

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



Commonhold and Leasehold Reform Act 2002

Section 168(4) – Application for an order that a breach of covenant or a condition in the lease has occurred

**DECISION AND REASONS**

**Case Number:** CHI/00HG/LBC/2010/0008  
**Property:** 18A Wilderness Road Plymouth Devon PL3  
4RN  
**Applicant:** Sharan Griffin  
**Respondent:** Joseph Mark Trethewey and Alice Mary  
Trethewey  
**Date of Application:** 7<sup>th</sup> March 2010  
**Date of Hearing and inspection:** 5<sup>th</sup> July 2010  
**Appearances:** Justin Griffin and Sharan Griffin  
Joseph Trethewey  
**Tribunal Members:** Cindy A. Rai LLB Solicitor (Chairman)  
Timothy N. Shobrook BSc FRICS Chartered  
Surveyor (Valuer Member)  
**Date of Decision:** 17th August 2010

**Decision**

1. The Tribunal determined that the Respondent has breached and continues to breach some of the covenants on the part of the tenant and/or conditions contained in the lease dated 18<sup>th</sup> June 1993 and made between Carolyn Elizabeth Kempe and William Frank Webb (1) and William Frank Webb (2) ("the lease") in relation to which lease the Respondent is the current owner and "tenant". The reasons for its decision are set out below.

## **Background**

2. The Applicant has applied to the Tribunal for it to determine that the Respondent is in breach of some of the covenants and conditions in his lease as specified in its application with which it has provided a copy of the lease together with a statement to which exhibits including photographs are attached.

## **Inspection**

3. Prior to the hearing the Tribunal inspected the property accompanied by Justin Griffin and Joseph Trethewey.
4. Flat 18A Wilderness Road Plymouth, ("the Property"), is the basement flat being one of three flats within a converted semi detached house dating circa 1900 situate and fronting Wilderness Road, a residential street and backing on to Mannamead Road. Flat 18B is on the ground floor and Flat 18C is on the first floor.
5. The Tribunal inspected the interior of the basement flat reached by descending a concrete stairway down into a compact yard both of which are apparently included within the lease of the Property. A drainage inspection manhole situate in the yard was clearly visible and accessible. It was apparent that extensive renovation works to the flat are ongoing and plastered walls, bare floors and exposed water and soil pipes could be seen. Both the Applicant and the Respondent drew the Tribunal's attention to rotten timbers in the one original internal wall in the entrance hall. The Tribunal were told that the other similar walls had been replaced with block walls. The Applicant provided a copy of a plan to both the Tribunal and the Respondent which showed the previous layout of the flat as opposed to its current layout and which provided verification that some walls had been removed and repositioned. A bathroom has been created out of part of two former bedrooms. A passageway had been removed and a dividing wall had been removed from the lounge to restore it to its former dimensions which was apparent from the position of what appeared to be original coving but in addition doorways and arches had been repositioned and in at least one case widened.
6. It is part of the Applicant's case that structural walls in the Property have been removed which compromised the structural integrity of the

whole building. Therefore the Tribunal examined all the internal walls. All the new walls are blockwork and some are replacement of the original lathe and plaster walls. It was not disputed by the Respondent that some of the original walls have been removed. The Respondent stated that he had obtained advice from a structural engineer. He said that he would bring a copy of the report provided to his builder to the Hearing. It was suggested by the Applicant that a soil pipe has been re-routed too.

7. Following the inspection of the interior of flat the Tribunal inspected another manhole situate on the southern side of the building in a narrow concreted areas at basement level. It appeared that at some time the drain beneath has overflowed and plaster coloured residue was visible within the area of the manhole. The Applicant pointed out a broken iron railing enclosing the lower concreted area.
8. No inspection was made of the interior of Flat 1(C) because Sharan Griffin would not allow Joseph Trethewey access to her flat.

