FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LBC/2016/0050**
Property	:	**Flat 3 Daynor House, Quex Road, London NW6 4PR**
Applicant	:	**Daynor House Limited**
Representative	:	**LMP Law Limited**
Respondent	:	**Mr Zashif Zafrani**
Representative	:	**In person**
Type of application	:	**Determination of an alleged breach of covenant**
Tribunal member(s)	:	**Tribunal Judge Dutton**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**19th October 2016**

DECISION

DECISION

The Tribunal determines that the Respondent has breached a covenant or condition of his lease as set out below in the Findings section of this Decision. Such breaches relate to the creation of the garage and the associated nuisance caused by its wrongful use, the installation of the number of CCTV cameras and the creation of the wooden store room.

BACKGROUND

1. By an application dated 4th July 2016 the Applicant, Daynor House Limited, which appears to be a tenant owned freeholder, seeks an order that the Respondent, Mr Kashif Zafrani, has in a number of regards, breached the terms of his lease.
2. The lease is dated 24th May 2000 and is a new lease replacing a previous lease dated 13th April 1971 but incorporates the terms of the first lease but now for a term of 999 years at a peppercorn rent. Unfortunately a completely legible copy of the 1971 lease is not available.
3. The Application included a letter before action setting out the alleged breaches which would appear to be the wrongful creation of a garage on what was intended to be a car parking space and an allegation that the use of the 'garage' constitutes a breach of the covenant to use the flat solely for residential purposes. Further it is alleged that the Respondent has installed CCTV cameras in breach of the lease and has enclosed his balcony area in breach of the prohibitions against alterations.
4. Directions were issued on 12th July 2016 but subsequently amended as a result of the Respondent's health problems.
5. On 26th September 2016 the Tribunal received the Respondent's statement with a number of appendices. This resulted in a statement for the Applicant in reply being lodged dated 3rd October 2016. By an email dated 12th October 2016 the Respondent indicates that he was considering making an application for a hearing. This matter was listed for a paper determination, with a hearing available on 19th October 2016. No application has been received at the tribunal to deal with the matter other than a written determination and the matter came before me today for that purpose.

EVIDENCE

6. I have considered the letter before action, the Respondent's statement and the Applicant's statement in reply. The letter before action includes photographic evidence what are said to be the alleged breaches. They show the enclosure of the car parking space to create a garage, enclosure works to the balcony, apparently to extend the kitchen in the Respondent's flat and the installation of the CCTV cameras, both externally and internally. There is also a photograph of what appears to be a wooden structure created, it is said in the

undercover car park and a photograph of what purports to be a 'grocer' using the 'garage' for storage purposes.

7. The letter before action sets out the alleged breaches of the lease and the steps required to remove/correct the breaches.

8. The Respondent's reply in contained in a document headed "Statement of Defendant" and dated 21st September 2016. The basis of his defence is that the Respondent alleges he has consent from the Applicant to puts windows on his balcony to enclose same, to install CCTV cameras, both internally and externally and to create a garage in the parking space. The statement goes on to say that the works were undertaken some 5 years ago and have been clearly visible since that time. Notwithstanding this no action has been taken against him until these proceedings. It is also said that the owner of Flat 2 has carried out similar works to the balcony yet no action has been taken and this is discriminatory.

9. Attached to the statement are a number of attachments. At appendix A is what purports to be permission to put windows on the balcony, apparently signed by two or more directors with the note that the works are to be at "*No cost to Daynor House*" This is dated 31st July 2010. Appendix B is a copy of the lease plan which appears to have been endorsed by a firm of Chartered Surveyors, although it is not possible to determine to what the endorsement relates. It is said by the Respondent to be a plan used by the Applicants in previous County Court proceedings.

10. In support of the installation of CCTV cameras the Respondent relies on a letter he wrote dated 11th July 2011. This seeks permission to install a camera in the hallway outside his flat and permission appears to have been given as evidenced by a signature of what is believed to be T Chong, a director at the time of the Applicant. Appendices D to H appear to relate to the CCTV. Appendix I1 is merely the front page of a witness statement in proceedings in the County Court at Central London in claim B00CL275 and at appendix I2 the first page of an initial notice under section 20 of the Landlord and Tenant Act 1985 relating to the upgrading of various items including additional CCTV cameras.

11. In support of the creation of the garage reference is made to the lease terms in the first lease at clause 2(e) which refers to service charges based on a *"charge of £150 per annum in respect of the flat and garage"*. In addition the Respondent again relies on a letter which he says constitutes permission dated 11th July 2011 which again contains the signature of T Chong granting permission. Finally at appendix 2 is an email from Archi Minhas of Pembertons Residential Limited asking for copies of any approval letters relating to the alterations to the Respondent's flat.

