

# **RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

## **LEASEHOLD VALUATION TRIBUNAL**

### **DECISION ON APPLICATION UNDER S.168 (4) COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**Property**                      38A Thornfield Road, London W12 8JQ

**Applicant/  
Landlord**                      Marisa Castle de Joncaire  
**Respondent's/  
Tenant**                          Philippa Mary Burford Harben

**Application**                      To determine, whether, the Respondent has breached terms or conditions of the Lease dated 21<sup>st</sup> January 1977

**Tribunal**                          Ms M Daley Chairman (LLB.Hons)  
   Ms. Krisko FRICS  
   Mr. Ring

**Date of Hearing**                10<sup>th</sup> January 2007

**Appearances**  
   Marisa Castle de Joncaire (representing herself)  
   (The Respondent did not appear and was not represented)

#### **1. The Application**

- (i)        The Tribunal received an application dated 7 November 2006 under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 to determine whether the Respondent had breached a covenant or condition of her lease.

- (ii) The Directions, given on 13 November 2006 required -: i) the Applicant to prepare a bundle of the relevant documents by 27 November 2006, ii) The Respondent was required to prepare a bundle of documents, including a statement in response to the Applicant's case, setting out the full grounds for opposing the application (made by the Landlord), by the 11<sup>th</sup> December 2006, which was to include any documents or witness statements in support of the Respondent's case.
- (iii) Point 4 of the directions also stated -: *The Respondent should seek independent legal advice, as these proceedings may be a preliminary to forfeiture proceedings, which could result in the loss of her flat. She should also send a copy of the application and these directions to any mortgagee of her leasehold interest.*
- (iv) The matter was set down for hearing on 10<sup>th</sup> January 2007 at 10am.

## **2. Documents Received**

- I. Application
- II. Bundle of Supporting Documentation
- III. Copies of Photographs
- IV. Statement of covenants/conditions/regulations
- V. Directions
- VI. Copy of the Applicant's lease
- VII. Correspondence
- VIII. Up to date Office Copy Entries
- IX. A copy of the Respondent's Lease
- X. Additional Colour Photographs
- XI. A copy of the deed of lease variation dated 20 May 1980
- XII. No documents were received from the Respondent

## **3. Matters in Dispute**

The Directions given on 13 November 2006 informed the Applicant Marisa Castle de Joncaire informed that the burden of proof would rest with her, as the Applicant, and The Tribunal would need to be satisfied-:

- (a) That the leases include the covenant or condition relied on by the Applicant; and
- (b) That if proved, the alleged facts constitute a breach of that covenant or condition.
- (c) The Applicant was required to prove that there was a continuing, breach of covenant on the balance of probabilities.

#### **4. The Law**

The relevant Law is set out below:-

#### **S.168 COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

- (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 is satisfied.

This subsection is satisfied if-

- (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
- (2) (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.

## **5. The Lease**

The Lease dated 21 January 1977, between Peter Hans Karl Knab and Diana Ruth Eleanor Knab and the Respondent Philippa Mary Burford Harben; contained the following relevant clauses:-

2. The lessee hereby covenants with the lessors that the lessee and the persons deriving title under her will at all times hereafter observe and perform the regulations set forth in the first schedule hereto

3. The lessee hereby covenants with the lessor that the lessee will throughout the said term:

(1) Pay the said rent at the times and in the manner aforesaid without any deductions

(2) Pay all rates taxes duties assessments charges impositions and outgoings which may now or at any time be assessed charged or imposed upon the demised premises or any part thereof or the owner or occupier in respect thereof and in the event of any rates taxes duties assessments charges impositions and outgoings being assessed charged or imposed in respect of the buildings a whole thereof to pay one third of such rates taxes duties assessments charges impositions and outgoings

(3) Repair maintain renew uphold and keep the demised premises (other than the parts thereof comprised and referred to in paragraphs (2) and (3) of clause 5 hereof) and including all windows glass doors (including the entrance door to the demised premises) locks fastenings hinges sanitary water gas electrical and heating apparatus walls ceilings drains and pipes wires and cables therein and all fixtures and fittings and additions thereto in good and substantial repair and condition save damage by way of risks against which the lessor maintain insurance except in so far as such insurance is vitiated by the act or default of the lessee his servants agents licencees visitors or sub-lessee

