



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/00BA/LBC/2017/0055

**Property** : 8 Recreation Way, CR4 1PG

**Applicant** : Mr Ajibola Danmola

**Representative** : Appeared in Person

**Respondent** : Ms Shanaz Khair-Din

**Representative** : No Appearance

**Type of Application** : Determination of an alleged breach of covenant

**Tribunal Members** : Judge Abebrese, Mr Trevor Sennett  
MA FCIEH, Mr Paul Clabburn, Lay  
Member.

**Date and venue of  
Hearing** : 4 September 2017, 10 Alfred Place,  
London WC1E 7LR

**Date of Decision** : 19 September 2017

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the Respondent is in breach of clauses 4(1) and 4(2) of the lease as alleged by the Applicant.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant. The fees payable by the Respondent include a £100 application fee and a £200 hearing fee.

### **The application**

1. The Applicant seeks a determination pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") on the grounds that the Respondent is in breach of the lease in that:
  - The Respondent has failed to maintain the garden
  - The Respondent has failed to maintain and repair her flat
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant appeared in person at the hearing and the Respondent made no appearance, neither was she represented.
4. The Respondent did not provide any reasons for her non-appearance at the hearing or at the inspection of the property by the tribunal.

### **The background**

5. The property which is the subject of this application is a two bedroom upper maisonette situated on the first floor of the building. The property also comprises of a garden and pathway leading to the garden. The tribunal noted that the property is described in the lease as Recreation Close, whereas the application is made under Recreation Way. The Tribunal however satisfied itself that these proceedings relate to the property to which the Applicant is the freehold owner and the Respondent is a leaseholder.

6. The tribunal inspected the property before the hearing in the presence of the Applicant. Photographs of the building were provided in the hearing bundle.
7. The Respondent is a long leaseholder of the premises and bound by the agreement between herself and the Applicant to comply with the provisions of the lease. The tribunal were provided with a copy of the lease in the hearing bundle

### **The issues**

8. The main issue in this application is whether the provisions of Section 168(4) of the Act are satisfied on the basis of the evidence provided by the Applicant. The Applicant relies on the wording of clause 4(1) and (2) of the lease, and he claims that there has been a breach of the covenant in law because the Respondent throughout the period of the lease has not maintained the garden and the property to the required standard
9. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the tribunal makes the following determinations.

### **Whether there has been a breach of covenant by the Respondent**

10. The Applicant in his application relies on clause 4(1) which states :

“Keep the maisonette and all walls party walls sewers drains pipes cables and aerials thereto belonging or situate therein and serving the maisonette in common with any other parts of the Building in good and substantial repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter and protect the lower maisonette”
11. The Applicant maintains that some parts at the back of the property belonging to the Respondent are in a state of disrepair, namely the step to the back door; communal stairs leading to the back garden and other areas near the guttering and the pipes. The Respondent it is claimed has not maintained in good repair and condition the parts of the building she is responsible for. It is further alleged that the Respondent has not maintained the common parts in good repair and condition.
12. The Applicant states that he has contacted the Respondent on numerous occasions and, although she has promised to put the property into a state of repair, she has failed to act accordingly. The Applicant has also been contacted by the owner of number two Recreation Way, who has complained about the state of disrepair of the

Respondent's property. The Applicant refers the tribunal to photographs numbered ten, eleven and thirteen.

- 13 The Applicant also relies on clause 4(2) of the lease which states:

“Keep the garden forming part of the premises hereby demised in a neat and tidy condition and maintain and keep in good repair and condition the fences with a T within the boundaries shown upon the plan”

- 14 The Applicant maintains that the Respondent has failed to maintain the garden for a prolonged period of time and it is in a bad state and overgrown. Fences and shed are in a state of disrepair. The leaseholder was first notified about the garden in July 2012 and this evidence is in photograph number two which is included in the hearing bundle and in the application. The Applicant also refers the tribunal to photographs numbered eight and nine.