12. For the Applicant a Statement in reply was lodged dated 3rd October. To this was attached a number of exhibits. The statement lists the alleged breaches which are:

    Alteration occasioned to the balcony of flat 3;

Erection of multiple CCTV cameras at the Daynor House development

Erection of a lockable wooden structure in the car park at the Daynor House development and

Breach of covenant to *"use and occupy the flat solely and exclusively as a self contained residential flat for the occupation of one family only"*, which it is said creates a nuisance.

13. As to the balcony it is said that no plans or specifications have been submitted, nor any licence granted to alter the flat. Accordingly any works have been carried out in breach of clause 2(13) of the original lease which requires that no alteration or addition, either internally or externally can be carried out without the licence in writing of the Lessor and in accordance with plans and specifications. It is asserted also that the works breach Camden Council planning but no evidence of such breach was produced.

14. Turning to the CCTV it is said the permission relates to installation of one internal CCTV camera. Not the number now in situ evidenced by the photographs produced with the letter before action. Copies of what are said to be relevant correspondence is also included. I have noted the contents.

15. On the question of the garage it is submitted that the lease does not include a garage and reference to same in clause 2(e) is not relevant. There is a right to the use of a car parking space under the First Schedule of the original lease which gives the right to park a car in what should have been a stipulated space but which is not so numbered in the lease. There is no right to create a garage and the same arguments attributed to the permission to enclose the balcony apply to the garage.

16. Reference is made to the lockable wooden storeroom the position of which is not clear to me. This is alluded to in the Letter before action in that photographs are produced and a reference to the creation of openings or other storage spaces is raised.

17. Finally there is an allegation that the use of the garage breaches the lease as it is creates a business use, both from running a business from the there and renting the space to a local grocer, which has caused a number of complaints as evidenced by letters attached to the Reply. This is the nuisance complained of. Reference is also made to a purported claim made by the Respondent for loss of rent. I do not know whether this was the subject of the County Court proceedings above, which appeared to have been dismissed.

18. In the conclusion the Applicant argues that there have been breaches of the lease as alleged and further that nuisance has been caused, a somewhat late introduction. It goes on to say that if I conclude licences have been granted the Applicant considers them revoked. There is, it is said no limitation point.

THE LAW

See below

FINDINGS

19. My role is to determine whether there has been a breach of the lease or not. It is not for me, presently at least, to determine whether there should be any relief from forfeiture if a breach is proven. The responsibility for proving the case rests with the Applicant.

20. With that in mind I will consider each alleged breach starting with the balcony. I am satisfied on the papers before me that the Respondent was given permission to enclose the balcony. The letter dated 31st July 2010 bears what appear to be four signatures and the endorsement as to costs. It does not indicate that the remaining elements of clause 2(13) have been complied with, that is to say the production of plans and specifications. It would seem to me that a licence has in part been granted and could be completed with the production of plans and specifications. The position of the Council is unclear. If the works were carried out in 2010 I question the power of the Council to take action. I am not prepared to find, on the information presently before me that the Respondent has breached his lease in enclosing the balcony. I have also noted that another flat has taken this course and does not appear to be the subject of similar proceedings. Accordingly I dismiss this allegation.

21. I now turn to the creation of the garage. The Respondent's suggestion that his lease includes a garage is disingenuous. The description of the lease makes no mention of the demise including a garage. He has a right to use the car parking space but no right to create a garage. Again he relies on permission endorsed on the letter dated 11th July 2011, signed by T Chong. I do not wholly satisfied that the Applicant could grant such a permission as unlike the balcony the car parking space does not fall within the demise. I bear in mind also that at some time the Respondent and T Chong were directors of the Applicant, it is said until 2014. There is no specific argument on estoppel put to me although the Respondent, does with some force, suggest that the present position has been in place since 2011. There is also thrown into the mix a late suggestion that the Respondent is creating a nuisance by using the garage in way he does and that it is also in breach of the user provisions. I do not consider the last allegation as to user can stand. Either the car parking space is not part of the "flat" as defined, which I find is the case, or it has now become part of the flat and therefore subject to the restrictions on user, which I do not accept. There is evidence of nuisance in the letters attached to the Reply. Taking the matter in the round I find that the Respondent is in breach of the lease for creating a garage on an undemised car parking space, which in turn has created a nuisance to occupiers of flats at the development. He has no right so to do, even with the endorsement to his letter, the provenance of which must be considered in the light of his position as a director at that time.

22. As to the wooden storage cupboard I am not aware of any permission having been given for this. There is no right to create such a cupboard in what appears to be a car parking space and I consider there is a breach of this lease in this regard.

23. Finally the CCTV. It is arguable that permission was given to erect a camera adjacent to his flat, as per the letter 11th July 2011. The following correspondence in the Respondents statement does not disclose approval of the installation of cameras to the extent that he has undertaken. I therefore find that he has breached his lease as set out at clause 2(18) and possibly under clause 2(13) in making alterations without permission. He has no right to install such cameras to the common parts of the building or the external walls, which are not within his demise.

Andrew Dutton

Tribunal Judge Dutton Dated 19th October 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

RELEVANT LAW
Commonhold and Leasehold Reform Act 2002

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.