(4) In the year one thousand nine hundred and eighty three and in every succeeding seventh year and in the last year of the said term (howsoever determined) decorate in a proper and workmanlike manner with two coats of good quality paint with paper or

emulsion paint of suitable quality such parts thereof as are usually so papered or emulsion painted

(5) Permit the Lessors and their duly authorised surveyor or agents with or without workmen and others upon giving such notice in writing at all reasonable times (except in cases of emergency) to enter into and upon the demised premises or any part thereof for the purpose of viewing and examining the state and condition thereof and the lessee will make good all defects decays and wants of repair of which notice in writing shall be given by the Lessors to the Lessee and for which the Lessee may be liable hereunder within three months after the giving of such notice and if the Lessee shall fail to make good all such defects and wants of repairs within three months after the service of the said notice it shall be lawful ( but not obligatory) for the Lessors with or without workmen and others to enter upon the demised premises and to repair and make good the same at the expense of the Lessee in accordance with the covenants and conditions herein contained and the cost thereof shall be payable by the Lessee to the Lessors on demand and recoverable as rent in arrear

(10) At all reasonable times to permit the Lessors and (as respects work in connection with any other parts of the Building) their Lessees with workmen and others to enter into and upon the demised premises or any part thereof for the purpose of repairing or altering any part of the Building or any adjoining or contiguous premises and for the purpose of making repairing maintaining supporting rebuilding cleansing lighting and keeping in good order and good condition all roofs foundations damp courses tanks sewers drains pipes cables..

The First Schedule above referred to Regulations 1-10 that included the following covenants

(1) Not to use the demised premises nor permit the same to be used for any purpose whatsoever other than as a private residence in one occupation only nor for any purpose from which a nuisance annoyance or disturbance can arise to the owners Lessees or occupiers of the other part of the building...

(2) Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on any part of the Building or may cause an increased premium to be payable in respect thereof nor to keep or permit to be kept any petrol or other inflammable substances in or about the demised and to repay to the Lessors any money paid by way of increased premium and all expenses incurred by them in or about the renewal of such policy or policies rendered necessary by a breach of this regulation all such payments to be recoverable as rent in arrears

(3) Not to throw dirty rubbish rags or other refuse or permit the same to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in the demised premises or throw or allowed to be thrown or deposited the same upon any part of the Building

(9) The Lessee will cover and keep covered the floors of the demised premises with carpet and an underlay other than the floors of the kitchen and bathroom which shall be properly and suitable covered

(10) The Lessee shall once at least in every month of the said term cause to be properly cleaned all windows of the demised premises both internally and externally and will at all times keep the windows properly curtained in the style appropriate to a private residence

## **6. Description of the Property**

The Property, a converted 19th Century three storey, terraced building,

Consisted of two flats, the ground floor flat which was occupied by the Respondent (who had sole access to a rear terraced garden), and the Applicant's flat which was situated on the first and second floor.

## **7. The Hearing**

## **8. The Applicant's Case**

At the Hearing the Applicant Marisa Castle de Joncaire, gave evidence that she purchased the premises known as 38 Thornfield Road , (the first and second floor flat, together with the freehold of the premises known as 38 Thornfield Road ) in 1998. The Tribunal were

referred to a copy of Register Entries for 38 Thornfield Road (which was in the bundle,) which confirmed that Marisa Castle de Joncaire had acquired her title to the property on the 7 January 1999. The Applicant occupied the first and second floor flat (38B) Whilst the Respondent Mrs. Harben was already resident at the ground floor flat at the time the Applicant purchased the premises.

The Applicant stated that in the first year after the Applicant purchased the property, she noticed that on one occasion, the Respondent Mrs. Harben had left the door to her premises open and as a result of this, the Applicant was able to see that there were several feet of paper and rubbish that the Respondent appeared to have been hoarded for some time.

The Applicant stated that in November 1999, a fire broke out in the property, which started in the Respondent's property; the Applicant was awoken by a smoke alarm and immediately called the fire brigade. The Applicant informed The Tribunal that the fire had started as a result of a candle that the Respondent had lit, in the middle of the night. (The fire brigade attended the premises, and rescued the Respondent.) The Applicant informed The Tribunal that the fire had been caused or contributed to by the existence of rubbish and papers within the premises.

The Tribunal was informed that when agents of, or on behalf of the Insurance Company attended the property, it had taken them a whole day of clearing to find the bathroom and toilet, which had been buried under rubbish and other deposits within the premises.