### **The Hearing**

9. At the beginning of the Hearing the Respondent told the Tribunal that he had not received a copy of the Applicant's case which had apparently been sent to the Tribunal office in March 2010. A copy was made for him and the hearing was adjourned to give the Joseph Trethewey an opportunity to read through the Applicant's case, look at the exhibits and if he wished, obtain legal advice.
10. Joseph Trethewey produced a copy of a report from Maurice Parker Structural & Civil Engineer dated February 2010. A copy was given to the Tribunal and the Applicant. The report simply contained factual loading calculations in respect of the internal walls within the flat.
11. When the hearing was reconvened Joseph Trethewey asked if the determination of the application by the Tribunal could result in forfeiture of his lease. The nature of the application was briefly explained and that it was an application for a determination to establish breach of a covenant or condition in his lease. The Chairman read aloud the relevant parts of section 168 of the Commonhold and Leasehold Reform Act 2002 ("CLARA"). It was also explained that the Tribunal could not offer either party legal advice.

Joseph Trethewey said that as long as the decision could not result in the forfeiture of his lease he agreed to the hearing continuing.

12. At the hearing the following facts emerged from the evidence and statements of the parties.
13. The Respondents had acquired the flat at the end of last year. Joseph Trethewey had commissioned building works which were apparently initially overseen by his business partner David Whitting. David was responsible for supervising Simon Richardson, the builder.
14. Sharan and Justin Griffin together owned 50% of the freehold of the Property and Sam Groves the leaseholder of Flat 18(B) who was not present at the Hearing but who had authorised them to represent him owned the other 50%. Sharan and Justin Griffin live in Flat 18(C) and Sam Groves lives in Flat 18(B)
15. The Tribunal were told that Flat 18(A) had previously been occupied by an elderly gentleman who had apparently been unable to maintain it and the Applicants stated that they had cleared rubbish away from the outside of the Property when it was vacated prior to it being sold to Joseph Trethewey.
16. Joseph Trethewey said that the areas surrounding his flat had been untidy when he acquired it last year and soon after his builder had started renovating the Property.
17. Justin Griffin told the tribunal that he and his wife had only become aware of the extent and structural nature of the works being carried out at the Property when Sharan had telephoned him at work to tell him that the works were causing the building to shake. He had returned home and said that he had tried to inspect the works by gaining access to the Property. He was eventually granted access but the builder had apparently been abusive towards him and had thereafter tried to force his way into their flat (18(C)) to assess whether the works being carried in the basement were causing consequential damage to other parts of the building. Following this incident the police were called. Attached to the Applicant's statement is a copy of the police record of the incident.

18. Joseph Trethewey denied any knowledge of this incident and said that he could not be responsible for either the conduct of his builder or his business partner.
19. Justin Griffin told the tribunal that he had not seen any acroprops in place before internal walls within the Property were removed. He had subsequently contacted the Building Control at Plymouth City Council ("the Council") and as far as he was aware no application had been made by Joseph Trethewey either at the time or since. Following the Hearing it has been established a "Building Notice Application" was made and acknowledged by Building Control on the 15<sup>th</sup> January 2010 but there is no evidence as to whether the Respondent has given notice to the Council to request inspections of the ongoing works.
20. Justin and Sharan Griffin are both aware that the lease requires that the tenant seek consent from the freeholder prior to carrying out structural works and alterations. They stated that in addition the tenant must obtain appropriate statutory consents such as Building Regulations Consent and Planning Permission if required. Whilst in principle there was no suggestion that the freeholder would not consent, it is the Applicant's case that the works to the basement flat were started prior to any approach to the freeholder for such consent being made; furthermore the Applicant only became aware of the extent of the work as a result of the disruption the work has caused to the other occupiers of the building.
21. They suggested that little care or consideration of the other occupiers of the building appeared to have been taken by or on behalf of the Respondent and rubble had been left within the lower yard and also on other parts of the Property. The railing enclosing the light wells serving Flat 18(A) had been broken;
22. Photographic evidence was produced showing the railings in situ and the rubbish that had been removed from the flat via the garden.
23. There had been a blockage of the drains although the actual cause was never clearly established as at the time it had been impossible to access the inspection chamber in the courtyard of Flat 18(A) because the manhole was covered with rubble and rubbish.

