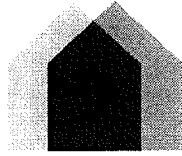


210



**Residential  
Property**  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AM/LBC/2010/0026**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

---

**Property:  
27D Lordship Park London N16 5UN**

**Applicant:  
Mr. I Moskovitz**

**Represented by:  
Y & Y Management Limited**

**Present:  
Mr. J. Gurvits( Managing Director Y & Y Management Limited)**

**Respondent:  
Mr. D Thomson**

**Tribunal:  
Mrs. N. Dhanani LLB (Hons)  
Mrs. J. E. Davies FRICS**

**Date of Directions:  
29/03/10**

**Date of Hearing and further directions:  
03/06/10**

### **Introduction**

1. The Applicant landlord submitted an application pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination that the Respondent is in breach of various covenants under his lease. In particular the Applicant asserts that the Respondent has failed to maintain and repair the Property by failing to cure a water leak emanating from the Respondents Property. It is alleged that the leak has caused damage to the flat below and inconvenienced the occupier of that flat as it has rendered one of the rooms unusable.

### **Background**

2. The Property is a first floor flat in a building comprising a total of five self contained flats.
3. The Applicant is the freehold owner of the building and holds a leasehold interest in Flat B one of the ground floor flats.
4. The Respondent holds a leasehold title to the Property by virtue of a lease dated 16<sup>th</sup> September 1988 made between Roglyd Limited(1) and David Tyrone Thompson (2) (“the Lease”).

### **Directions**

5. Directions were issued on the 29<sup>th</sup> March 2010 and the case scheduled for a hearing on the 3rd June 2010.

### **The Lease**

6. The Lease defines the demised property as the first floor flat D and the building as the building known as 27 Lordship Park London N16.
7. The Respondent as lessee covenants under the provisions of clause 3 of the Lease as follows:

“...the Lessee HEREBY COVENANTS with the Lessor that the Lessee will throughout the term:.....

(3)...Repair maintain renew and uphold and keep the demised premises.... ...including all .....sanitary water...walls ceilings floors drains pipes....in good and substantial repair and condition.....

(14) Make good all damage caused through the act or default of the Lessee or any servant or agent of the Lessee

(a) to any part of the Building or to the appointments or the fixture and fittings thereof and

(b) to any other occupier or tenant of the Building”

8. The Respondent further covenants under the provisions of clause 4 of The Lease as follows:

“THE Lessee HEERBY COVENANTS AND AGREES with the Lessor and with and for the benefit of the owners and lessee from time to time during the said term of the other flats comprised in the Building that:

(1) The Lessee will at all times hereafter during the said term repair maintain renew uphold and keep the demised premises as aforesaid so as to afford all necessary support shelter and protection to the parts of the Building other than the demised premises.....”

### **The Statutory Provisions**

9. The relevant provisions are set out under the Commonhold and Leasehold Reform act 2002 (the 2002 Act). These provide as follows:

#### **“Section 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 a leasehold valuation Tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

#### **Section 169: Section 168: supplementary**

.....

(5) In section 168

- “long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share.

#### **Section 76: Long leases**

(1) This section and section 77 specify what is a long lease for the purposes of this Chapter.

(2) Subject to section 77, a lease is a long lease if—

- (a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise”

10. A determination under Section 168(4) does not require the Tribunal to consider any issue relating to forfeiture other than the question of whether or not a breach has occurred.

### **Hearing**

#### **The Applicant’s case**

11. The Applicant relies on the lessee's covenants detailed above. In addition the Applicant has submitted and relies on the witness statement of Mr Jack Ost an Executive employed as a manager by Avon Estates (London) Limited who act as the Applicant's managing agents responsible for the management of the ground floor flat known as Flat B Lordship Park. Mr Ost's statement gives a chronology of the events and details that they first received a complaint about the leak in early October 2008. The statement records that the Respondent's agent was informed of the leak and he assured the Applicant that the source of the leak had been repaired but the leak persisted causing the ceiling in Flat B to collapse. The tenants of Flat B suspended payment of a third of their rent. The leak continued on and off since November 2008 and the Applicant's tenants have stated that they have reduced the monthly rent by one third from November 2008 until such time as the leak is permanently resolved as the room is not considered habitable.

12. The Applicant also relies on a report produced by Sheeley & Associates Surveyors who inspected both Flat D and Flat B the report concludes as follows:

“There is no doubt in my mind at all that water is leaking from the bathroom of Flat D into the bedroom of Flat B.

The owner of the Flat above will need to significantly improve the detailing around the bath possibly by removing and bricking up half of the window providing a proper tiled surround and fixing a good quality shower screen.

Additionally the floor tiles need to be taken up and the floor allowed to dry out otherwise there is a significant risk of a dry rot outbreak which would be very difficult and expensive to deal with.”

#### The Respondents Case

13. The Respondent did not attend the hearing and was not represented and the Respondent has not submitted any representations.

**Decision**

14. The Tribunal having heard from the Applicant's representative and considered the evidence is satisfied that the Applicants are the current lessors under the Lease. The Tribunal is satisfied that the Lease is a long lease within the meaning of Section 169(5) of the Act. The Lease contains covenants which are binding on the Respondent and may be enforced by the Applicant.
15. The Tribunal accepts the unchallenged evidence submitted on behalf of the Applicant in respect of the persistent leaking of water from the bathroom in the Respondent's Property into the Flat B on the ground floor of the building.
16. The Tribunal finds that the Respondent is in breach of the covenants set out in Clauses 3 and 4 of the Lease as detailed above.

Chairman:



Mrs N Dhanani.

Date..6<sup>th</sup> July 2010.....