022/09/17

IN THE MATTER OF: 9 CWRT PENCRAIG, CAERAU CRESCENT, NEWPORT NP20 4HG

AND IN THE MATTER OF section 168 Commonhold and Leasehold Reform Act 2002

BETWEEN:

Applicants: **NEWPORT CITY HOMES HOUSING ASSOCIATION LIMITED**

-and-

Respondent: **MALCOLM SADLER**

ORDER

Before: E.W. Paton (Chair), R. Baynham (Surveyor), A Ash (Lay Member)

Sitting at the RPT Office, Wood Street, Cardiff

Inspection and hearing date: 6th December 2017

UPON HEARING the solicitor for the Applicant, and the Respondent in person
IT IS ORDERED AS FOLLOWS:

1. The Tribunal determines, for the purposes of section 168(4) Commonhold and Leasehold Reform Act 2002, that the Respondent is in breach of the following covenants of his lease of flat 9, Cwrt Pencraig, Caerau Crescent, Newport NP20 4HG:

   - Sixth Schedule, clauses 4,6, 8 and 15
   - Seventh Schedule clause 2(b)

DATED this 22nd day of DECEMBER 2017

CHAIRMAN

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1. The Applicant is the freehold owner, under registered title number CYM 414435, of Cwrt Pencraig at the above address. It is a block of 30 flats, together with common parts and areas, primarily occupied by persons over the Age of 55.

2. The Respondent is the leasehold proprietor, under title number CYM 578949, of Flat 9 in Cwrt Pencraig. He holds this title under a lease dated 20th December 2012 for a term of 99 years from 1st March 1990 (“the lease”). The lease is what is sometimes referred to as a ‘shared ownership’ or ‘staircasing’ lease, by which the Respondent initially acquired a beneficial interest of 25% in the flat, paying an initial gross rent of £4152.72, but with the option to acquire a larger percentage of the beneficial interest over time, and so reduce the rent payable.

3. The lease contains various covenants, including the following:-

- 6th Schedule clause 4:
"To the satisfaction of the Lessor to keep in good and substantial repair and condition and properly cleansed throughout the said term granted the Demised Premises and all fixtures and fittings therein and all additions thereto.."

- 6th Schedule clause 6:
"To permit the Lessor with or without workmen and all other persons authorised by it at reasonable times and upon reasonable notice (except in emergency) during the term hereby granted to enter upon and view and examine the condition of the Demised Premises and prepare a schedule of all..defects and wants of repair on any such view found…"

- 6th Schedule clause 8:
"within the time limited by law or by notice requiring the same to be done or if no such time is limited within a reasonable time to carry out all sanitary works and all other works whatsoever which a Public Authority may lawfully require to be carried out on or in connection with the Demised Premises (whether by the Landlord tenant owner or occupier), all such works to be done to the satisfaction of the Lessor or its agents in all respects……"

- 6th Schedule clause 15:
"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 other owner or occupier of any of the flats or to the owner or occupier of any adjoining or neighbouring property."

- 7th Schedule clause 2(b)

"[To] keep all passages staircases paths and communal areas in the Property clear of obstruction of any kind"

4. The Applicant claims that the Respondent has breached some or all of these covenants, and accordingly seeks a determination under section 168(4) Commonhold and Leasehold Reform Act 2002 that a breach of these covenants has occurred.

5. The hearing took place on 6th December 2017. A site visit to the property was scheduled for 9.30 a.m., prior to the hearing. Given the evidence of previous difficulties experienced by the Applicant and others in obtaining access to the property for inspection, we were not hopeful that we would be able to obtain such access for inspection ourselves.

6. In the event, however, we did obtain access. The Respondent was present at the property. He was in bed at the time we called, and did not initially hear us knocking, but came to the window and indicated that we could come in, just as we were about to leave. He accepted, as was obvious from inspection and

from the fact that he was there, that he was living at the property as his home. We were also satisfied that he was aware that there was to be a hearing of the application, notice having been sent to the property – he knew that the hearing was, as he said, on the 5th or the 6th. Very helpfully, after he had taken a few minutes to get dressed, he allowed us in to inspect the property, along with Mr Kevin Fuller of the Applicant and Ms Sian Jones of Blake Morgan, solicitor for the Applicant.

7. The Respondent indicated that he was happy to attend the hearing later that morning. Most helpfully and kindly, Mr Fuller of the Applicant offered him a lift from Newport to Cardiff for the hearing, which the Respondent gladly accepted, so that he was able to attend on time.

8. The Applicant's case, as set out in the application and the witness statements of Kevin Fuller, was that the Respondent was in breach of the covenants of his lease for broadly three reasons.

9. First, it was said that the Respondent has persistently deposited and stored goods and items in communal areas, and continues to do so. There is evidence of a concern about this from as long ago as 2011, and again in 2015. Mr Fuller's statement exhibited photographs from 11th September 2017 showing various items deposited in the communal gardens, and a bicycle stored on a rear pathway.

