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LEASEHOLD VALUATION TRIBUNAL for the LONDON RENT ASSESSMENT PANEL

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 section 168(4)

LON/OOAC/LBC/2008/0038

Property:	**Flat 228a, Colney Hatch Lane, Friern Barnet, London N10 1EU**
Applicant:	**Colney Hatch Court Limited**
Respondent:	**Mr Rongpu Sen, also known as Mr Rudranil Sen**
Representations:	**For the Applicants:** **Mr S Datta Counsel** **Mr R Taha Martyn Gerrard managing agents** **For the Respondent:** **Mr Sen**
Date of Application:	**5th August 2008**
Date of hearing:	**23rd October 2008**
Tribunal Members:	**Mr AA Dutton Chair** **Mr B Collins BSc FRICS** **Mrs S Justice**

Date of decision: 28 October **2008**

Reasons/Decision

BACKGROUND

1. This application was made on 5th August 2008 by Colney Hatch Court Limited for a determination that the Respondent, Mr Sen, had breached the terms of his lease. The lease is dated 31st August 1965 for a term of ninety nine years from 25th December 1964. It appears that Mr Sen's mother was the owner of the flat until her death in 1989. Amongst the papers before us was a copy of the Grant of Probate to her estate to which was attached a copy of her will which left her interest in the subject premises to the Respondent. It is not clear whether evidence of the death and devolution of title has been lodged with the Land Registry but there is no issue that the Respondent is the current lessee and was the lessee at all material times.

2. A helpful chronology was prepared by Mr Datta which indicated that in April 2007 the Applicants sought to inspect the flat under the provisions of the lease. Such access was refused but as a result of County Court proceedings the Respondent relented and access was afforded to the Applicant's representatives in August 2007. As a result of that inspection by Mr Peterson, a chartered surveyor and Mr Taha of the managing agents a schedule of works was prepared and sent to the Respondent. At the time of the inspection a number of photographs were taken by Mr Taha. The report from Mr Peterson, in its conclusion indicates that *"the flat is in very poor order and in a filthy condition.....Decorations have not been carried out for many years...Joinery is affected by wet rot and ideally the windows should be renewed...The electrical installation is possibly the original and in which case it does not comply with the current Regulations and may be hazardous."*

3. Later in August 2007 a notice under section 147 (sic) of the Law of Property Act 1925 was served. This included a schedule of works requiring the matters to be put right within 3 months.

4. A further notice under section 146 was served on 6th February 2008 alleging breaches of the lease. Subsequently the Applicant sought an order for forfeiture at Court but this was refused as they had not complied with the requirements of the Commonhold and Leasehold Reform Act 2002 section 168(2). Hence the matter came before us for consideration on 23rd October 2008.

THE LEASE

5. There are a number of clauses dealing with the Respondent's obligations to repair the flat. At clause 2(5) there is an obligation to decorate both the exterior and the interior of the premises. At clause 2(6) an obligation to *"repair uphold support cleanse maintain drain amend and keep and if necessary rebuild the demised premises.."*

6. The Applicant relies to a large extent on alleged breaches of clauses 2(9) and 2(10) of the lease. The first requires the lessee to allow access to the landlord to view the premises and to give notice of any *"defect decays and wants of reparation"*. In fact the Respondent has complied with this requirement. The second provides that within 3 months after the giving of the notice the lessee will carry out works to correct the alleged want of repair. It is the Respondent's failure to do this which forms the basis of the Applicant's case.

THE HEARING

7. Mr Sen was not present at the commencement of the hearing, arriving some 20 minutes late. However the Applicants had not called evidence at this time.

8. We heard from Mr Taha who had filed a witness statement dated 20th August 2008. We had read the statement in advance and a copy of the bundle before us had been supplied to Mr Sen, such bundle including Mr Taha's statement. Mr Taha made some amendments to his statement to correct dates but otherwise confirmed that the contents were true. He confirmed that he had taken the photographs appended to his statement at the time of his inspection in August 2007. He had inspected the flat again in July 2008 and found no improvement in its condition. Again photographs were taken and were exhibited to his statement. He told us that he had tried to visit the flat since July 2008 but had not been able to gain access, notwithstanding that he had left a card at the flat. He told us that he had been contacted by other residents in 2006, there are apparently 9 flats in the block, and residents had expressed concern about the external state of Mr Sen's flat. Hence the request to inspect in April 2007.

9. In addition to Mr Taha's statement we had before us the application consisting of a statement of Mr Mark Wagner, the solicitor for the Applicant, the report from Mr Peterson dated 16th August 2007 and copies of some of the court papers.

