



**Residential
Property**
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Leasehold Valuation Tribunal

LON/00AG/LBC/2010/0023

London Rent Assessment Panel

Commonhold and Leasehold Reform Act 2002 section 168(4)

Address: 22A Goldhurst Terrace, London NW6 3HU

Applicant: London Borough of Camden (freeholder)

Represented by: Ms. Christine Cooper, counsel, instructed by Mr Simon Evans

Respondent: Mr. Paymen Pachenari (leaseholder)

Represented by: Mr John Ioannou, solicitor, of Devereux solicitors

Tribunal members: Mr T J Powell LLB (Hons)
Mr. T Sennett MA FCIEH

Application dated: 22 March 2010

Directions granted: 24 March 2010

Hearing: 21 June 2010 & 25 August 2010

Decision: 25 August 2010

Background

1. This is an application made pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 seeking the Tribunal's determination as to whether there has been a breach of the terms of the lease granted in respect of 22A Goldhurst Terrace, London NW6 3HU, a flat owned by the Respondent.
2. The Applicant claimed that the Respondent had carried out the following works in breach of the lease:
 - i) Alteration to the location of the kitchen;
 - ii) Alteration to the upper ground floor layout and repositioning of internal structural walls;
 - iii) Removal of the fire lobby between Flat A door and living accommodation;
 - iv) Alteration of underground drainage for the new kitchen and bathroom positioning; and
 - v) Erection of a conservatory at the rear of the building.

The property

3. The Tribunal did not consider that an inspection of the property was necessary for its determination and neither party asked the Tribunal to inspect.

The lease

4. The lease to Flat A was granted on 9 February 2009 for a period of 125 years from the same date. The Applicant and Respondent are the original parties to the lease.
5. Clause 3.6 of the lease is the tenant's covenant:

"Not at any time without the licence in writing of the landlord first obtained nor except in accordance with plans and specifications previously submitted in triplicate to the landlord and approved in writing by the landlord and to its satisfaction to -

3.6.1 make any alteration or addition whatsoever in or to the property either externally or internally; 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 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.
 - (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 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.”

The hearing

- 9. At the hearing on 21 June 2010 the matter was adjourned for six weeks to enable the Applicant to clarify outstanding requirements in writing to enable the Respondent to comply. At the Applicant's request the matter was restored for hearing on 25 August 2010.
- 10. At the hearing on 25 August 2010 the Applicant was represented by Ms. Christine Cooper of counsel. The Respondent was present at the hearing and was represented by Mr. John Ioannou, solicitor. Immediately prior to the hearing the Applicant submitted a Case Summary, which included a chronology of events. At paragraph 2, it confirmed that several additional complaints about alterations to the communal parts of the building were not being pursued before this Tribunal, which was only concerned with alleged breaches within the demise.
- 11. Ms. Cooper presented the case on behalf of the Applicant, relying on the witness statement of Ms Lynne Skevington, which exhibited colour photographs of the flat in question.

12. On behalf of the Respondent, Mr Ioannou admitted that all the alleged alterations had been carried out, without prior consent, and that therefore the Respondent was in breach of the covenants in his lease, as alleged by the Applicant.


The Tribunal's decision

13. In the light of the admissions by the Respondent through his solicitor, the Tribunal determines that the Respondent is in breach of the terms of clauses 3.6, 3.7 and 3.9 of his lease dated 9 February 2009.
14. Mr Ioannou asked for it to be noted that the Respondent had made endeavours to apply for appropriate planning permission and building control consent for the works that he had carried out, but he was unable to rely upon any evidence or documentation at the hearing to substantiate this.

Alleged breach of clause 3.4.5

15. By clause 3.4.5 of the lease the tenant is to cover internal floorings with carpets or other suitable material for avoiding the transmission of noise. The Applicant alleged a breach but the Respondent claimed that he had complied with this clause.
16. In the absence of evidence before the Tribunal, no determination was made in relation to this alleged breach. It is left to the Applicant to re-inspect and, if it wishes to pursue this matter, to re-apply for a determination on the papers (without a hearing), submitting all necessary evidence in support.

Chairman:



Timothy Powell

Date:

25 August 2010