10. The depositing or storage of some of these items is a relatively minor matter, clearly capable of being remedied very easily. Some items had been moved since the application was made. It was, however, obvious on inspection that there had been a breach in this regard. Almost the whole of a patio or garden area adjacent to the Respondent's flat was taken up with potted plants, flagstones, gardening and other items belonging to the Respondent, as he himself confirmed. This area is not within the demise of his flat, but is rather one of the communal or garden areas reserved to the Applicant, and for the use of all occupiers, by the terms of the lease. On this clear evidence, we find that this breach of the 7th Schedule clause 2(b) is made out.

11. Second, and perhaps more importantly, a number of breaches were said to flow from the Defendant's "hoarding" of a large quantity of material and items in his flat. An email of 28th July 2017 describing a visit to the flat on 26th July 2017 by an Environmental Health Officer, Richard Griffiths, from Newport City Council said that the flat was:

"…heavily cluttered with personal belongings and other household/domestic items. This was from the front door all the way through to the rear living room…The bathroom was filled with items and there appeared to be no way the tenant could use the appropriate means of the facilities [sic]. The kitchen itself was cluttered but useable…It was clear that the tenant had been hoarding. However my professional judgement concludes that the property was not filthy or verminous…"

12. That visit was made in the aftermath of a fire at the flat, or at least a triggering of the smoke alarms, said to have been caused by a pan being allowed to 'boil dry'. The visit was made in the company of two members of the Applicant, and the police and fire services were also present.

13. This led to the fire authority (the South Wales Fire and Rescue Service) serving, on 2nd August 2017, a Prohibition Notice on the Respondent, as the "Responsible Person" for the purposes of that Order, under article 31 of the Regulatory Reform (Fire Safety) Order 2005. This notice identified a fire hazard at the flat caused by the quantity of materials stored there:

    "Due to the quantity of combustible materials (general household furniture and clothing) stored within the whole area of the flat, any fire involving these materials will grow rapidly, quickly spreading heat and smoke and blocking the means of escape. This will prevent people from making a safe escape from the premises."

14. The Notice then prohibited the flat from being used for "residential or sleeping purposes. While the existing quantity of general household furniture and clothing are stored within the flat. The flat is not available for any use aside from remedial works to reduce the storage/hoarding quantities."

15. Our inspection wholly confirmed this evidence and position. Almost every part of the flat was filled with items, including clothes, papers and household objects, in places up to the ceiling. The bathroom was wholly filled and blocked off by such materials. The lighting at the flat was not working, and so we had to negotiate a narrow passage through the stored objects, in semi-darkness, in the course of our visit. The kitchen, bedroom and living room were similarly filled with items, with just small spaces left in each for the Respondent to (respectively) cook, sleep or sit.

16. It was therefore clear, and we find, that:

    i) the Respondent has taken no, or no adequate, steps to comply with the Notice; and

    ii) he is still living in the flat in the meantime, as he openly confirmed and agreed. His van was also parked outside.

    iii) he replied to some correspondence sent to or left at the flat, in connection with arranging an inspection of the flat, although the inspection on the date of the hearing was the first time such inspection had been possible by anyone since the date of the fire.

17. On that last point, the Applicant also claimed (as the third category of breach) that the Respondent is in breach by failing to allow the Applicant reasonable access for the purposes of inspection. The evidence was that the Applicant proposed a date of 11th September 2017. The Respondent replied, in an undated letter written with the flat as his address, stating that he could not

make that date, adding “hope you can make another appointment, try and give me a bit more notice”. He followed that with another letter from the flat on 14th September, which added “When you make the next appointment for an inspection of my flat – please don’t send Louise Anderson – she is not welcome.” Louise Anderson is an employee of the Applicant. It is not clear from this letter or any other evidence what objection the Respondent had to her personally. The Applicant wrote to the Respondent on 14th September 2017 asking him to provide a suitable date and time for an inspection.

18. After that, the evidence was that the Respondent did not reply to the Applicant, by letter, telephone or in person. We are satisfied that he received letters at the flat, and in any event was clearly aware of the need for an inspection and the Applicant’s wish to make one. While his initial inability to agree an inspection on 11th September might have been genuine and reasonable, we are satisfied that he made no sufficient effort after that to agree a different date, despite being aware of the importance of the matter. The onus was on him, having declined an initial inspection date, to respond to the Applicant’s invitation to name a suitable date and time. He did not do so. He gave some evidence that he may have hand delivered a letter, or letters, to the Applicant, but could not give any more detail about when this was or what the letter/s said.

19. In practical terms this breach has to some extent been ‘cured’ by the fact that inspection was allowed on the date of the hearing, which inspection confirmed all of the points the Applicant had raised in its evidence. The Applicant, and the Tribunal, have now seen the position for themselves.