10. Mr Sen accepted that the lease referred to above is the one under which he held the premises. He did make comments concerning his dissatisfaction with what appeared to be the circumstances surrounding the enfranchisement which appears to have taken place in the 1990's and from which it seems he was excluded. He was concerned that other lessees had influenced the Applicant's action in this case. In the bundle before us was the defence that Mr Sen had filed in the County Court proceedings, photographs and correspondence exhibited to his hand written witness statement dated 11th September 2008. All had been read by us prior to the hearing.

11. Mr Sen told us that he had now decorated the flat. Notwithstanding the tribunal's warning as to the impact a letter from the Environmental Health Department of the London Borough of Barnet he sought to introduce same as well as a letter from British Gas evidencing a Homecare agreement he had entered into with them dated 24th September 2008. The thrust of his evidence was that he was not in breach in that he had actioned works to resolve the matters set out on the schedule served upon him in August 2007. Further he asserted that the schedule did not refer to the windows to the rear and that the problems with the garage guttering was not his responsibility as it was a communal gutter serving 5 garages. He told us that he had engaged the services of a contractor to carry out the works. However, that contractor, he told us, had absconded with his money leaving his flat without two windows to the rear which had been boarded up. This was in May 2008. Since then he had decorated the flat and started on clearing it of paperwork and other items. He told us that he had visited Halifax in the last few days to source windows but could not say when they would be supplied, or indeed whether he had ordered them. He produced a copy of a letter from British Gas confirming that he had entered into a Homecare agreement but that no inspection had taken place and he could not say whether the agreement would exclude existing problems.

12. The letter from the Council which is undated but which was received sometime in August / September 2008 records a meeting Mr Sen had with Tariz Karmali and Richard Pixner, the latter being a Principal Environmental Health Officer. The letter states that it addresses two issues, the condition of the flat and an application for a Disabled Facilities Grant. It goes on to say that *"The condition of the property is of concern to the Council because of our duties under the Housing Act mentioned above."* The letter goes on to refer to

the Housing Health & Safety Rating System and identifies a number of hazards which fall in Category 1. These concern excessive cold due to the absence of two windows, the disrepair of the gas boiler and the general condition of the electrical installation. A schedule of works was attached headed "Schedule of works to remove or reduce hazards. Works to remedy category 1 hazards"

13. This schedule refers to the rear windows of the property and a front bedroom window, the need to replace the present boiler and associated works and to replace a defective wall light and carry out a test and report of the electrical installation. There were further works under a general heading.

14. He told us that he did not believe that the boiler was malfunctioning and that the electrical system was functioning satisfactorily.

15. In final submissions Mr Datta referred us to his skeleton arguments and that the schedule did indeed refer to the windows of the flat, including the rear ones. He told us that Mr Sen had either put forward excuses or that the matters were in hand. There was, he said, no evidence that matters were in hand. The notice had been served over a year ago and apart from some alleged decorative works the problems remained. The photographs were clear evidence.

16. Mr Sen denied that he had breached clause 2(10) of his lease. He said he had attended to his obligations and that any delay was as a result of him having to clear a great quantity of business papers and move furniture, which he found difficult as a result of his arthritus.

17. No claim for costs was made by the Applicants who also confirmed that they did not require us to inspect the property. Mr Sen told us that he did not believe a visit would assist his case.

THE LAW

18. Section 168(1) of the Act states

> *"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 (c20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.*
>
> Subsection (2) states: *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.

19. Subsection (4) provides for an application to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred

DECISION

20. The tribunal's remit in this matter is to determine whether a breach of the lease has occurred enabling the Landlord to serve a notice under section 146(1) of the Law of Property Act 1925. It is not for us to decide what steps would then be taken as that is within the jurisdiction of the County Court.

21. Having heard the evidence and considered the papers before us we are satisfied that the Respondent is in breach of his repairing obligations under his lease, both clauses 2(5) and (6) but in particular clause 2(10), the ground relied upon by the Applicant. Although we are prepared to accept that the Respondent has made some attempts to comply with the schedule of works they are peripheral. We are satisfied that the schedule did refer to all windows and indeed the letter form the Environmental Officer refers to front and back windows. We would be very surprised if British Gas would be prepared to accept responsibility for pre-existing problems and the lack of repair is a concern. The same applies to the condition of the electrical system. His evidence as to the steps taken to comply with the schedule were not compelling. He produced no evidence to support an order being placed to replace the windows nor that he had paid some £2000 to a contractor to carry out works of repair in May this year.

22. In those circumstances we find that a breach of the lease has occurred.

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Chair – Andrew Dutton

28 October 2008

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Date