Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0035/11/22

In the matter of No 63B Mary Street, Porthcawl, CF36 3YN

In the matter of an application under Section 168(4) Commonhold and Leasehold Reform Act 2002

APPLICANT: Hazel Denton

RESPONDENTS: Gemma Waters
Hayley Waters
Jonathan Waters

Tribunal: Mr M. Hunt (Chairman)
Mr R. Baynham (Surveyor)
Mr H. E. Jones (Member)

Date of determination: 9 May 2023

DECISION

The Tribunal declares that breaches of the following covenants have occurred:

3(c): to keep the interior of the Demised Premises and every part thereof in tenantable repair;

3(e): to keep in repair and replace when necessary all cisterns pipes wires ducts and other things installed for the purposes of … draining away water soil or … other deleterious matter from the Demised Premises;

3(l): to paint the outside ironwork belonging to the property once in every third year of the term of the lease.

REASONS FOR DECISION

<u>The Application</u>

1. 63 Mary Street, Porthcawl, CF36 3YN is a terraced house consisting of 2 separate dwellings: 63A and 63B Mary Street. 63A is situated primarily on the ground floor of the building. 63B is situated on the upper floors. The Applicant is the freeholder of the entire building and resides

at 63A Mary Street. By written agreement executed on 26 October 2001, 63B Mary Street was leased to Mr Allan Waters for a term of 999 years from 1 January 1992, at a yearly rent of £1, subject to several covenants.

2. The Applicant contends that several of these covenants have been breached and seeks a determination to that effect in accordance with s.168(4) Commonhold and Leasehold Reform Act 2002. The nature of the alleged breaches was recorded in the application notice signed on 10 November 2022, received by the Tribunal on 22 November 2022, and in the Applicant's witness statement filed in accordance with the Tribunal's directions of 30 December 2022. The Respondents provided no response to the application.

3. The Applicant contends that all of the following covenants have been breached (relevant excerpts):
    a. 3(c): to keep the interior of the Demised Premises and every part thereof in tenantable repair (breach alleged in two respects, in relation to the external staircase providing access to 63B, and to its first-floor external door);
    b. 3(e): to keep in repair and replace when necessary all cisterns pipes wires ducts and other things installed for the purposes of supplying water (cold or hot) gas electricity or for the purposes of draining away water soil or for allowing the escape of steam or other deleterious matter from the Demised Premises (breach alleged in relation to a broken "stenchpipe" or "soil pipe", which will be referred to as a "wastewater drainpipe" in this decision);
    c. 3(h): not to do or permit or suffer to be done in or upon the Demised Premised anything which may be or might become a nuisance annoyance or cause damage or inconvenience to the Landlord (breach alleged in relation to the poor condition of the external staircase, causing water ingress, generating debris and risking collapse);
    d. 3(l): to paint the outside wood and ironwork belonging to the Demised Premises once in every third year of the term (breach alleged in relation to the external staircase);
    e. 3(m)(i): to pay one half of the expense of the Landlord in complying with his obligations of repair (breach alleged in relation to a failure to pay for repairs to the wastewater drainpipe and a damaged fascia board); and
    f. 3(m)(ii): to pay one half of the cost of insuring the whole of the Demised Premises (breach alleged is the failure to make the appropriate contribution).

4. The Applicant described the final alleged breach as a breach of the Landlord's covenant (2) to insure and keep insured the buildings, as well as to produce to the Tenant on demand the policy or policies of such insurance subject to the Tenant paying one half of the cost of such insurance "as is hereinbefore provided for". It was clear to the Tribunal that the actual breach alleged was of the Tenant's covenant 3(m)(ii), referred to in this Landlord's covenant, not of the Landlord's covenant, and this allegation has been recorded accordingly. The Tribunal was of the view that there was clearly no prejudice to any of the parties in interpreting the application in this manner. The underlying issue is exactly the same and this interpretation was the only way the application would make sense. Subject only to this point, the Tribunal

proceeded to consider only the specific breaches of covenant alleged by the Applicant as detailed above.

