

Y TRIBIWNLYS EIDDO PRESWL
RESIDENTIAL PROPERTY TRIBUNAL WALES
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0008/06/22

In the matter of 4B Walker Road, Splott, Cardiff CF24 2EJ

And in the matter of an application under s168(4) Commonhold and Leasehold Reform Act 2002

Tribunal Judge: TE Richards-Clarke

Surveyor member: Mr Roger Baynham

Lay member: Mr Hywel Jones JP

Applicant: Godding Freehold Management Limited

Respondent: Mr Peter Raymond Elmi

Date and Venue of Hearing: 20 January 2023 via CVP Remote Hearing
Determination without an oral hearing

DECISION

A Breach of covenant of the lease has occurred.

The Respondent has breached Covenants 3 (d), (g), (i) of the lease.

The Application

1. On 16 June 2022, the Applicant applied to the Tribunal, pursuant to paragraph 168(4) Commonhold and Leasehold Reform Act 2002 (“the Act”) alleging breach of covenant or condition of the lease of 4B Walker Road, Splott Cardiff CF24 2EJ. In the application to the Tribunal the Applicant claims that there has been a breach of Clauses 3(a), 3(b), 3(d), 3(e), 3(g), 3 (i) and 3 (j).
2. Directions were issued by the Tribunal on 19 July 2022 [page 26-27 Hearing Bundle]. It was ordered that as s168(4) applications only deal with breaches of covenant other than service charges or rent this application will be confined to the allegations of

breach of covenant 3(d), 3(g), 3 (i) and 3 (j). The Applicant complied with the direction to file a Witness Statement. No response was received from the Respondent.

3. The inspection and hearing were due to take place on Friday 11 November 2022. On 9 November 2022 the Respondent informed the Tribunal that because of a family bereavement he would not be able to provide access to his flat for the inspection on 11 November 2022. Having considered the *Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004* the Tribunal decided it was appropriate to adjourn in the interests of justice to give the Respondent another opportunity to provide access to his flat and participate in the hearing.
4. On 10 November 2022 the Applicant indicated that they were agreeable for the matter to proceed by way of paper determination. On 15 November 2022 both the Applicant and the Respondent were notified in writing that the matter had been re-listed to take place on Friday 20 January 2023. The parties were informed that following the inspection of the property at 10.30am on the 20th January 2023, the matter will be determined upon the paper evidence before the tribunal. Neither party made an application to the Tribunal to be heard at an oral hearing nor was any response received from the Respondent. The Tribunal therefore determined the application without an oral hearing in accordance with *Regulation 13 Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004*.
5. The Tribunal had regard to the hearing bundle of 47 pages, the e mails and documents submitted by the Applicant dated 11 November 2022, 21 December 2022, 20 and 23 January 2023 together with the findings following the inspection.

The Law

6. Section 168 of the Commonhold and Leasehold Reform Act 2002 states that:

168 No forfeiture notice before determination of breach

(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.

The Inspection

7. The Tribunal Judge and Surveyor attended and inspected 4 Walker Road on the morning of the 20 January 2023. There was no attendance on or on behalf of the Respondent. The Applicant was present.
8. No. 4 Walker Road comprises a three-storey middle of terrace house which has been converted into 3 self-contained flats. The property is approximately 100 years old and is constructed of solid brick and dressed stone exterior walls which have been cement rendered at the rear, a tiled roof and has the benefit of UPVC double glazed windows. The access to the lower ground floor flat is via concrete steps leading down from the pavement whereas the access to the other 2 flats is through a communal entrance hall. The subject Flat (4B) is situated at ground floor level. At the lower level adjacent to Flat 4A there are 2 cupboards housing the respective gas and electric meters.
9. Unfortunately, as indicated above the Respondent did not attend and consequently the Tribunal could not gain access to the flat but were able to inspect the exterior, the communal hallway, and the meter cupboards.
10. Walker Road is located on the eastern side of Cardiff and is within easy reach of local shops and all other facilities are available in the city centre approximately 2 miles distant.