24. Following Joseph Trethewey obtaining advice from the Leasehold Advisory Service he had sought retrospective consent to the alterations and a copy of his undated letter addressed to Sam Groves but apparently copied to Sharan Griffin was produced at the hearing.
25. The Applicant has not received any written evidence of an application for Building Regulations consent neither did she believe that there had been inspections of the works by Building Control and she thought this would be a prerequisite to obtaining certification on completion.
26. In the course of the hearing and whilst stating his case Joseph Trethewey was apologetic for the disruption that the works had apparently caused and apologised at the Hearing to both Sharan and Justin Griffin for any conduct of the builder and David Whitting which had caused them distress or upset. However he stated that he could not control either what they said or their actions. He said that had no desire to upset the freeholders. He thought that Sam Groves the other freeholder was happy with the work he had carried out and his method of operation. He did not produce any written evidence in support of this statement.
27. He told the Tribunal that he wanted to improve his flat and improve the value of the whole building. He said that he had incurred substantial costs in arranging for building rubble and debris to be removed on several past occasions as well as just prior to the hearing. He said that he was not entirely happy with the appearance of the building, or some areas within the flat, or his builder but he believed that the work was of a satisfactory standard and that the builder was generally competent. He said that it was his builder who had noticed the drainage problem and had reported this to the freeholder.
28. He did not appear to accept that the building works may have caused or exacerbated drainage problems. He was not apparently concerned at the disruption resulting from the way in which his builder had deposited rubble and waste around the courtyard garden areas or as to whether in fact those areas were common parts or belonged to other flats.

29. He said that acroprops had been put in place before structural walls were removed. He suggested that these were in place when Justin Griffin inspected the works within the Property.
30. He claimed to have made no enquiries of his builder as to the circumstances which had resulted in Mr Griffin calling the police.
31. From its inspection the Tribunal saw evidence of building rubble having been located, and in some cases remaining on areas which were either common or belonged to other flats. It was clear from the photographic evidence supplied by both parties that large quantities of rubble and debris must have been removed. The Applicant suggested that such removal was only undertaken just before the date of the Hearing.

#### **DECISION OF THE TRIBUNAL**

32. A determination by the LVT under section 168 of the CLARA is a prerequisite for service of notice by a Landlord under section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or a condition in its lease
33. The Leasehold Valuation Tribunal is asked to determine finally pursuant to this application made under section 168 (4) of CLARA that a breach of lease has occurred. Part of section 168 is set out below:-
  - S. 168(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”
  - 168(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.....has finally determined that the breach has occurred”
34. In her Application Sharan Griffin refers to the Respondent having breached specific covenants and obligations in his lease.

35. Firstly **Clause 1(c)** of the lease refers to "the rights of support and protection" (subject to which the demise is made)
36. Sharan Griffin suggests that this obligation has been breached by the removal of some "supporting" walls in Flat 18(A) by the Respondent. No evidence has been supplied by the Applicant as to the current structural integrity of the building. The Tribunal was not able to inspect Flat 18(C) for the reasons referred to in paragraph 8 above, to ascertain the extent of any cracks within the walls which might have been caused by the works, but has been provided with copies of photographs at exhibit 2 of the Applicant's statement. It was impossible from the limited visual and photographic evidence to establish with any certainty whether or not the cracks have been caused by the Respondent's building works. It is however accepted that the removal of supporting walls without suitable support would be undesirable.
37. The structural engineer's report does not enable the Tribunal to determine if the structural integrity of the building has been compromised by the Respondent's works but would suggest that it might be helpful and reassuring to the Applicant if the Respondent was to request that his structural engineer provided written confirmation (if indeed this is the case) that it has not. Without further evidence the tribunal cannot categorically determine breach of this obligation neither was it admitted by the Respondent.
38. Secondly **Clause 2(8)** obliges the tenant "Not to make any alterations in the Premises (Flat 18A) without the approval in writing of the Landlord to the plans and specifications thereof and to make all such alterations in accordance with such plans and specifications. The Tenant shall at his own expense in all respects obtain all licences, approvals of plans, permissions and other things necessary for the carrying out of such alterations and comply with the necessary byelaws and regulations and other matters prescribed by any competent authority either generally or in respect of the specific works involved in such alterations."
39. It is not disputed by the Respondent that he started carrying out alterations to his flat without obtaining written consent from the



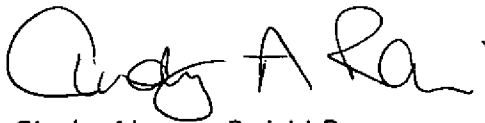
Freeholder. He has belatedly written to Sharan Griffin and Sam Groves seeking consent to the alterations but without addressing the requirement to provide evidence that he has obtained Building Regulations consent. It has been subsequently established that he has made an application for Building Regulations consent. Such breach is not capable of remedy if the Respondent does not actively pursue obtaining the necessary statutory consents in respect of his works in addition to obtaining the consent of the freeholder. However there is no evidence that the Respondent is actively trying to obtain Building Regulations consent merely that he submitted an application but that he appears to have done nothing more.