5. The Tribunal was satisfied that the Respondents had been given ample opportunity to respond to both the original application and the further particulars provided in the witness statement. In any event, the Tribunal found that it had sufficient information before it to determine the application without hearing from the Respondents.

6. The Tribunal's expert surveyor attended and inspected 63 Mary Street alone on the morning of 19 April 2023. There was no attendance on behalf of the Respondents who were informed of the date and time of the inspection. The Applicant was present.

7. The Tribunal noted the following. 63 Mary Street comprises a middle of terrace two-storey house with attic rooms in a road of similar-type properties. The building, which is approximately 90 years old, is conventionally constructed having brick exterior walls which have been cement rendered to the first-floor front elevation and to the entire rear elevation. It has the benefit of a tiled roof, plastic rain-water goods and double-glazed windows and doors.

8. The front garden consists of a paved forecourt while the rear garden, which is of reasonable size, is laid in pebbles. There is a concrete path leading from a lane to the rear of the building to a metal staircase running up the side of the rear part of the building, providing access to 63B Mary Street. There is a detached garage at the end of the garden, included within the lease of 63B.

9. The building was converted into two self-contained apartments prior to the Applicant's purchase of her interest in 2013.

10. The Applicant's home, 63A Mary Street, is self-contained, accessed directly from Mary Street and comprises the entire ground floor and a first-floor bedroom at the front of the building, which is accessible only from an internal hallway. 63A benefits from the majority of the rear garden as indicated on the plan attached to the lease.

11. 63B Mary Street is also self-contained, comprising the first floor of the building (with the exception of the room fronting on to Mary Street as indicated in the preceding paragraph) and the bedrooms contained in the attic area. An external metal staircase provides the only access to the apartment, extending to both the first floor and the attic rooms with small landings at each level, as indicated in the photograph attached to the Applicant's witness statement. The staircase is accessed via a concrete path extending from a lane to the rear of the building. The concrete path and metal staircase form part of the demised premises, being included in the lease as indicated on the plan attached to it. The lease suggests the relevant boundaries are marked in colour on the plan. However, the Tribunal only had a black and white copy of the plan. Nevertheless, the boundary markings appeared sufficiently discernible, when read alongside the lease, for the Tribunal to make this finding. This

arrangement is also reflected in the Land Registry entry for 63 Mary Street, which describes the extent of 63B as "63b Mary Street (First Floor Maisonette) and Garden Ground, Garage and Stairway". This finding also concurs with the Tribunal's expert surveyor's impression of the property boundaries from his site visit. The leaseholder of 63B has no right of access to the rear garden through 63A, so the sole access to the apartment is from the lane at the rear of the building. Conversely, the landlord has no right to access the garden from the rear lane or to mount the external staircase (save to the limited extent permitted in the lease). There was no access to the first-floor bedroom of 63A from the external staircase or landings, not even to the bedroom window. Consequently, the Tribunal found that none of these areas or access routes were shared.

12. As the Respondents were not present at the inspection, it was not possible for the Tribunal's expert surveyor to inspect the interior of 63B Mary Street. In addition, due to the dangerous condition of the external metal staircase – as described in further detail below – it was only possible to view the exterior of the property from ground-floor level.

13. The Tribunal's expert surveyor made the following observations, which the panel accepted:
    a. the metal staircase, as indicated in the photographs, is missing approximately seven steps. Consequently, it was not physically possible to safely gain access to the first-floor or the top-floor exterior landings. The missing steps have rusted away and it appears that a number of other steps are in a poor condition.
    b. the metal pillars supporting the staircase are also badly corroded with rust. A number of holes are apparent where the supports have rusted through, an issue which requires attention.
    c. the exterior metal landing on the first floor, as indicated in the photograph, is corroded and delaminating, allowing water ingress through the exterior wall and causing damp to the Applicant's ground-floor kitchen.
    d. the first-floor door to 63B, accessed via the exterior landing, has a window which has been boarded up for a number of years and requires replacement.
    e. the decorative condition of the cement render to the first-floor apartment is in poor order and consequently requires repainting.

