FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/43UJ/LBC/2022/0010**
Property	**:**	**Flat 9, Chasemount Snows Ride Windlesham Surrey GU20 6LN**
Applicant	**:**	**Chasemount Property Management Ltd (Landlord)**
Representative	**:**	**Mr B Mein**
Respondent	**:**	**Ms M Padda (Tenant)**
Representative	**:**	**In person**
Type of Application	**:**	**Breach of covenant**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Mr I R Perry FRICS**
Date and venue of Hearing	**:**	**Paper remote** **08 September 2022**
Date of Decision	**:**	**12 September 2022**

DECISION

This has been a remote consideration on the papers which has been consented to by the parties. The form of remote hearing was P:REMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in an electronic bundle the contents of which are referred to below. The orders made in these proceedings are described below.

Decision of the Tribunal

1. The Tribunal determines that the Respondent Tenant is in breach of covenant under the terms of her lease.

2. The Tribunal makes no order under Section 20C Landlord and Tenant Act 1985 or Commonhold and Leasehold Reform Act 2002 Schedule 11, Paragraph 5A.

Reasons

1 The Applicant landlord sought a declaration from the Tribunal that the Respondent tenant was and remained in breach of the covenants of her lease. Directions were issued by the Tribunal on 23 June 2022.

2 The hearing took place as a paper consideration to which the parties had previously consented. In accordance with current Practice Directions relating to Covid 19 the Tribunal did not make a physical inspection of the property. The issues in the case were capable of resolution without a physical inspection of the property.

3 The Applicant landlord is the freeholder of the building known as Chasemount Snows Ride Windlesham Surrey GU20 6LN (the building) which comprises twelve self-contained flats. Flat 9 (the property) on the first floor of the building is occupied by the Respondent.

4 The Respondent is the tenant of the property.

5 The lease under which the Respondent holds the property is dated 02 November 2007 as extended on 08 April 2021 (the lease) (page 14) and was made between Brymor Homes Ltd (1) and the Respondent (2).

6 By Clause 3.1 of the lease the tenant covenanted to observe and perform the obligations set out in the Third Schedule (page 22). By clause 26 of the Third Schedule (page 34) the tenant covenants to observe the regulations in the Seventh Schedule. Regulation 5 of the Seventh Schedule (page 40) requires all floors other than kitchen and bathroom to be close carpeted.

7 It is common ground between the parties that the floor covering of the property is formed of ceramic tiles which the Respondent says have been in place since the property was built. Photographs of the property supplied by the Respondent (pages 68-69) show the kitchen/lounge area with a ceramic tiled floor part of which is covered by a rug.

8 The Applicant's request that the Respondent change her flooring to comply with the covenants appears initially to have been agreed to by her (pages

144-147) but she later altered her position and now purports to rely on a licence, waiver or consent which she said was granted to her by the original landlord. She has however been unable to produce any tangible evidence in support of her assertion. Further, answers to an enquiries form given by a previous landlord confirm that no permission, licence or variation of covenant had been given to the Respondent (page 100). It is accepted however that the property as built was fitted with the ceramic tiles.

9 Copies of emails from the occupiers of other flats in the building suggesting that they understood the Applicant had bought the property as new with ceramic tiles already laid (pages 71-74) do not demonstrate any evidence that consent to the variation of lease was given in this case and are not supported by witness statements.

10 Other tenants in the same block had covered or replaced their tiles and no other tenant is known to have had a waiver or licence to maintain hard flooring.

11 In her own statement (page 66) the Respondent cites evidence of other breaches of covenant committed by other tenants. These are not relevant to this application.

12 When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court in **Arnold v Britton and others** [2015] UKSC 36 Lord Neuberger:

'When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.'

13 The lease requires that all areas (except bathroom and kitchen) shall be 'close carpeted'. The word 'close' suggests that the entire specified area should be carpeted, not just partial carpeting with loose rugs.

14 The Tribunal finds, accordingly, that 'close carpeted' has the meaning that all floors except the bathroom and kitchen should be entirely covered by carpet.

15 The floors in the property are not covered by carpet, only partially covered, so that there is a breach of covenant.

16 For the above reasons, on the basis of the evidence before it, the Tribunal finds that there has been a breach of Clause 3.1 of the lease encompassing clause 26 of the Third Schedule and Regulation 5 of the Seventh Schedule.

17 The Law

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.

Section 20C Landlord and Tenant Act 1985

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any

service charge payable by the tenant or any other person or persons specified in the application.

(2)The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Name: Judge F J Silverman as Chairman **Date:** 12 September 2022

Note:

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 by email to rpsouthern@justice.gov.uk.
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.