Case No: D70LV094

IN THE COUNTY COURT
AT LIVERPOOL

Liverpool Civil and Family Court,
35 Vernon Street,
Liverpool. L2 2BX

Date: 31st August 2017
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Before:

HIS HONOUR JUDGE GREGORY

- -

Between:

LIVERPOOL MUTUAL HOMES	**Claimant**
- and -	
PAULINE MENSAH	**Defendant**

- -
- -

MR HARRILL (instructed by **Brabners LLP**) for the **Claimant**
MR BENNETT (instructed by **Driscoll Kingston**) for the **Defendant**

- -

APPROVED JUDGMENT

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His Honour Judge Gregory :

1. By this application the claimant landlord seeks a remedy against the tenant: and I will use those terms throughout, landlord and tenant, not to confuse matters with claimant and defendant because there is a parallel set of proceedings as I understand it going on involving these two parties.

2. The claimant landlord applies against the tenant for an injunction requiring the landlord's employees and contractors access to premises at 13 Danefield Terrace, Liverpool, 19. That property is the subject of a tenancy agreement entered into by the defendant and her then partner, Michael Maher, on 12th May 2014. It is a property in respect of which the landlord has repairing obligations pursuant to section 11 of the Landlord and Tenant Act 1985. The tenancy was transferred into the defendant's sole name on 26th February 2016.

3. On 20th October 2016 the claimant landlord received a letter of claim from solicitors acting on behalf of the defendant, Miss Mensah, pursuant to the Housing Disrepair Protocol in respect of a number of alleged defects to the property said to constitute a breach of the relevant repairing covenant. The tenancy agreement itself appears as an exhibit to the first witness statement of Mr Thompson, who is one of the landlord's witnesses, and that copy of the tenancy agreement begins on page 41 of the hearing bundle.

4. The agreement includes the conventional covenants and obligations on the part of the tenant requiring the tenant to facilitate access to the property, to contractors acting on behalf of the landlord to undertake inspection and any necessary works of repair and improvement. That much is set out in page 51 of the hearing bundle, internal page 9 of the tenancy document – the bold heading of that section being: "Access to your Home". Then at (a) and in a number of bullet points the scope of that covenant insofar as it requires access to be afforded to the landlord's contractors or workmen. That same section on page 9 internal documentation states in terms: "If you do not allow us into your home you could be putting yourself and your neighbours in danger putting your tenancy at risk. We can take legal action to enter your home and you may have to pay the legal costs." There is a further warning to that effect on page 47 of the hearing bundle, internal pagination 20 of the tenancy document, where reference is expressly made to injunctions and the following is set out: "We reserve the right to seek injunctions to require you to comply with or to stop you breaching your obligations under this agreement."

5. Following the communication from solicitors acting on the part of the tenant surveyors were appointed: on behalf of the tenant, Mr James, and Mr Moran on behalf of the landlord. These experts have produced two reports. The first report dated January 2017 essentially identifies three separate areas: Firstly, those parts of the property which the surveyors agree are in a state of disrepair and which fall within the scope of section 11 of the 1985 Act. Secondly, additional areas identified by Mr James, on behalf of the tenant, which Mr Moran, for the landlord, does not accept constitutes disrepair falling within the scope of the section 11 obligation. Thirdly, other areas of the property which both surveyors agree do not require work. The second report recently completed, with, it seems, more sophisticated investigative equipment,

identified additional areas of necessary remedial work to walls and the rooms identified as: "0/6 hall", and: "0/5 bedroom", on the plan on page 390 of the hearing bundle.

6. What followed thereafter is amply illustrated within the exhibits appended to the witness statements of the various witnesses who were to have been called on behalf of the landlord. It is a series of attempts by the landlord to arrange for access to the property in order that it could carry out at least those elements of remedial work identified in the joint report and accepted by the landlord as properly falling within the scope of the landlord's repairing obligation.

7. The first such letter is dated 9th February 2017 and appears at page 114 of the hearing bundle. That elicited no response from the claimant's solicitors and a follow up letter was sent on 21st February 2017, page 116 of the bundle. A letter of 1st March 2017, at page 118, seeking access to facilitate the carrying out of remedial electrical work on 8th March 2017 was met with a telephone response from the tenant at page 120 to the effect that she had been told by her solicitor not to allow access. On 6th March 2017, at page 122, the landlord through its solicitors stressed the urgency on the grounds of safety of allowing access to facilitate this specific item of repair.