14. The Tribunal's expert surveyor was informed by the Applicant at the inspection that the Respondents have not paid the ground rent or their proportion of the insurance cost since the Applicant acquired the building in 2013. However, no reference was made to the ground rent in the application, so the Tribunal disregarded this statement. The covenant relating to insurance costs was raised and is addressed below.

15. The Tribunal's expert surveyor was also informed that Mr Allan Waters (the original leaseholder) had deceased, and the Respondents are his successors in title. The Tribunal had no further information in this regard.

16. The application was decided without a hearing, after the site inspection. The Tribunal had before it a copy of the application notice, lease, and the Applicant's witness statement, to which was appended copies of correspondence sent to the Respondents dated 7 August 2022 concerning repairs that needed to be made to 63B Mary Street (including to the external staircase and wastewater drainpipe), further correspondence dated 17 December 2022 stating that the Applicant had arranged for the repair to the wastewater drainpipe and was seeking reimbursement of £180 as per invoice attached (stating also that the other repairs remained outstanding), a copy of a Land Registry entry for 63A Mary Street, and photographs of the property.

The Law

17. Section 168(4) Commonhold and Leasehold Reform Act 2002 provides as follows.

    168 No forfeiture notice before determination of breach

    ...

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

The Determination

18. The Tribunal considered each alleged breach of covenant in turn.

Covenant 3(c)

19. Covenant 3(c) provides as follows:

    3. THE TENANT HEREBY COVENANTS with the Landlord as follows:-

    (c) to keep the interior of the Demised Premised and every part thereof in tenantable repair throughout the term hereby granted and it is HEREBY DECLARED AND AGREED that there is included in this covenant as repairable by the Tenant (including replacement whenever such becomes necessary) the windows of the Demised Premises...

20. The "Demised Premises" is defined in clause 2 of the lease as follows:

    2. The Landlord hereby demises unto the Tenant ALL THAT first floor maisonette in the Building and known as Number 63B Mary Street Porthcawl as edged red in the plan annexed hereto (hereinafter called the "Demised Premises") together with:-

    (i) so much of the back garden as is edged in green on the plan annexed hereto

    ...

21. To assess whether any breach of this covenant had occurred, the Tribunal determined firstly what formed part of the "Demised Premises". As explained in paragraph 11 above, the Tribunal found that the Demised Premises incorporates all of the concrete access path from the rear lane to the external staircase and the external staircase itself. This was reflected in the markings on the plan annexed to the lease, in the Land Registry entry, and is also a

reasonable and workable assessment based on the Tribunal's expert surveyor's physical inspection.

22. The Tribunal noted that the lease was not especially clear on this issue, that the staircase was not specifically referred to in the lease and that it was marked as a "fire escape" in the plan attached to it. However, The Tribunal found that none of these issues was of any real relevance to its finding: its task was to interpret the lease whatever its shortfalls, the staircase was outlined in the plan (as far as legible), and it provided the only access to 63B Mary Street (including by way of fire escape). It could not physically serve as fire escape to the inhabitants of 63A as there was no access to it from any part of that flat. It may well have been a fire escape at some point prior to the division of the building, and it may have been for this reason that the terminology had been retained. The Tribunal also noted the landlord covenants included at (5) an obligation to "*keep in tenantable repair the exterior of the Demised Premises and of the remainder of the Building and all additions thereto and the roof walls gutters and downpipes walls fences and drains driveways pathways paths entrances and other parts of the Building used in common with the Tenant*". On the Tribunal's finding, there would be no driveways, pathways, paths or entrances used in common. However, the Tribunal considered that the general wording of this clause would not displace the particular division of this property and was more likely to have been included as a standard clause to cover all of the landlord's repairing obligations. On any view, there was no driveway at all nor shared entrances, which supported this interpretation.

