



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

Case reference	:	LON/00AP/LBC/2018/0039
Property	:	35 Rochford, Griffin Road, London N17 6HX (“the flat”)
Applicant	:	The London Borough of Haringey (“The council”)
Representative	:	Assistant Director of Corporate Governance
Respondents	:	Ahmed Sheikh and Mohammed Omar (“the tenants”)
Representative	:	In person
Type of application	:	Determination of an alleged breach of covenant
Tribunal members	:	Angus Andrew Helen Bowers BSc (Econ) MSc MRICS
Date and Venue of hearing	:	4 July 2018 10 Alfred Place, London WC1E 7LR
Date of decision	:	11 July 2018

DECISION

Decisions

1. There have been breaches of the following covenants
 - a. Not to make alterations without the council’s consent; and

- b. To register any subletting of the flat with the council and to pay a reasonable charge of at least £20.

Application and Hearing

2. The council applied under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that there have been breaches of two covenants contained in the lease of the flat. Those covenants are to be found in clauses 4(13) and 4(24).
3. At the hearing on 4 July 2018 the council was represented by Mr Dehall who is an in-house solicitor. Mohammed Omar appeared in person and on behalf of Ahmed Sheikh. He was assisted by his father, Mr Mohammed. Paul Cox a Lease Compliance and Home Sales manager gave oral evidence on behalf of the council.

Statutory framework

4. Section 168 of the Commonhold and Leasehold Reform Act 2002 states: -
 - a. *A landlord under a long lease of a dwelling may not serve a notice under s.146 (1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless sub-section (2) is satisfied.*
 - b. *This sub-section is satisfied if –*
 - (a) *it has been finally determined on an application under sub-section (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.*
 - c. *But a notice may not be served by virtue of sub-section (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.*
 - d. *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.*
 - e. *But a landlord may not make an application under sub-section (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.*

Background

5. The flat is on the Broadwater farm estate. In 1990 a leasehold interest in the flat was granted to Nidia Sterling under the Right to Buy legislation. A copy of the counterpart lease is at pages 14 to 31 of the documents bundle. Paragraph 4 of the particulars page describes the flat as *"ALL THAT the 2 bedroom flat number 35 in the building...."*
6. The covenants on which the council rely are contained in clauses 4(13) and 4(24). For the purpose of this decision it is sufficient to summarise those covenants. The covenant in clause 4(13) prohibits the lessee from making *"any alterations or addition whatsoever in or to the Flat"* without first obtaining the council's written consent. The covenant in clause 4(24) requires the lessee to register any subletting of the flat with the council and to pay a reasonable charge of at least £20.
7. In February 2016 Mr Cox, who gave oral evidence at the hearing, discovered that the flat was being advertised for sale as a four bedroom maisonette. He wrote to the lessee pointing out that the council had not consented to an alteration increasing the number of bedrooms in the flat but it seems that he did not receive a response.
8. In June or July 2017, the previous lessee's solicitor wrote to the council requesting a resale pack. Such packs are intended to be disclosed to prospective buyers and usually give comprehensive details about such matters as the service charge and the buildings insurance. In this case the resale pack clearly recorded the council's view that there had been an unauthorised alteration from a two bedroom to a four bedroom flat. In particular under the heading *"Legal action"* the resale pack states *"the Flat has been converted into four bedrooms without Landlord's consent. Enforcement action is ongoing"*.
9. The tenants purchased the flat at auction on 23 August 2017 for £207,500. Mr Omar told us that he had never seen the resale pack. He considered that his solicitors were responsible for that omission although it is possible that the resale pack was never disclosed by the previous lessee.
10. On 21 September 2017 Michael Baker, a Customer Liaison Manager, visited the flat in response to what appears to have been a complaint from the occupier about disrepair and overcrowding inside the flat. In his witness statement Mr Baker said that the flat was *"listed on OHMS (Open House Management System) as a 2 bedroom flat"*. He also observed the *"crude reconfiguration to convert the property into a 4 bedroom flat"*.

11. Mr Baker reported his findings to the Home Ownership Team. Five letters and emails were sent to the tenants giving them an opportunity to rectify the apparent breach of covenant but they were in the first instance ignored. A final letter warning of the council's intention to issue proceedings, was sent on 13 April 2018 and that letter did finally result in a response from the tenants. In their response the tenants acknowledged that the flat had been converted to a four bedroom flat without the consent. They said that they were unaware of the breach when they purchased the flat and they offered to resolve the situation as quickly as they could.
12. In his oral evidence Mr Cox said that all sub-lettings had to be disclosed to comply with the insurer's requirements and the council maintained a register of all sub-lettings. He told us that the council had no record of any request to register the sub-letting of the flat or to pay the registration fee of £20.

Reasons for our decision

13. At the hearing neither Mr Omar nor his father denied that the breaches of covenant asserted by the council had occurred. They explained that the previous lessee was originally responsible for both breaches and they said that they wanted to find an amicable solution.
14. Without formally committing the council, Mr Dehall indicated that it would be unlikely to seek forfeiture of the lease provided that the tenants restored the flat to its original two bedroom configuration and registered the current subletting, within a reasonable period of time.
15. That apart we find the following facts based on the description of the flat in the lease, the witness statement of Michael Baker that contained a statement of truth and the oral evidence of Paul Cox: -
 - a. When the lease was granted in 1990 the flat had only two bedrooms; and
 - b. The flat was subsequently altered by its conversion to a four bedroom flat; and
 - c. The alteration was completed without the council's consent; and
 - d. The current subletting of the flat was not registered with the council and the registration fee was not paid.
16. Consequently, we conclude and find that the breaches of covenant asserted by the council have occurred.

Name: Angus Andrew

Date: 11 July 2018