The Respondent did not return to her premises, until around May 2000. The Applicant informed The Tribunal that she became aware that the Respondent had resumed hoarding refuse, as a result of the Applicant's premises becoming affected by a very bad smell. In her evidence the Applicant stated that the Respondent was harbouring food, and cat litter, and that the Respondent had been seen by neighbours urinating and defecating in the garden. From this the Applicant formed the view that the Respondent no longer had access to her bathroom, because of the conditions within the premises.

The Applicant informed The Tribunal that the smell caused by the condition of the Respondent's premises was sufficient to affect, the Applicant in, her enjoyment of her premises, and to impact on her daily life. As well as the physical condition of the property the Applicant considered that the conditions had an impact on her private and professional life, in that she was so worried about the possibility of another fire breaking out in the premises that this caused her considerable stress.

The Applicant had taken some photographs of the Respondent's premises; The Tribunal was informed that the photographs were taken, when the Respondent had left her front door open. The Photographs, were taken in 2005, the photographs show newspapers, letters and bottles strewn across a room to a depth of several feet high. The Photographs also show that the rear garden of the Respondent's premises was very overgrown and that

the wall paper in the common parts near the Respondent's premises was soiled and grubby (which the Applicant attributed to the Respondent)

The Applicant had on more than one occasion contacted Environmental Health with a view to them providing assistance to the Respondent to clear the premises. The Applicant had also tried to resolve the situation by contacting Social Services, who had contacted the Respondent's Doctor, this had not resulted in any improvement at the premises.

Despite delays, the Environmental Health Department did take action but this had no long-term impact on conditions in the premises. The Respondent continued to hoard rubbish within the property, which led to Environmental Health Officers having to return to the property in January 2006 for two days to clear the refuse from the premises. The Applicant stated that the smell of the Respondent's premises was such that it continued to affect her enjoyment of her flat and had affected her ability to entertain within her premises.

The Applicant considered that the Respondent had breached the terms and conditions of the Lease in the following ways:-

The Respondent had failed to pay the Ground rent for the premises since 1999, in breach of clause 3(1) of the lease. The Applicant produced a copy of a demand for ground rent, which had been posted underneath the Respondent's front door to her property. The Respondent had also not paid her water rates. The Applicant was aware of this because she had been contacted by the water company, who had been chasing payment from the Applicant. The Applicant had informed the Water Company of the Respondent's separate liability to pay water rates, and thereafter she believed that the water company contacted the Respondent directly.

The Applicant also considered that the Respondent's hoarding was such as to render the Respondent in breach of clause 1(3) of the Lease.

The Applicant informed The Tribunal that she had not had access to the premises in accordance with 1 (5) and 1 (10) of the lease. When asked by The Tribunal what steps she had taken to obtain access, the Applicant informed The Tribunal that in her view the Respondent would not have provided access, as she had not willingly given access to Environmental Health, who had had to force entry to the Respondent's premises, in order to clear it in accordance with their statutory powers. The Applicant accepted that she had not asked for access in accordance with the terms of clause 1 (5) and 1 (10) of the lease neither had she sought to enforce access in accordance with the terms.

The Applicant also considered that the Respondent hoarding within her premises was in breach of The Covenants of clause 1, 2, and 3 set out in the first schedule of the lease.



The Applicant informed The Tribunal that the Respondent was aware of the hearing as the Applicant was informed that friends of the Respondent had contacted Social Services who had attempted to assist the Respondent in being represented at the Hearing, however the Respondent had not opened the door when someone from Social Services had called to take her to see her solicitor. The Respondent had not complied with the directions, or indicated an intention to defend the proceedings

Given the serious implications for the Respondent, The Tribunal decided that, an inspection should be carried out, to assist The Tribunal in determining,

1. Whether there was a breach of the lease,
2. If so whether it was continuing,
3. And if there was a breach, the extent of the breach.

The Tribunal informed the Applicant that they would inspect the premises.

## **9. The inspection**

The Tribunal inspected the premises on 10<sup>th</sup> January 2007 shortly after the conclusion of the hearing.

The Property was as described above, the Respondent's premise was located on the ground floor; Access to both flats was by the front door with a narrow shared hallway which provided access to both properties ( via a door to the Respondent's ground floor flat and via a door and staircase to the Applicant's premises). The Tribunal was unable to gain access to the Respondent's premises (or view the premises externally,) and left a calling card.