8. There followed a series of attempts on the part of the landlord to arrange access to the property for the purposes of carrying out remedial works which the landlord, at that stage, accepted it was liable for. Firstly a letter of 7th March 2017 outlining a detailed schedule of repairs with the projected commencement date of Monday 13th March concluding on Wednesday 22nd March 2017. When the landlord's contractor attended he was turned away by the tenant's son apparently on the basis that his mother had told him not to let any workmen in.

9. A second, revised, schedule of works was proposed and a further letter on 27th April 2017 proposing a start date of Monday 8th May 2017 concluding on Wednesday 24th May 2017. This prompted a telephone call from the tenant who asked for the works to be cancelled. That communication is documented at page 136.

10. A third attempt was made by the landlord who, under cover of a letter dated 16th May 2017, set out a yet further schedule of proposed works, anticipated commencement date of 30th May, anticipated conclusion on 14th June. This prompted the tenant to call and cancel the works on the basis that she wished to move out of the property while the work was being carried out. Eventually the tenant's solicitors wrote to the landlord on Friday 26th May 2017 stating in terms that as the proposed schedule of works did not include the additional items identified by the claimant's surveyor: "no work is to be carried out".

11. This drew a response from the solicitors acting for the landlord at page 147 pointing out that, once again, contractors had been booked to attend the property on 27th May to commence the works and that: "Whilst we note that you have raised some issues about additional work to be completed, there is no reason for the work as set out in the schedule to not commence on the date proposed. The Protocol requires our client to provide a schedule of works and a timetable, it has done this, it does not require the schedule and time to be agreed. Our client

is entitled under statute and under the tenancy agreement to have access to carry out works. If your client refuses access she will be in breach of her tenancy and the Protocol. Your client has had sight of the proposed schedule of works since 27th April 2017, no comment has been raised by her or yourselves about the content of the schedule until this afternoon. It is not acceptable or proportionate that on the last working day prior to works commencing, due to the long Bank Holiday weekend, that you suggest no work can commence. This is particularly relevant given on the last proposed start date your client cancelled access at the last minute." Regrettably the parties were unable to come to terms and an injunction application was issued by the landlord to facilitate access to the premises in order to carry out the necessary remedial works.

12. There was a preliminary hearing before Deputy District Judge Golding in July when directions were given for this hearing. In the intervening period, as noted above, the surveyors prepared an addendum report and were able to identify and agree upon certain additional works over and above those set out in their original joint report.

13. On attendance at court yesterday, 30th August 2017, the parties were, I am told, able to achieve some measure of agreement in connection with the scheduling of works to the property. The landlord, however, still harboured reservations as to whether or not the tenant would grant access to the landlord's contractors in order that the work could be carried out. An undertaking to the court was suggested. The tenant, Miss Mensah, expressed a desire to have all works carried out and a willingness to facilitate access to the premises in order that this could be achieved. At one point during the course of her oral evidence she seemed willing to give an undertaking to the court to this effect which would have obviated the need for these injunction proceedings to be pursued to a conclusion. She appeared to understand the potential consequences of giving such an undertaking in the event of a breach. Later on in her evidence however, it seemed to me prompted by her counsel Mr Bennett, she reconsidered her position and seemed no longer to be prepared to give such an undertaking.

14. At the hearing of this injunction application I considered the totality of the material in the trial bundle, that is to say the documentary material and the witness evidence of the parties. Those witnesses who were scheduled to give evidence on behalf of the landlord were not in the end called upon to give their evidence orally. Those witnesses are Mr Thompson, who provided two statements, along with Miss Evans, Mr Joiner and Mr Arrowsmith, and those statements refer to a significant volume of exhibits. I also considered the defendant's written evidence along with her oral testimony and allowed the late admission of the witness statement with additional exhibits of Eilish Cullen, a solicitor employed by the defendant's solicitors, Driscoll Kingston.

15. Mr Bennett on her behalf puts the case in this way. He makes reference to the Pre-Action Protocol for Housing Disrepair Cases set out at paragraph C10/001 commencing at page 2622 of the White Book volume 1 and in particular at paragraph 6.3 of the Protocol. He also refers me to the "Good Practice Guidance" in a document published by the Department for Transport, Local Government and the Regions at paragraphs 3.15 and 3.16. That document is set out in the hearing bundle beginning at page 413. Where there is what Mr

Bennett refers to a tension between these documents and any relevant statutory or contractual obligations of the tenant pursuant to any tenancy agreement, he seems to suggest that the Guidance and Protocol should take precedence. In the circumstances, submits Mr Bennett, it is entirely reasonable and understandable for the tenant, Miss Mensah, to refuse access to the contractors to do any work at all until such times as the totality of the works to be undertaken, including that element of the work that was at an earlier stage the scope of disagreement between the experts, have been agreed. It was also reasonable, submits Mr Bennett, for the tenant in refusing access to be concerned for the welfare of her asthmatic child.

16. Mr Harrill, on behalf of the landlord, whilst acknowledging the substance of the Pre-Action Protocol and the Good Practice document, reminded me of the express contractual obligations set out in the tenancy agreement and indeed the statutory position with regard to access to a landlord being afforded to carry out necessary repairs. It was that document, the tenancy agreement, he submits which regulated the position of the parties as landlord and tenant and identified clearly the tenant's obligations to permit access to demised housing premises. He further submits that the evidence of Miss Mensah was in parts at least unreliable and inconsistent.

17. I am bound to say that I have difficulty in accepting some elements of Miss Mensah's evidence at face value. I simply do not believe her assertion that she repeatedly, seemingly over a course of months, attempted to contact her landlord with a view to discussing the works to be carried out or the scheduling of such works. Each of the relevant letters sent by the landlord to Miss Mensah, and I have in mind here particularly those of 1st March 2017, 7th March 2017, 27th April 2017 and 16th May 2017, provide a clear and detailed schedule of the works that were proposed to be carried out, this consistent with the relevant element of the Protocol. Such contact as the tenant did make with the landlord was sporadic, infrequent, belated, limited and overwhelmingly negative in substance. In fact so desperate was the landlord it seems to engage in meaningful contact with the tenant that Mr Thompson, the landlord's Complaint's and Disrepair Manager, caused a photograph to be taken of him hand delivering on 16th May 2017 a copy of the then latest revised schedule of works. Against that background, and the documentary exhibits to the various witness statements put forward on behalf of the landlord, I am unable to accept the tenant's complaint that her repeated attempts of communicating with her landlord were met with no response.

18. Neither do I accept the health of the tenant's daughter was a significant factor prompting her refusal to allow access to the landlord's workmen. It seemed to me to be something she relied upon in her oral evidence in an effort to deflect criticism of her refusal to allow entry to the contractors. The suggestion she made in her oral evidence that the works being carried out would result in putting her daughter's life at risk seems to me to be exaggerated and hopelessly overstated and completely unsupported by any medical evidence. Indeed in the course of proceedings on 30th August 2017 Miss Mensah, apparently anxious to ensure that the schedule of works agreed between the experts could be undertaken without further delay, suggested that the contractors could "work

around her". When she was reminded in cross-examination about the issue of her daughter, she expressed the hope that her daughter would not be there whilst the works were being carried out and gave the impression of someone who would be able to make whatever arrangements she deemed necessary for her daughter in fairly short order if indeed in all reality, which on the existing evidence I doubt, it is necessary to accommodate her daughter separately during the currency of any works. Certainly each of the schedules of proposed works previously delivered to Miss Mensah provided a sufficiently generous timescale within which to make whatever arrangements may have been thought necessary.

19. In my judgment the landlord, who is a social landlord, has acted throughout in a patient, reasonable and proportionate manner and has only resorted to using injunction proceedings as a matter of very last resort. In scheduling the works the landlord has observed faithfully the provisions of paragraph 6.3(d) of the Pre-Action Protocol. That Protocol, sub-paragraphs (a) and (b), clearly contemplates a situation such as we have had here where, at least at the outset, some of the defects about which complaint was made were disputed by the landlord. That dispute has it seems now been resolved, however the existence of a dispute of that nature did not, in my judgment, entitle Miss Mensah, contrary to the express provisions in her lease, to refuse access to the landlord's workforce to carry out those works, including electrical works, the scope of which was the subject of agreement.

20. There was nothing to prevent the tenant in the interim through her solicitors to ask for the landlord to revisit, literally and figuratively, the issue of the extent of the repairs, something which they did with the result that we now have the addendum report referred to and, judging from the plan on page 390 of the hearing bundle, some addition to the agreed schedule of work.

21. It is to be hoped that these works can now proceed and be completed within as short a timescale as is reasonably possible. I had hoped that that could be facilitated by an undertaking on the part of the tenant to allow the landlord access to the premises. Indeed it seemed at one point during the course of the hearing on 30th August that Miss Mensah was prepared to give such an undertaking. Ultimately one was not forthcoming and it seems to me, from the unhappy history of this matter, that the landlord may require the assistance of injunctive relief in order to achieve the requisite access to the property to which it is clearly entitled for these purposes.

22. In the circumstances I grant the injunction facilitating access in the terms sought.

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