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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/16UD/LBC/2019/0055**
Property	**:**	**Flat 2, 72-74, Senhouse Street (Second Floor), Maryport, Cumbria CA15 6BS**
Applicant	**:**	**Dr Evin Sowden**
Respondent	**:**	**Derek Bradbury**
Type of Application	**:**	**Commonhold & Leasehold Reform Act 2002 Section 168(4)**
Tribunal Members	**:**	**Tribunal Judge C. Wood** **Tribunal Member S. Latham**
Date of Decision	**:**	**15 March 2021**
Date of Determination	**:**	**18 March 2021**

DECISION

ORDER

1. The Tribunal determines that the following breaches of covenant in the lease dated 11 January 2018 and made between Sophie Waugh (Properties) Ltd (1) and the Respondent (2), ("the Lease") have occurred:

1.1 paragraph 4 of Schedule 5; and,

1.2 clauses 5a and 5b.

BACKGROUND

2. By an application dated 22 December 2019, ("the Application"), the Applicant sought a determination from the Tribunal that breaches of certain covenants contained in the Lease had occurred, pursuant to section 168(4) of the Commonhold & Leasehold Reform Act 2002, ("CLARA"). The Application referred expressly to the covenants contained in clauses 5a, 5b, paragraphs 7, 8.1, 10.1 in Schedule 4 and paragraphs 3, 4 and 6 in Schedule 5 of the Lease.

2. Directions dated 28 February 2020 were issued by the Tribunal pursuant to which the Applicant submitted his statement of case dated 16 March 2020 together with supporting evidence, ("the Statement of Case").

3. The Directions directed that the Application should be determined by way of a paper determination in April 2020, subject to the parties' right to request an oral hearing.

4. For the reasons set out in the order dated 15 July 2020, ("the Barring Order"), made pursuant to Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal barred the Respondent from taking any further part in the proceedings.

5. In August 2020, the Applicant informed the Tribunal that the postal address he had provided for the Respondent was incorrect. The Tribunal required the Applicant to re-serve the Statement of Case to the amended address. The Applicant confirmed that he had done so by letter dated 4 October 2020. The Tribunal also re-served the Barring Order.

6. A date for the Tribunal to make a paper determination of the Application was initially scheduled for January 2021, adjourned pending receipt of further information from the Applicant. The Tribunal made its determination on 9 February 2021.

LAW

7. Section 168 of CLARA provides as follows:

(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…in respect of a breach by a tenant of 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 a breach has occurred.
(3) ……..
(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 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 a determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

8. The meaning of a "long lease" for these purposes is as set out in sections 76 and 77 of CLARA.

EVIDENCE

9. During its deliberations in January 2021, the Tribunal was concerned that the evidence of breaches of covenant in the Application and in the Statement of Case may be out-of-date. The Tribunal therefore requested the Applicant to confirm the current position.

10. By letter dated 24 January 2021, the Applicant confirmed to the Tribunal as follows:
10.1 that the broken window at the rear of the Property has been repaired;
10.2 that the Respondent has not reimbursed the Applicant for the cost of replacement and fitting of a new entrance door, which the Applicant claimed had previously been damaged by the Respondent.

REASONS

11. The Tribunal noted that the Lease comprised "a long lease of a dwelling" for these purposes.

12. The Tribunal noted that the Application contained 2 grounds, namely, (1) damage caused to the main entrance door to the Property; and (2) state of disrepair of the Property, specifically, a broken rear window, exposed electric cables and accumulations of rubbish within the Property.

13. In the Applicant's covering letter dated 16 March 2020 to the Statement of Case, the Applicant listed the following as the relevant covenants in the Lease: clause 5a, clause 5b, paragraphs 7, 8.1 and 10.1 of Schedule 4, paragraphs 3, 4 and 6 of Schedule 5.

14. The Tribunal noted that, in the letter dated 24 January 2021, the Applicant confirms that the rear window has been repaired but that the Respondent has not sought to make any reimbursement for the cost of the replacement door and its installation.

15. The Tribunal noted that the Statement of Case included a photograph of a badly-damaged front door to the Property and a copy of an estimate for the costs of a new door and its installation.

16. The Tribunal assessed the photographs from the CCTV having regard to the relevant evidential burden, namely, the balance of probabilities, and having regard to the letter dated 19 December 2019 from Mesut Can Gomen, a director of the tenant of the ground floor business premises at the Property. The Tribunal determined that the Respondent had damaged or was responsible for the damage caused to the front door of the Property on or about 13 December 2019.

17. The Tribunal accepted the Applicant's evidence that the Respondent has not reimbursed the Applicant for the cost of repairing the damage to the front door.

18. The Tribunal is satisfied that the Respondent's failure to reimburse the Applicant for the cost of these repairs is a breach of paragraph 4 of Schedule 5 of the Lease, namely, "No[~~N~~t to do anything at the Property which may…cause loss…to the Landlord…". For the purposes of section 168(4) CLARA, the Tribunal is satisfied that a breach of covenant has occurred.

19. The Tribunal is further satisfied that the breach of paragraph 4 of Schedule 5 constitutes a breach of clauses 5a and 5b.

20. With regard to the other covenants in the Lease referred to by the Applicant the Tribunal notes as follows:

20.1 clause 7, Schedule 4: there is no evidence before the Tribunal of the Respondent's failure to pay costs and expenses of the type included within this clause;

20.2 clause 10.1, Schedule 4: as acknowledged by the Applicant, the breach of the covenant to keep the Property in good repair and condition as evidenced by the broken rear window has been remedied. There was no evidence before the Tribunal of the other issues referred to in the Application in this context;

20.3 clause 3, Schedule 5: there was no evidence before the Tribunal that the Property was being used for "any noisy, offensive, illegal or immoral purpose";

20.4 clause 6, Schedule 5: there was no evidence before the Tribunal of "anything which may cause any insurance of the Building to become void or voidable or which may cause an increased premium to be payable in respect of it…".

Tribunal Judge C Wood 15 March 2021