The Applicant's premises consisted of a hallway and kitchen and living room on the first floor, the Applicant's bedroom and a second small bedroom situated on the second floor. The Tribunal observed that there was a noticeable smell affecting the first floor of the Applicant's premises the smell was less marked on the second floor. The Tribunal formed the view on a balance of probabilities that the smell emanated from the ground floor premises.

The Tribunal noted that the Respondent's garden was very overgrown. This was confirmed when The Tribunal was able to gain access to a neighbouring property, and noted that the Respondent's garden was so overgrown that weeds appeared to have grown through the door or window into the Respondent's premises, the Respondent also had cardboard lining the front windows instead of curtains.


## **10. Determination of the Application**

The Tribunal considered the three issues:-

- I. Firstly whether the Respondent had breached the terms of the lease relied on by the Applicant in her application
  - II. Whether on a balance of probabilities the breach existed at the date of the hearing
  - III. Whether the Breach was serious.
- (i) The Tribunal determined that the Respondent was in Breach of clause 3(1) of the Lease by reason of her failure to pay the ground rent demanded and by reason of the Applicant's failure to discharge her obligations to pay water rates.
  - (ii) The Tribunal concluded that the Respondent was continuing to hoard refuse at the premises and that her hoarding was such as to breach clause 3 (2) of the lease. The Tribunal had been unable to gain access to the Respondent's premises, and had received no response and was therefore not able to ascertain the condition of the premises, and save for the evidence concerning the Respondent's hoarding, which was confirmed by the smell. There was no direct evidence concerning the condition of the premises.
  - (iii) The Tribunal considered, that the wording of clause 3 (2), *Repair maintain renew uphold and keep the demised premises... in good and substantial repair and condition.* " was sufficiently wide, to require the Respondent to do more, than ensure that the interior of the premises did not fall into disrepair and that as a result of the hoarding the respondent's premises was not in good and substantial repair and condition.
  - (iv) Although The Tribunal had no direct recent evidence of the physical condition of the interior of the premises, The Tribunal had photograph evidence of what the condition of the premises in 2005, unless the premises had been substantially refurbished,( and the evidence from the Applicant was that it had not been refurbished) then given the Applicant's evidence, and The Tribunal's own findings, based on the inspection of the premise was that a breach had occurred which was continuing.
  - (v) In relation to clause 3(4) The Tribunal found that the premises had been redecorated in 1999 after the fire at the property and accordingly there was no breach of clause 3(4).
  - (vi) The Tribunal found that there was no breach of clause 3(5) and 3(10) set out above, as the Applicant had not asked the Respondent for access to her premises.

- (vii) The Tribunal, found that the condition of the premises as evidenced by the smell, was in breach of the covenant in schedule 1, regulation 1 of the Lease cited above. The Tribunal was of the opinion that the foul and unpleasant smell emanating from the premises was sufficient, to substantially interfere with the Applicant's use and enjoyment of the premises.
- (viii) The Tribunal found that the Respondent was in breach of the covenants in schedule 1 regulations 1 and 2 of the Lease. The windows of the Respondent's premises were lined with cardboard, which together with the garden which was very overgrown (foliage had covered the backdoor and was growing through into the rear of the property). The Tribunal determined that the condition of the property was such that as a matter of common sense that there was an increased risk of fire and in the event of fire, because of the condition of the premises, the back door was rendered inoperable, The Tribunal considered that, if the insurance company were aware of the increased risk of fire and the difficulty of escaping the fire it would cause the insurance premium to be rendered void or voidable.
- (ix) The Tribunal decided that that, on a balance of probabilities the Respondent had breached regulation 3, The Tribunal accepted that the Respondent's hoarding was such as to prevent the Respondent using her bathroom, and accordingly determined by hoarding refuse in the bath.
- (x) The Tribunal also determined that the premises were on a balance of probabilities, not suitably carpeted in accordance with the covenants in clause 9.
- (xi) The Tribunal observed that in breach of clause 10, the windows were not curtained in the Respondent's premises and that they were dirty and covered in cardboard.

The Tribunal were provided with a copy of the variation of the lease dated 20<sup>th</sup> May 1980, and found as a matter of fact that the variation had no substantial effect on the covenants referred to, accordingly The Tribunal determined that clause 3 (1), 3(2) and the covenants in Schedule 1 regulation 1, 2, 3, 9, and 10 of the terms and conditions of the Lease had been breached and that the breaches were of a serious nature.

Tribunal Chairman.....  
 Date.....8<sup>th</sup> February 2007