40. It is determined that the covenant in clause has been breached and that this breach is continuing. The Respondent admitted that he had not sought consent from the freeholders before starting the works. The recent letter sent by the Respondent seeking retrospective formal consent for the alterations is not in itself sufficient to remedy this breach or prevent it continuing.
41. Thirdly **Clause 2(10)** of the lease obliges the tenant "Not to do or permit or suffer to be done in or upon the Premises anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Landlord or to neighbouring owners and occupiers whereby any insurance for the time being effected on the other maisonettes or either of them or any contents thereof may be rendered void or voidable or whereby the rate of premium may be increased"
42. The Applicant contends that the works to the Property constituted a nuisance and have resulted in the possibility that the insurance of the building might be compromised.
43. It is apparent that the alteration works carried out by or on behalf of Joseph Trethewey have caused a nuisance to the other occupiers of the building There is some evidence that some effort has been made to remedy the breach since the application was submitted to the Tribunal. The suggestion made by the Respondent that these areas may not have been tidy prior to his acquisition of the flat is not relevant. The evidence at the hearing suggested that the Respondent

has had little regard for the other occupiers of the building and the likely effect of his works in terms of creating a "nuisance". He did not admit that he had breached this covenant.

44. The Tribunal determines that this covenant has been breached on both counts. Firstly it was apparent as has been stated that nuisance has resulted from the way in which the works have been undertaken. Removal of the bulk of the rubbish has alleviated the nuisance but not eliminated it. The risk of the works affecting the buildings insurance continues and this was brought to the attention of the Respondent in the formal acknowledgement notice from Building Control to Joseph Trethewey dated 15<sup>th</sup> January 2010. The breach continues.
45. **Clause 2(15)** of the lease obliges the tenant "to maintain the garden area in a clean and tidy condition and the grass cut"
46. In so far as a "garden area" exists with regard to Flat 18(A) it was not noticeably tidy on the date of inspection but the other areas apparently within the demise of the other two flats were not tidy either. However evidence as to which party was responsible for the each area was not provided. Whilst it is accepted that this covenant may have been breached it appears however that any continuing breach of clause 2(15) could be remedied. It would appear to be the case that little or no maintenance has been carried out during the Respondent's ownership of the Property to his garden areas which remain untidy. It is determined that a breach of this covenant has occurred.
47. Fifthly **clause (1) of the Second Schedule** to the lease (Exceptions and Reservations) reserves "power to the Landlord and its duly authorised surveyors or agents with or without workmen and upon giving three days previous notice in writing (or in case of emergency without notice) at all reasonable times to enter the Premises for the purpose of carrying out its obligations under Clause 3 of this lease"
48. Sharan Griffin has told the Tribunal that she was unable to access the common manhole in the courtyard in front of the Property to enable an assessment of the cause of the blocked drain and to enable any necessary works be undertaken.

49. The Tribunal determines that this obligation has been breached but following inspection it was apparent this breach is no longer subsisting. Joseph Trethewey did not deny that this covenant may have been breached.
50. **Clause 2 of the First Schedule** of the lease provides that the tenant shall "not throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in the premises". She believes that waste from the building works has caused the blockage in the drains. The tribunal could see visual evidence of the problem and the "tell tale" indications of plaster in the vicinity of one of the manhole covers so it appears possible that the blockage may have been caused by or contributed to by the Respondent's works. This does not appear to be a continuing breach. Such breach was not admitted by the Respondent who consistently maintained that it was his builder who had noticed that the drains were blocked but without accepting that such blockage could or might have resulted from the conversion works.
51. The Tribunal determines that the Respondent has breached this restriction.



Cindy Alpona Rai LLB

Chairman