20. We are nevertheless satisfied that the Respondent was previously in breach of the covenant in the 6th Schedule, clause 6 of the lease to permit the Applicant to enter the flat at a reasonable time and on reasonable notice to view and examine the condition of the flat. It is a matter for the Applicant whether it wishes to rely on this aspect in any further proceedings, given that inspection has in fact now been allowed.

21. Perhaps the most serious issue – and in our view, breach - is the failure to comply with the Prohibition Notice. That is a statutory notice served by a “Public Authority”. While the substance of the Notice itself is prohibitory i.e. not to use the flat for residential or sleeping purposes, the accompanying letter and Schedule of Works attached to it clearly requested and required remedial “works” to be done to undo the reason for that prohibition, namely the removal of sufficient quantities of stored combustible materials. We are satisfied that no, or no sufficient, remedial works have been done in that regard. That is therefore a breach of the covenant in the 6th Schedule, clause 8. The breach of the Prohibition Notice by the Respondent continuing to live at the property is not in itself a breach of this specific clause of the lease, but is instead a matter for the relevant authorities (the Fire Authority and local Council) to pursue if they so wish.

22. We are also satisfied, however, that the Respondent's continued storage of such materials in the flat, and his continued occupation and use of the flat for domestic purposes, in breach of the Prohibition Notice, amounts to a ".nuisance or inconvenience to the Lessor or any other owner or occupier of any of the flats or to the owner or occupier of any adjoining or neighbouring property", in breach of the covenant in the 6th Schedule, clause 15.

23. There has already been one small fire at the flat. For obvious reasons, in the light of tragedies such as the Grenfell Tower fire this year, the Applicant is extremely conscious of the need to do all things possible to reduce the risk of further fires, and consequent endangerment not just of the Respondent himself but all occupiers of the building. The Fire Authority's notice is unchallenged, and unequivocally states that the storage of combustible materials at the flat by the Respondent poses a serious risk of a fire starting at the flat and spreading, sufficiently serious to justify a Prohibition Notice. Nothing we saw on inspection of the flat causes us to question that view. The Applicant is perfectly entitled to take the view that the continued existence of such a risk amounts to both a "nuisance" and "inconvenience" both to it and to other occupiers.

24. Finally, we are also satisfied that the continued state of affairs at the flat amounts to a breach of the covenant in the 6th Schedule, clause 4. While the storage of a dangerously large number of items and other chattels in the flat is not a matter going to the "repair" of the flat or of "fixtures and fittings therein and all additions thereto", it does go to the "condition" of that flat, and also amounts to a failure to keep the flat "properly cleansed". This is not a trivial matter of a lessee simply being untidy and leaving items lying around. As stated, the competent Fire Authority has issued a Prohibition Notice on the basis that such a degree of storage of combustible materials poses a significant fire risk. In addition, the inspection on 26th July 2017 stated that the storage of items was so great that the bathroom in the flat was effectively unusable. That was self-evident on our inspection. In those circumstances the "condition" of the flat is not therefore "good", nor is it being (or can it be, in such circumstances) "properly cleansed".

Conclusion

25. We therefore determine that the Respondent is in breach of the covenants of his lease as set out above, in all the respects claimed by the Applicant, for the purposes of section 168(4) Commonhold and Leasehold Reform Act 2002.

26. We add this by way of postscript. It is a matter for the Applicant what it does next, and whether it relies on this determination of breach to pursue a forfeiture of the lease by serving a notice under section 146 Law of Property Act 1925.

27. We would however:-

i) urge the Respondent urgently to seek practical and legal advice and help. He recognised at the hearing that he had allowed matters to get out of hand at

the flat. Help may be available from the responsible authorities, both with the practical matter of clearing and tidying the flat to make it safe and comply with the Notice, and with the Respondent's underlying difficulties and challenges living alone. If matters progress further to the service of a section 146 notice and possible forfeiture, the Respondent needs legal assistance and advice on how to respond to such a notice and any consequent proceedings.

ii) urge the Applicant to co-operate with the Respondent, and if possible direct him towards the help he needs, before commencing further legal processes. To forfeit the Respondent's lease and render him homeless would be a significant course of action, with severe consequences for the Respondent, even if the Applicant is also quite properly concerned to protect the interests and safety of other occupiers of Cwrt Pencraig.

28. These are only expressions of hope, but it ought in principle to be possible for the underlying problems at the flat, and the Respondent's breaches of his lease as found, to be remedied without the need for him to lose his home and his investment in it. We can, however, only leave that to the Applicant and Respondent to resolve if they can.

29. On the application before us, we therefore make the order attached.

Dated this 22nd day of December 2017

E.W. Paton

Chair, Residential Property Tribunal (Wales)