



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

**Case reference** : LON/00BK/LBC/2013/0032

**Property** : Flat 8, 7-8 St. Edmunds Terrace  
London NW8 7QP

**Applicant** : St. Edmunds Flats Management  
Limited

**Representative** : Ms M Harvey, Secretary

**Respondent** : Ms V. Wei

**Representative** : Mr A. Jaffer

**Type of application** : Determination of an alleged breach  
of covenant under S.168(4)  
Commonhold and Leasehold  
Reform Act 2002

**Tribunal member(s)** : Judge -Ms N Haria LLB (Hons)  
Professional member -Mr K  
Cartwright JP FRICS  
Lay member - Mrs L West

**Date and venue of  
hearing** : 16 June 2014 at 10 Alfred Place,  
London WC1E 7LR

**Date of decision** : 16 June 2014

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**DECISION**

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### **Decisions of the tribunal**

- (1) The Tribunal is satisfied that the Lease is a long lease within the meaning of Section 169(5) of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The Lease contains covenants that are binding and may be enforced by the Applicant.
- (2) The Tribunal finds the Respondent has breached the provisions of the covenants under the Fourth Schedule paragraphs 5, 13 and 18 of the Lease as detailed in the decision below.

### **The application**

1. The Applicant seeks a determination pursuant to subsection 168(4) of the Act that the Respondent is in breach of the covenants under the fourth schedule paragraphs 5, 13 and 18 of the Lease.
2. The alleged breaches are as detailed in the application dated 24<sup>th</sup> April 2014 and in the Applicant’s statement of case.

### **Background**

3. The Applicant holds the freehold title to the property known as 7 and 8 Edmunds Terrace London NW8 registered at H M Land Registry under Title Number NGL617870.
4. The Respondent holds the leasehold title to the Property known as Flat 8, 7/8 Edmunds Terrace registered at H M Land Registry under Title Number NGL 647534, pursuant to a lease dated 11 October 1989 made between The Applicant (1) and Ivy Marjorie Silver (2) (“The Lease”). The Respondent acquired the leasehold interest in the property by assignment on the 15 January 2008.

### **Directions**

5. Directions were issued on the 30 April 2014 and the case was scheduled for a determination on the papers in the week commencing the 9 June 2014.

### **The Lease**

6. Under Clause 2 of the Lease the Respondent as Lessee covenants with the Applicant as Lessor and with the Lessees of the remainder of the building that the Respondent will observe and perform the obligations and regulations set out in the Fourth and Fifth Schedules.

7. The Respondent as Lessee covenants under paragraphs 5, 13 and 18 of the Fourth Schedule of the Lease as follows:

“(5) To keep the Demised Premises and all parts thereof and all fixtures therein and all additions thereto in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts and shall maintain and whenever necessary for whatever reason rebuild reconstruct and replace the same  
.....

(13) Not to make or permit to be made any alterations whatsoever in the Demised Premises nor to the exterior appearance of the Building without approval in writing of the Lessor (such approval not to be unreasonably withheld) to the plans and specifications thereof and shall make such alterations only in accordance with such plans and specifications when approved. The Lessee shall at the Lessee’s own expense obtain all licences planning permissions and other things necessary for the lawful carrying out of such alterations and shall comply with all bye law as regulations and conditions applicable generally or to the specific works undertaken

(18)Not to do or permit or suffer to be done any act matter or thing on or in respect of the Demised Premises which contravenes the provisions of the Town and Country Planning Acts 1971 and shall keep the Lessor indemnified against all claims demands and liabilities in respect thereof”

### **The Statutory Provisions**

8. The relevant provisions are set out under the Commonhold and Leasehold Reform act 2002 (the 2002 Act). These provide as follows:

#### **Section 168: No forfeiture notice before determination of breach**

(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 (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 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) 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 determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement

## **Section 169: Section 168: supplementary**

.....

(5) In section 168

“long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share.

## **Section 76: Long leases**

(1) This section and section 77 specify what is a long lease for the purposes of this Chapter.

