Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Ref: LVT/0063/03/16

In the matter of s.168 of the Commonhold and Leasehold Reform Act 2002

In the matter of Flat 3 27 Llannerch Road West Rhos on Sea Colwyn Bay CONWY LL28 4AU

Tribunal: Andrew Sheftel
David Jones
Bill Brereton

Applicants: Kenneth Gilbert and Ruth Gilbert

Respondent: Lynne Gilbert

DECISION

The decision in summary

1. For the reasons set out below, the Tribunal determines that the Respondent has breached the Lease.

Background

2. The Tribunal is concerned with an application dated 15 March 2016 brought under s.168 of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act"). Specifically, the Applicants. Who are the parents of the Respondent, allege that the Respondent has refused to permit them access to inspect the Property in breach of the terms of the Lease (as defined below).

3. The Tribunal inspected the Property on 29 June 2016, and subsequently held an oral hearing. The hearing was attended by the parties and a Mr Wenger, a surveyor, in support of the Respondent.

The Property

4. The application concerns the property known as Flat 3 27 Llannerch Road West Rhos on Sea Colwyn Bay CONWY LL28 4AU (the "Property").

5. Llannerch Road West is a street located within a mile west of the centre of Colwyn Bay and has a well-established residential element. The A55 Expressway and Chester to Holyhead mainline railway are in the vicinity.

6. Flat 3 is a first floor flat located in Number 27 that is an end terraced property, originally built as a single private dwelling but which has been converted to provide 4 self-contained Flats. Number 27 appears to be of brick construction it having mainly rendered elevations under a pitched and slate clad roof. Flat 3 has white framed double glazing in metal frames; is connected to mains services; and has a gas fired central heating system.

7. The Property comprises a first floor 2-bedroom flat. The accommodation provided includes: rear external steps to the flat; hall; lounge; fitted kitchen; bathroom with 3 piece suite; and 2 bedrooms.

8. The Property has been demised to the Respondent by lease dated 20 March 2008 between the parties for a term of 999 years from and including 27 August 2004 (the "Lease").

9. The Applicants occupy one of the ground floor flats and the Property itself has been sublet by the Respondent.

The law

10. The relevant sections of the 2002 Act provide as follows:

Section 168

"*(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 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 the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to the appropriate 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.*

(6) For the purposes of subsection (4), "appropriate tribunal" means—

> *(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and*
>
> *(b) in relation to a dwelling in Wales, a leasehold valuation tribunal*."

11. Accordingly, the sole question for the Tribunal is whether there has been a breach of the lease. Therefore, the Tribunal does not comment as to the state or condition of the Property and indeed cannot compel access or the manner of access.

The Lease

12. The clause of the Lease relied on by the Applicants is clause 3.17. By clause 3.17, the Tenant covenants with the Landlord:

> *"to permit the Landlord and all persons authorised by the Landlord with or without workmen equipment and materials on prior notice to the Tenant except in case of emergency:*
>
> *3.17.1 to enter upon the Premises for the purpose of ascertaining that the covenants and conditions of this lease have been observed and performed*
>
> *3.17.2 to view (and to open up floors and other parts of the Premises where such opening-up is required to view) the state of repair and condition of the Premises …"*

13. In summary, the Applicants contend that the Respondent is in breach of the above provision in not allowing the Applicants to enter the Property to determine the extent of dry-rot, which has been revealed in other parts of the building.

Discussion

14. At the hearing, Mr Gilbert relayed the history of the Applicants' ownership of the building and the discovery, several years ago, of extensive dry rot. Substantial remedial works were carried out to three of the four flats including, apparently, disposing of floorboards and lintels.

15. The Applicants' position was that insofar as three of the four flats suffered from dry rot, there was a good chance that the fourth did also Accordingly, they wished (and continue to wish) to inspect the Property including opening up parts of the Property to determine the existence and extent of dry-rot.

16. The Applicants' case is that they have been unable to inspect the Property for over a year. On two occasions, inspections were arranged but the tenant refused access. On other occasions, requests for inspection have been ignored.

17. It was apparent from the documents provided to the Tribunal that there have been a number of requests to inspect the Property. It was also accepted that no such inspection had taken place. A builder did visit the Property in February 2015 on behalf of the Applicants, although it was never intended that this visit would involve any opening up of parts of the Premises to determine the existence of dry-rot. The Applicants' case is that they have been unable to visit since and have been unable to exercise their rights under clauses 3.17.1 and 3.17.2 as set out above.

18. In the Respondent's view, she felt somewhat 'stuck in the middle' as between the Applicants and her tenant who was concerned about granting access. The reason for this was because a builder who the Applicants had instructed to attend the Property in February 2015 allegedly told the tenant (without having carried out an inspection) that she (the tenant) would have to move out as there would be £10,000-£20,000 worth of work that needed doing.

19. The Respondent accepted that she had not agreed to grant access to the Property but contended that she had never received any paperwork or report stating what work needed to be done. In the Respondent's view, she had sought to achieve a sensible compromise by proposing that she, or the parties jointly, appoint a surveyor to inspect the Property. She also enlisted the support of Mr. Wenger in this regard to try to reach an agreement. The Applicants' response was that: (i) they could not determine what was wrong or what works needed doing without first carrying out the inspection that they were trying to achieve; and (ii) they were under no obligation to have the inspection carried out by the Respondent's surveyor.

20. Although the Respondent's proposal above might have had the attraction of common sense, and the Tribunal and the fact that the parties have failed this far to resolve the impasse is hugely unfortunate, the wording of clause 3.17 is quite clear. As noted above, the landlord has fairly wide powers not just to enter on notice but also to open up floors and other parts of the Property to view its state and condition. In the Tribunal's view, they have been prevented from exercising this right.

21. Indeed, the Respondent fairly accepted at the hearing that she had not paid close attention to the wording of the Lease and had not appreciated what it entailed.

22. At the hearing, Mr. Wenger in support of the Respondent suggested that clause 3.17, must be read such as to require a good reason for the landlords to be able to exercise their powers under the clause. However, even if that were correct, he accepted that the potential risk of dry rot would indeed be a good reason.

23. It is extremely unfortunate that the parties have reached this stage and the Tribunal sincerely hopes that they will be able to resolve the matter and relations improve. However, given the wording of clause 3.17 and the history as outlined above, the Tribunal must conclude that the application is made out and that the Respondent has breached clause 3.17 of the Lease.

Dated this 20th day of July 2016

ANDREW SHEFTEL

CHAIRMAN