Consideration

11. The Applicant has made an application for a determination that breach of covenant of the lease has occurred. Such a determination is required before service of a forfeiture notice. The Applicant relies on breach of covenants of the lease dated 28 August 1991 [page 11-25 Hearing Bundle].

12. Covenant 3 (d)

To maintain and keep the demised premises in good repair and condition.

13. At our inspection on 20 January 2023 the curtains to the front of the property appeared dirty and the blinds to the rear room were broken and appeared to have suffered some fire damage. We were shown the 2 electric meter cupboards where the electric meter for Flat 4B was substantially in arrears. Further, according to the Applicant the gas supply to the flat was disconnected on 21 December 2022 by the Gas company Wales and West Utilities as there was a gas leak.
14. The Applicant relies on the letter dated 11 February 2020 to the Respondent from DPA Law LLP [pages 34-36 Bearing Bundle] setting out the Applicant's concerns about the condition of the property. These concerns include holes in the ceiling as seen from above in Flat 4C and the lack of a working electricity supply at Flat 4B. No response to this letter was received from the Respondent. Nor is this evidence disputed by the Respondent.
15. The Tribunal is therefore satisfied that the Respondent is in breach of Covenant 3 (d).

16. Covenant 3 (g)

To permit the lessor and his duly authorised agents with or without workmen and others upon giving three days previous notice in writing at all reasonable times to enter upon and examine the condition of the demised premises and thereupon the Lessor may serve upon the Lessee notice in writing specifying any repairs necessary to be done and require the Lessee forthwith to execute the same and if the Lessee shall not within one month after the service of such notice proceed diligently with the execution of such repairs than to permit the Lessor or to enter upon the demised premises and execute such repairs and the cost thereof shall be a debt due to the Lessor from the Lessee and be forthwith recoverable by action.

17. The Applicant relies on the failure of the Respondent to allow access to Flat 4B for the installation of fire detection equipment. This is an issue of some concern for the Applicant. Letters dated 18 March 2019, 27 November 2019, 12 February 2020, and 29 June 2020 [page 37, 40-42 Hearing Bundle] were sent by the Applicant to the Respondent requesting permission for access for the installation of a fire detection system at 4 Walker Road. No reply was received to these requests.
18. The controls for the fire detection system are in the communal hallway and were installed in July 2020 as indicated on the invoice dated the 4 August 2020 from JDS Fire and Security Solutions Ltd [page 43-45 hearing bundle]. However, as noted on the Invoice, JDS could not obtain access to Flat 4B and consequently there is no fire alarm system in that flat. This evidence is not disputed by the Respondent.
19. The Tribunal is therefore satisfied that the Respondent is in breach of Covenant 3 (g).

20. Covenant 3 (i)

Not to do or permit or suffer to be done in or upon the demised premises anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Lessor the occupiers or whereby any insurance for the time being affected on the building or part of it or any contents therein may be rendered void or voidable or whereby the rate of premium may be increased.

21. The Applicant relies on the Statement from Mr Mark Cooney dated 1 August 2022 [page 31 Hearing Bundle]. Mr Cooney is the previous owner of Flat 4A which is directly below the Respondent's Flat 4B. Mr Cooney complains about water leaks from Flat 4B into his property, filthy windows, curtains, and an acrid smell from the property. This evidence is not disputed by the Respondent.

22. The Tribunal is therefore satisfied that the Respondent is in breach of Covenant 3 (i).

23. Covenant 3 (j)

To keep the demised premises and all buildings erections and fixtures of an insurable nature.

24. Here, the Applicant asserts that given the condition of the property it is likely that an insurer would refuse to pay or reduce any payment on the basis that Flat 4B is inhabitable. The Tribunal considered the evidence before us regarding this and did not make a finding that the Respondent is in breach of Covenant 3(j).

Summary

25. Given the evidence before us the Tribunal is satisfied that there has been a breach of covenants or conditions 3 (d), (g) and (i) of the lease of 4B Walker Road, Splott Cardiff CF24 2EJ.

26. The Tribunal therefore finds that a breach of covenant or condition in the lease has occurred.

Dated this 3rd day of February 2023

Tribunal Judge
T E Richards-Clarke