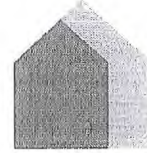


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Residential
Property
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**HM COURTS AND TRIBUNALS SERVICE
LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AS/LBC/2012/0019

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

Premises: 119A Falling Lane Yiewsley Middlesex UB7 8AG

Applicants: Pizza on Demand Ltd (Landlords)

Respondents: Mr A Khanzadeh
Mrs N Khanzadeh (Tenants)

Applicant's Representative: Mr J Pennington Legh Counsel

Respondents' Representative : Mr A Khanzadeh

Date of hearing : 10 May 2012

Date of Decision: 10 May 2012

Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM
Mr J Avery FRICS

DECISION

The Tribunal declares that the Respondent Tenants have been in breach of the covenants contained in 3(2) , 5 and paragraph 5 of the 4th Schedule of their lease.

REASONS

1 The Applicant is the landlord and freeholder of the premises known as **119A Falling Lane Yiewsley Middlesex UB7 8AG**. The Respondent Tenants are the leaseholders of first floor flat (the property) under a lease dated 7 June 2005 (the lease) and made between the same parties.

2 By an application dated 23 February 2012 the Applicant sought a declaration from the Tribunal that the Respondents have been in breach of covenant in relation to the provisions contained in clauses 2, 3(2), 5 and para 5 of the 4th Schedule of the lease.

3 Directions were issued by the Tribunal on 25 February 2012 which required (inter alia) the Respondents to file a statement of case and legal submissions by 2 May 2012. The Directions also stated that the Tribunal could refuse to hear evidence from any witness who had not provided a witness statement.

4 The hearing of this matter took place on 10 May 2012 at which the Applicants were represented by Mr Pennington Legh of Counsel and the Respondents by Mr A Khanzadeh.

5 The Respondents had not prepared or filed a statement of case neither were any witness statements provided on their behalf. The Respondents were therefore unable to defend the application. The Tribunal declined to permit the Respondent to give oral evidence in the absence of a written witness statement. The Respondent had taken legal advice about the matters which were the subject of this application (see page 195) and had ample time in which to prepare a response and/or witness statement but had failed to do so. The Respondent was however allowed to cross examine the Applicant's witnesses and to make closing submissions.

6 The Tribunal did not consider it necessary to inspect the property which it understands to comprise a first floor flat above a pizza shop in West Drayton. According to the Applicant's surveyor's report the property was built at the end of the 19th century.

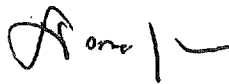
7 By clause 3(2) of the lease the tenant covenants : ' from time to time and at all times during the said term well and substantially repair cleanse maintain amend and keep the demised premises and all additions thereto in good and substantial repair and well cleansed and will keep all gas water and other pipes and sewers drains tubes and meters now laid or hereafter to be laid in or upon the demised premises or any part thereof in good repair and condition'.

8 Clause 5 of the lease contains a covenant by the tenant to observe and perform the regulations and stipulations set out in the fourth schedule of the lease and then fourth schedule contains a regulation inter alia 'not to use or permit to be used in the demised premises ...any washing machine....in such a manner as to cause or which may cause a nuisance ort annoyance to the lessees or occupiers of the adjacent premises or any part thereof ...'

9 Clause 2 of the lease contains a declaration as to the ownership of joists etc and since there is no covenant contained in that clause it follows that there can be no breach of it.

- 10 The Applicants purchased the freehold of the property in 2005 and it was Mr Fatemi's evidence for the Applicant that the property was in an acceptable state of repair as at the date of purchase. Mr Vafa, giving evidence for the Applicant had visited the property twice in late 2010 and said that the property was at that stage not in a good condition and that there had been complaints (page 94) from the tenants of the pizza shop on the ground floor of the building that they were suffering damage from water penetration from the property and nuisance by way of excessive vibration to their ceiling when people were walking around in the property and particularly when the washing machine in the property was in use.
- 11 In July 2011 the Applicant commissioned an independent surveyor to inspect and report on the property . The report dated 2 August 2011 is made by James Prestidge MRICS acting as an expert and highlights a large number of problems with the property and the building some , but not all of which, lie within the Respondent's obligations under the repairing covenants in his lease. The report is supported by a schedule of dilapidations and photographs. For the purposes of the present application the Applicant confined itself to items 1,2,7 and 8 all of which in substance relate to escape of water from the bathroom of the property which has caused damage to the pizza shop on the ground floor.
- 12 The Applicant's attempts to negotiate with the Respondent and his solicitors about the repairs needed to the flat were unsuccessful. The Applicant sent a letter to the Respondents requiring the breaches of the Respondent's repairing covenants and nuisance to be remedied by 15 February 2012 (page 106).
- 13 It was the Respondent's assertion that he had done remedial works to the property and he said in closing submissions that the washing machine could be removed. He said that the works or repairs which he had done were ongoing at 15 February 2012 . It is noted however that his solicitor's letter dated 21 February 2012 (after the deadline set by the Applicant had expired) did not mention the fact that Mr Khanzadeh was carrying out repairs to the property nor did it ask for an extension of time so that the purported works could be completed. No evidence whatsoever was adduced by the Respondent to support his contentions either that the property was in a bad condition when it was purchased by the Applicant nor that he had done repairs to it.
- 14 The Tribunal accepts the evidence of the Applicant's surveyor who was acting as an expert and whose evidence was unchallenged, as to the state and condition of the property at the date of his inspection. In the absence of any evidence that repairs had been carried out between that date and the 23 February 2012 the Tribunal concludes that the surveyor's report reflects the actual state and condition of the property as at the later date which was the date of the Applicant's application to the Tribunal.
- 15 Items 1,2,7 and 8 of the Applicant's surveyor's report all relate to escape of water from the bathroom of the property caused by defective tiling and floor coverings which are breaches of the tenants repairing obligations under Clause 3(2) of the lease.

- 16 We therefore conclude that the Respondent tenants have been in breach of those obligations under Clause 3(2) of the lease.
- 17 We also find that there has been a breach of paragraph 5 of Schedule 4 of the lease in that, vibrations caused by use of the washing machine in the property caused a nuisance to the occupiers of the adjacent property. We base this on the Respondent's statement that the washing machine could be taken away and the letter of complaint from the ground floor tenants (page 90).
- 18 It is open to the Applicant now to serve a notice under s 146 Law of Property Act 1925 . The Tribunal assumes that they will defer doing so until they have verified by inspection the Respondents' assertion that they have remedied the breaches in question.



Frances Silverman
Chairman

10 May 2012