FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UC/LBC/2018/0031
Property	**:**	Flat 3, 33 Enys Road, Eastbourne BN21 2DH
Applicant	**:**	Rat Records Limited
Representative	**:**	Dean Wilson LLP
Respondent	**:**	Mr David Tomkins & Ms Natalie Hartley
Representative	**:**	
Type of Application	**:**	Determination of an alleged breach of covenant
Tribunal Member(s)	**:**	Mr D Banfield FRICS
Date of Directions	**:**	9 April 2019

DECISION

Decisions of the Tribunal

It is determined that the Lessees Mr David Tomkins & Ms Natalie Hartley are in breach of clause 21 of the Fourth Schedule to the lease dated 11 January 2014, Title number ESX356515.

The Application

1. The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act) that a breach of covenant contained in the Respondent's lease has occurred. In particular, the Applicant asserts that clause 21 to the Fourth Schedule to the lease has been breached by laying laminate flooring on all floors within the flat.

2. The Respondents in this matter have applied to the Tribunal under s27A of the Landlord and Tenant Act 1985 to determine the service charges payable (CHI/21UC/LAC/2018/0013) and Directions were made on 27 December 2018 that the two applications would be heard at the same time.

3. The Tribunal indicated that the applications would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal's Procedural Rules 2013 unless a part objected in writing within 14 days. No objection has been received and the applications are therefore determined on the papers.

4. The Directions required the Lessees to serve a statement indicating whether they admitted the alleged breach and if not their reasons for opposing the application. The Applicant was then to reply before preparing a bundle of all the relevant documents for the Tribunal to consider in making its determination.

The Lease

5. The Lessee's covenant relevant to this application are as referred to in paragraph 1 above. Clause 21 requires the lessee "To keep the floors of the Premises (other than a lower ground floor flat) covered with carpet and underfelt or with such other effective sound deadening floor covering material as shall previously be approved by the Landlord or his managing agent."

The Evidence

6. It appears that the lessees did not prepare the statement referred to in paragraph 4 above. However, in an email to Dean Wilson dated 23 January 2019 in respect of both applications they said, "In any case, leaving aside the fact that the property has been empty since from before you submitted this Application, and that you did not respond to our requests for instructions for a period 3 months following your inspection, the alleged breach of covenant is not admitted." They reserved the right to request the Tribunal that they may submit material at a later date.

7. In the Applicant's reply dated 6 February 2019 it was said that due to noise complaints received by the Applicant's managing agent in January 2018 it was suspected that laminate flooring may have been laid contrary to the terms of the lease.. Dean Wilson were instructed,

and a letter sent dated 20 March 2018 requesting access and for any evidence that a previous Freeholder had consented to the flooring.

8. The Applicant's agent visited on 30 April 2018 when it was confirmed that other than the stairs and landing all floors were covered with a laminate material.
9. Correspondence has been exchanged with the Lessees, but the breach remains to be remedied.
10. Case law was cited in support together with witness statements from Amy Allcorn of Pepper Fox who are employed by the Applicant to manage the property and Nicholas Annand a Director of the applicant both of which supported the grounds for the application. Appended to Ms Allcorn's statement were two photographs showing a bedroom and living room both of which had hard flooring.
11. In an email marked Without Prejudice and dated 2 July 2018 from Mr Tomkins to Mr Annand with a copy to Dean Wilson the third paragraph included "We will be happy to lay carpet in the remaining areas before 30 July 2018 upon confirmation that this will represent full and final instructions following the inspection"

Discussion and Decision

12. The lessees' obligation is clearly set out at clause 21 of the Fourth Schedule. Either carpet is laid or some other material previously approved.
13. No evidence of a previous approval has been given and I do not therefore have to consider whether any alternative covering has been laid.
14. The witness evidence shows that at 30 April 2018 no carpets were in place and from Mr Tomkins email of 2 July it was clear that this was accepted and whilst an offer was made to lay carpets this was subject to conditions.
15. No evidence has been submitted as to whether the conditions were met, and the carpets laid and on the balance of probabilities it appears that they were not.
16. I therefore determine that the Lessees Mr David Tomkins & Ms Natalie Hartley are in breach of clause 21 of the Fourth Schedule to the lease dated 11 January 2014, Title number ESX356515.

D Banfield FRICS

9 April 2019

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

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

S.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.