(2) Subject to section 77, a lease is a long lease if—

(a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise”

### **The Applicant's Case**

9. The Applicant relies on its statement of case prepared by Michele Harvey the Secretary of the Applicant and the witness statements of Henry Brook, Director of the Applicant and Judith Steinberg, Director of the Applicant.
10. It is the Applicant's case that the Respondent has breached covenants under paragraphs 5, 13 and 18 of the Fourth Schedule of the Lease.
11. It is the Applicant's case that shortly after the Respondent acquired the leasehold interest in the Property the Respondent began alterations to the Property and as a result the Respondent is in breach of the covenants under the Fourth Schedule as follows:
  - (i) Paragraph 5- as due to the incomplete refurbishment works the Property has been left in an un-tenantable condition since the works ceased in 2008 and
  - (ii) Paragraph 13 – the Respondent has made substantial alterations to the Property including removing internal walls and fittings and partially constructing new walls in a different location to the original walls without obtaining the prior written approval of the plans and specifications from Applicant, and
  - (iii) Paragraph 13 and 18 – the Respondent has erected a timber structure on the roof terrace without obtaining planning permission and Westminster City Council issued an enforcement notice dated 22 November 2010 under Section 171A(1)(a) of the Town and Country Planning Act 1990 (as amended).
12. The Applicant claims that the Respondent and her representative did not inform the Applicant of her plans and they did not ask for approval of the alterations. The Applicant submits that the Respondent and her representative were repeatedly informed by conversation, email and/ or letter that the alterations required approval in writing and that the covenant under paragraph 13 of the Fourth Schedule had been breached.
13. On the 9<sup>th</sup> April 2008 the Applicant held an Extraordinary General Meeting to discuss the alterations; the Respondent's representative was present at the meeting and took part in the discussions. The Applicant

produced a copy of the minutes from the meeting. The Applicant also sought help from a solicitor to address the issue but failed to reach a resolution.

14. By autumn 2008 some walls had been partially constructed but in different locations to the original walls and a window had been removed and filled in. A timber frame structure and duct had been erected on the roof terrace.
15. Some time before 1 December 2008 work ceased at the property. The Applicant produced photographs taken on the 1 December 2008 and 8 May 2014 in support.
16. **The Respondent's case:** The Respondent has not responded to the application.

### **The Tribunal's decision**

17. On the basis of the evidence produced by the Applicant, the Tribunal is satisfied that the Applicant's served a copy of its statement of case and the accompanying documents on the Respondent in accordance with the Directions.
18. A determination under Section 168(4) of the Act does not require the Tribunal to consider any issue relating to forfeiture other than the question of whether or not a breach has occurred. The Tribunal does not have jurisdiction to consider whether the landlord has waived the right to forfeit the lease, this is a matter for the court to determine when considering an application for forfeiture. Accordingly, the Tribunal limits this decision to the narrow issue of whether or not the Respondent is in breach of the covenants in the Lease.
19. It is not uncommon for leases to include covenants requiring a leaseholder to seek the written consent of the landlord to any alteration of the demised premises. The Lease in this case includes a qualified covenant permitting the repair and making good of any defect but expressly prohibiting any alteration to the Property without:
  - (i) first submitting plans and specifications to the Applicant and obtaining the approval of the Applicant to the plans and specification, and
  - (ii) obtaining planning permission before commencing the works.
20. The Tribunal appreciates that the Respondent as a lay person may not be familiar with the nature of a leaseholder's obligations under a Lease,

but the Tribunal does not consider it reasonable for the Respondent to ignore the provisions of the Lease and fail to comply with the requirements of the covenants under the Lease despite having the covenants and the breaches pointed out on several occasions.

21. The Tribunal is of the view that if the Respondent had checked the Lease or sought advice on the covenants in the Lease she would have appreciated the need to ensure that she submitted plans and specifications to the Applicant for approval and that she obtained written approval of the plans and specifications prior to the commencement of the works.
22. On the evidence the Tribunal finds that the Respondent is in breach of the covenants under paragraphs 5 and 13 of the Fourth Schedule as a result of the incomplete alterations to the interior of the Property and the erection of the timber structure on the roof terrace. On the basis of the photographic evidence the Tribunal is satisfied that this breach is still subsisting.
23. On the basis of the evidence, in particular the copy enforcement notice and the photographic evidence, the Tribunal finds that the Respondent was in breach of the covenant under paragraph 18 of the Fourth Schedule due to the erection of the timber structure without the necessary planning permissions. There is insufficient evidence before the Tribunal to make a determination as to whether or not this breach is still subsisting.

**Name:** N Haria

**Date:** 16 June 2014