23. Having found that the external staircase formed part of the "Demised Premises", the Tribunal had no hesitation in finding the leaseholders had committed a clear and serious breach of covenant 3(c). The external staircase was far from being in "tenantable repair". It was in very poor condition and clearly had been for a number of years. It was severely corroded, missing a large number of steps, and was causing water ingress to 63A Mary Street. The Tribunal's view was that it would be dangerous to attempt to use the staircase in its current state.

24. In relation to the alleged failure to repair a boarded-up window in the first-floor door to 63B Mary Street, the Tribunal also found a breach of covenant 3(c). Keeping windows in tenantable repair and replacing them when necessary is clearly specified in the covenant as being the leaseholders' responsibility. Doors are not directly mentioned, but the lease does not provide an exhaustive list of what the repair obligation includes. It was clear to the Tribunal that, as windows are specifically referred to as falling within scope of the leaseholders' responsibility, so too plainly are doors on proper interpretation. There was no question of this door being a shared access way. One window in the doorframe was boarded up and appeared to have been for some considerable time. The Tribunal's expert surveyor's view was that the door had been in this state for several years. The Tribunal concurred. Whether or not this work had been required to make the door weathertight, the Tribunal did not consider this to be "tenantable repair". A tenant would expect boarded-up windows to be properly repaired or replaced if necessary. In the Tribunal's view, this was no more than a temporary repair, and any period of grace that may be inferred in the lease for remedial works to be undertaken had long expired.

Covenant 3(e)

25. Covenant 3(e) provides as follows:

    3. THE TENANT HEREBY COVENANTS with the Landlord as follows:-
    (e) to keep in repair and replace when necessary all cisterns pipes wires ducts and other things installed for the purposes of supplying water (cold or hot) gas electricity or for the purposes of draining away water soil or for allowing the escape of steam or other deleterious matter from the Demised Premises insofar as such things are installed and used only for the purposes of the Demised Premises...

26. There is an external wastewater drainpipe affixed to the wall of the building. The lower portion is shared between 63A and 63B Mary Street. The upper portion serves only 63B as 63A has no connection to it, or need for one, from the first floor of the building. The Applicant alleges that the upper section of the pipe was damaged in a storm in 2021 or 2022 and was not repaired until she commissioned the work herself. She unsuccessfully sought reimbursement from the Respondents.

27. The Tribunal's expert surveyor had no direct knowledge of this issue as it had been rectified by the time of the inspection. The wastewater drainpipe was in good repair at the time of his visit.

28. The Tribunal noted some discrepancies in the dates of the correspondence and with the repair invoice, making the precise date of the damage and its repair unclear. However, all the Tribunal needed to determine was whether the covenant had been breached. The Tribunal found that repair to the upper section of the wastewater drainpipe fell within this covenant as it was only used for the purposes of the Demised Premises.

29. The Tribunal placed significant weight on the Applicant's evidence despite the uncertainty as to the date of damage and repair. 63B Mary Street has clearly been neglected for some considerable time in the Tribunal's view and all of the allegations made by the Applicant appear to relate to genuine issues and concerns. The repair invoice clearly showed that damage had occurred and that the wastewater drainpipe needed repair and only partial replacement. There was no objective confirmation of whether it was only the upper part that needed replacement or a section also of the lower part of the pipe for which responsibility would lie with the Applicant (albeit on the basis of shared costs). On the balance of probabilities, the Tribunal found it was exclusively the upper part of the wastewater drainpipe that had been damaged, the repair of which was the leaseholders' responsibility under covenant 3(e). That repair was not done so the covenant was breached. Even had the damage extended to the lower part of the wastewater drainpipe, the repair of the upper portion would still have fallen to the leaseholders, so the Tribunal would have found a breach in any event.

