



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

Case Reference : CHI/00HN/LBC/2019/0018

Property : Ground Floor Flat, 17 Nelson Road,
Bournemouth, Dorset BH4 9JA

Applicant : Linda Mary Sanford
Hannah Rose Sanford

Representative :

Respondents : Peter O'Sullivan
Tracy O'Sullivan

Representative :

Type of Application : Breach of lease covenant

Tribunal Member(s) : Judge D. R. Whitney

**Date and Venue of
Hearing** : Determination on Papers

Date of Decision : 13th September 2019

DECISION

The Application

1. The Applicants are the freeholders of the Property. The Respondents are the leaseholders pursuant to a lease dated 23rd February 1979.
2. Application was made alleging that the Respondents were in breach of paragraph 9 of the Fifth Schedule of the lease in that they had painted an external wall in a colour not agreed with the Applicant.
3. Directions were given dated 4th July 2019. The tribunal has received various documents from both parties including letters from the Respondent dated 12th August 2019.

The Law

4. The relevant law to this application may be found in section 168 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).

Determination

5. The tribunal has carefully considered all documents which have been received but in particular has considered:
 - The application form and attachments;
 - An undated photograph of the front wall to the premises;
 - The lease;
 - Letters dated 12th August 2019 from the Respondent;
6. The relevant terms of the lease are contained within the fifth Schedule. This schedule sets out the Respondents covenants to the Applicant. In particular part of paragraph 9 is relied upon which provides:

“The Lessees shall....paint with two coats of good quality paint in a workmanlike manner all The other parts of the Premises usually or which ought to be painted in a colour mutually agreed between the Lessees and the owner of the flat above....”
7. It appears to the tribunal that the Respondent accepts the front wall of the Premises adjoining the pavement to the front of the Property has been painted by them. Further they appear to accept that they have no agreement with the owner of the upper flat which we understand is the Applicant.
8. The photograph supplied by the Applicant shows the front wall has been painted a grey colour. The Applicant suggests the wall was previously painted white.

9. The Respondent suggests they have no idea what the original colour was and due to the nature of their relationship with the Applicant agreement was impossible. It appears to be accepted the colour painted differs from the colour prior to any painting having been undertaken.
10. The Applicant contends this is a breach.
11. The tribunal reminds itself that its role is simply to determine whether or not such matters are a breach of the lease. It is not for this tribunal to determine whether any further action may be taken.
12. There is no evidence that the Respondent sought to obtain any agreement prior to painting the front wall.
13. This tribunal determines that the Respondent has breached paragraph 9 of the Fifth Schedule by painting the front wall a colour not agreed with the owner of the flat above and which is not the same as the colour prior to the works being undertaken.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking