

609



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

**Case Reference** : **CHI/43UH/LBC/2014/0016**

**Property** : **26 Hale Street Staines Middlesex TW18  
4UW**

**Applicant** : **Mr Si Pan Long**

**Respondent** : **Mr John Salter**

**Type of Application** : **Determination of an alleged breach of  
covenant**

**Tribunal Members** : **Judge D. R. Whitney  
Mr. A. Mackay FRICS**

**Date and venue of  
Hearing** : **1<sup>st</sup> October 2014 at Staines Law Courts**

**Date of Decision** : **1<sup>st</sup> October 2014**

---

**DECISION**

---

© CROWN COPYRIGHT 2014

7. The property is located at a busy traffic intersection close to Staines town centre. The Property appears to be part of what can best be described as a Victorian lodge which comprises 22, 24 & 26 Hale Street. The Property occupies a triangular plot bounded on one side by the river Colne and Hale Street on the other side. It was apparent the building as a whole has been subdivided and from the papers we understand that the freehold comprises numbers 24 and 26 Hale Street which are the North eastern end of the building.
8. Upon inspection there were what can be described as wrought iron style double gates opening on to Hale Street. These gates were adjacent to the building of the Property and appeared to have an electronic opening mechanism. Further along the wall to the North East was a pedestrian gateway. The gates appeared to have been in place for some time although it was not possible to say for how long.
9. Looking through the gates it was plain to see that the open area adjacent to the building had been laid to block paving. This block paving from its appearance and the growth of weeds etc. must have been laid some time ago but again this tribunal could not say when from its inspection save that it was not newly laid.
10. The tribunal inspected the Property externally only from Hale Street.

#### DISCUSSION AND REASONS

11. The tribunal had regard to the bundle provided and in particular the skeleton argument of the Applicant contained therein. The tribunal was also greatly assisted by letters from Rowberry Morris Solicitors on behalf of the Respondent and particularly its letters of 12<sup>th</sup> and 23<sup>rd</sup> September 2014.
12. The tribunal reminded itself that its jurisdiction was simply to determine if there was a breach of the lease as complained of by the Applicant. It is not for the tribunal to determine any other issues as the jurisdiction for that lies in an entirely different forum. The tribunal has therefore determined simply whether there is a breach and makes no other findings.
13. Three distinct breaches were alleged. The first being that the Respondent did not allow the Applicant access to the property. The Applicant relies upon letter he wrote dated 15<sup>th</sup> April 2013 in which he states "please provide access to the property for my surveyor on Tuesday 23<sup>rd</sup> April 2013 at 11am."
14. The Respondent states that access was allowed for the surveyor but not for the Applicant himself. The Respondent states that the Applicant did not ask for access for himself and so contends they did not have to give such access. The Respondent relies upon letter from Rowberry Morris Solicitors dated 11<sup>th</sup> July 2014 in which they indicate that if Mr Long wants to inspect provided he gives the relevant notice he will be allowed to do so.

15. Mr Long suggests (see his letter dated 17<sup>th</sup> September 2014 to the tribunal) that it should be inferred he may require access for himself with his surveyors and his request was adequate under the terms of the lease.
16. The tribunal determines that it is for the Landlord to properly specify who and when wishes to access the property and it is not for the tenant to draw inferences. It is not suggested that the Respondent did not let the surveyor in and so the Respondent complied with the request for access. As a result the tribunal finds that the Respondent has not breached the lease on this basis.
17. The second allegation is that the Respondent has undertaken certain alterations without consent in writing.
18. The tribunal during its inspection was able to see the alterations complained of being the erection of electrically operated double gates in the wall fronting Hale Street and the removal of a lawned area which was replaced with block paving.
19. It was not disputed that the work was done after completion of the lease although there appeared some debate as to when the works were undertaken. It was apparent from the tribunals inspection such works had been undertaken some years previously although it would not be possible for the tribunal to determine when. For the purposes of this decision when such works were undertaken is not relevant.
20. The tribunal notes again that most helpfully Messrs. Rowberry Morris Solicitors on behalf of the Respondent in their letter of 23<sup>rd</sup> September 2014 concede that the Respondent has no written consent. It is contended on the Respondents part that prior to the granting of the lease certain discussions were undertaken with the solicitors for the then freeholder and such works were agreed. The Applicant denies this and has attached various witness statements in support that no consent was provided.
21. The tribunal reminds itself that its jurisdiction is simply to determine if there is a breach. It is conceded by the Respondent that alterations have been undertaken and they have no written consent. The tribunal is satisfied that the Respondent is in breach of clause 3.9 of the lease in respect of the removal of a stretch of wall and replacement with electrically operated double gates and the removal of a lawned area and replacement with block paving in the area of outside space to the North East of the building.
22. The third allegation is that the Respondent has failed to comply with clause 3.24 in that a sublease has been entered into but a copy has not been provided for inspection.
23. The Applicant contends that the property is sub-let and a copy of the agreement should be provided with 28 days. He says that the assured

shorthold tenancy is a sub-letting notice of which he is entitled to be given under the lease. He relies upon clause 3.24 as set out above.

24. Whilst it appears to have been admitted that the property was let under an assured shorthold tenancy agreement which commenced on 4<sup>th</sup> May 2014 it was suggested on behalf of the Respondent that this was not a sub-lease. It is admitted that a copy of the tenancy agreement was not provided within 28 days. It was supplied under copy of letter dated 12<sup>th</sup> September 2014 written by Messrs. Rowberry Morris.
25. The tribunal is satisfied that an assured shorthold tenancy is a “subletting” under the lease. Plainly this is a letting of the Property and is a form of sub lease even if one not capable of registration at the Land Registry. The form of the clause in the lease is not unusual and is typical of when a freeholder wishes to be kept apprised of all lettings, no matter how short term. As such a copy of the agreement and payment of the registration fee should be made within 28 days.
26. For the reasons above the tribunal determines that two of the three breaches have been established by the Applicant. In making these determinations the tribunal has made no additional findings and has confined itself to purely whether the breaches complained of have been established. All other comments and statements are by way of background and explanation.

Judge D. R. Whitney

## **Appeals**

- 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.**