Covenant 3(h)

30. Covenant 3(h) provides as follows:

    3. THE TENANT HEREBY COVENANTS with the Landlord as follows:-

    (h) not to do or permit or suffer to be done in or upon the Demised Premises anything which may be or might become a nuisance annoyance or cause damage or inconvenience to the Landlord...

31. The Applicant alleges that the poor condition of the external staircase is causing water ingress, debris to fall on her property, and poses a risk of collapse. This is causing damage and annoyance to her as landlord.

32. The Tribunal found that, on proper interpretation, this covenant addresses positive acts occurring at 63B Mary Street, whether by the leaseholders themselves or visitors, including passive acceptance by the leaseholders of another's acts. It does not address cases of disrepair. There are separate and distinct covenants addressing these issues (outlined above and below) and the Tribunal found that the covenants did not overlap in this respect. As the issues that give rise to the alleged breach of this covenant relate solely to the poor condition of the external staircase, the Tribunal found there had been no breach of covenant 3(h).

Covenant 3(l)

33. Covenant 3(l) provides as follows:

    3. THE TENANT HEREBY COVENANTS with the Landlord as follows:-

    (l) to paint the outside wood and ironwork belonging to the Demised Premises once in every third year of the term hereby granted with three coats of good and suitable paint...

34. The Applicant alleges that the external staircase has not been painted for at least nine years. As indicated above, the Tribunal found the staircase formed part of the Demised Premises. It is of ferrous metal construction, clearly falling within the definition of "ironwork" in the Tribunal's view. The photos clearly show the poor condition of the staircase. On his inspection, the Tribunal's expert surveyor noted the same. In his expert view, no good-quality paint system had been applied for at least nine years and probably much longer. The Tribunal concurred with this view.

35. Accordingly, the Tribunal found that covenant 3(l) had been breached.

Covenant 3(m)

36. Covenant 3(m) provides as follows:

    3. THE TENANT HEREBY COVENANTS with the Landlord as follows:-

    (m) at all times during the term hereby granted to pay one half of:-

    (i) the expense of the Landlord in complying with his obligations of repair

    (ii) the cost of insuring the whole of the Demised Premises...

37. The Applicant alleges a breach of both parts of this covenant.

38. In relation to covenant 3(m)(i), the Applicant alleges that the Respondents have not reimbursed the costs of replacing the damaged section of the wastewater drainpipe and a damaged fascia board.

39. The Tribunal has found that responsibility for the repairs to the wastewater drainpipe fell entirely on the leaseholders under covenant 3(e). As this was not part of the landlord's repair obligation, the covenant does not apply to these works.

40. The Tribunal noted covenant 3(f), which states that the cost of works undertaken by the landlord on the leaseholders' behalf in line with that covenant should be treated as a debt and would be actionable as such. Whether or not the works undertaken by the Applicant qualify under this covenant is not an issue for this Tribunal to determine and did not affect its determination that no breach had occurred.

41. As to the failure to contribute to the cost of the fascia board repairs, the Tribunal found that these repairs would fall under the landlord's repair obligations in covenant (5) (mentioned above in paragraph 22). However, no evidence was presented that the work was needed, or completed, or the cost of such work, or that half of this cost had been claimed from the leaseholders. Rather the correspondence suggested that the Applicant believed in error that this repair work was the Respondents' responsibility.

42. Accordingly, the Tribunal had insufficient evidence to find on the balance of probabilities that there had been a breach of covenant 3(m)(i) in this respect.

43. In relation to covenant 3(m)(ii), the Applicant alleges that the Respondents have made no contribution to the cost of insuring the premises. The Tribunal accepts that this would be a breach of covenant. However, the Applicant has provided no evidence that the insurance has been obtained, its cost, or whether a contribution has been sought from the Respondents.

44. Accordingly, the Tribunal has insufficient evidence to determine that a breach of covenant 3(m)(ii) has occurred.

45. In light of the above, the Tribunal finds that no breach of covenant 3(m) has been proven.

Dated this 9th day of May 2023

M Hunt
Tribunal Judge