- 15 At the hearing of the application the Applicant relied on the documents which he had submitted to the tribunal alongside the photographs of the property. The Applicant referred to all the letters which had been written to the Respondent dating back as far as 2012 complaining about the condition of the property. This was supported by photographs of the property which show the current conditions of the garden, stairs and common parts, and photos of the ground floor flat showing damp in the ceiling. The tribunal were also referred to letters received from the owner of number two and six Recreation Way complaining about the state of the property. Applicant also provided a copy of a text sent to the Respondent dated 23 July 2017. The Applicant contends that all of the back garden, including the brick part of the garden and the shed, is part of the demised premises.

- 16 The Respondent provided a letter dated 14 June 2017 to the tribunal in response to the application and she makes the following points. The Respondent denies that she has acted in breach of her covenant and alleges that the Applicant has provided evidence which is intended to mislead the tribunal. She maintains that she has always responded to correspondence from the Applicant and she cannot recall having received any text messages from the Applicant. The state of the garden has always been discussed in an amicable manner between herself and the Applicant. She adds that she accepts her responsibility for the staircase and the communal parts and she has offered to make a contribution to the repairs but this has been refused. She also claims that she has made similar offers to the Applicant and these have also been refused. The Respondent finally states in her letter that she is open to an informal resolution of this matter so as not to waste the tribunal's time.

- 17 The Respondent did not appear at the inspection or the hearing of the application. The tribunal did not accept the matters contained in the Respondent's letter as credible because she did not provide any evidence to support her assertions and her non-attendance at the inspection and the hearing did not aid a positive finding in her favour. The tribunal found on inspection that the back of the property belonging to the Respondent was in a state of disrepair namely, the step to the back door was severely rotted and loose, the woodwork to the back doorframe was rotted at high level, communal stairs leading to the back garden were holed and patched and rear guttering was blocked and overflowing.
18. On inspection the tribunal also found that the garden was un-kept and overgrown and it appeared that this had been the position for some time. The shed was in a poor state of disrepair. The tribunal find that the photographs which had been provided by the Applicant were a true reflection of the condition of the property.
- 19 The tribunal also found on inspection that the overgrown hedge at the side of the property and surrounding the property was not part of the property demised to the Respondent and this was reflected in the plan of the property.
- 20 The tribunal also find that the Respondent is not responsible for the brick outbuilding part of the garden. The extent of her liability, is as shown on the lease plan and it consist of the garden, fencing to the rear garden and the shed at the back of her property. The tribunal therefore find that the Respondent is in breach insofar as the lease plan, and that she has not complied with her obligations under clause 4(1) and (2) of the lease.
- 21 The tribunal found on inspection that the door frame and threshold at the back of the property and the guttering were in a state of disrepair and that the communal steps although patch repaired were holed and in disrepair. The tribunal were also referred to the report prepared by the London Borough of Merton under the Housing Act 2004, and a notice of schedule of works on the property. The London Borough of Merton found penetrating dampness to the main rear of the bedroom via the exit door threshold.
- 22 The London Borough of Merton also expressed security concerns regarding the back of the property and they conclude on the last page of the report that the landlord is to: "Provide fencing to rear garden area (as defined by the tenancy) and pad locked exit gate to afford and secure unauthorised access and to allow safe use of garden"
- 23 The Tribunal have taken into consideration the findings of the London Borough as further evidence of the breach of covenant on the part of the Respondent.

- 22 The tribunal determine that the Applicant and others have notified the Respondent on numerous occasions to take steps to remedy the defects and she has not responded accordingly.

**Decision of the tribunal**

- 22 The tribunal on the basis of the above findings determines that the Respondent is in breach of clause 4(1) and (2) of the lease. The application made by the Applicant under Section 168(4) of the Act is therefore granted because a breach of covenants of the lease has occurred and the tribunal is satisfied that the Applicant has provided evidence to support the breaches.

**Application under s.20C and refund of fees**

- 23 At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application and hearing. Having heard the submissions from the Applicant and taking into account the determinations/findings above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

- 24 No application under section 20C was made by the Respondent.

**Name: Judge Abebrese**

**Date: 19 September 2017**

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **Section 168(4)**

A landlord under a long lease of a dwelling may make an application to an (appropriate tribunal) for a determination that a breach of a covenant or condition in the lease has occurred.

### **Landlord and Tenant Act 1985**

#### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.