FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AC/LBC/2018/0036**
Property	:	**11 Lisle Court, Cricklewood Lane London NW2 2EP**
Applicant	:	**London Borough of Barnet**
Representative	:	**Ms Murray of counsel**
Respondent	:	**Mr Fras Al-Drwesh**
Representative	:	**none**
Type of Application	:	**For the determination of an alleged breach of covenant under section 168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Judge Pittaway** **Mr S Mason BSc FRICS FCI Arb**
Date and venue of Hearing	:	**19 June 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19 June 2018**

DECISION

Decision of the tribunal

The tribunal determines, pursuant to section 168(4) of the Commonhold and Leasehold Act 2002, that the respondent has breached the covenants in clauses 3 (xiii), 3(xvi) and 3(xix) of the lease.

The application

1. The Applicant seeks a determination pursuant to s. 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent tenant is in breach of various covenants contained in the lease.

2. Section 168(4) provides that;

   "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 covenant or condition in the lease has occurred."

3. The property which is the subject of this application is 11 Lisle Court Cricklewood Lane London NW2 2EP(the **"Flat"**).

4. Directions were made dated 3 May 2018 which set out the steps to be taken by the parties and provided for this matter to be considered at an oral hearing.

5. In accordance with those directions the applicant lodged a bundle of documents. The respondent did not comply with the directions. He did not supply the tribunal with details of the sub-tenants/occupiers of the flat; nor did he provide the tribunal with the requested bundle.

The inspection

6. The tribunal attempted to carry out an inspection at 10am on 19 June 2018. The tribunal obtained access to the common parts, without the assistance of any person in the flat. On reaching the front door of the flat (which is on the first floor of the block) the tribunal knocked to obtain access but no one came to the door. The tribunal noted that all the windows were curtained or obscured by frosted glass.

7. Due to a misunderstanding as to whether there was an inspection Ms Murray, for the applicant, only arrived as the tribunal were leaving the block. The tribunal therefore accompanied her to the front door of the flat to repeat the attempt to gain access. Again no one answered the front door. The tribunal noted that between their first and second attempts to gain access a window in the room to the left of the front

door had been opened, indicating that there was someone in the flat who was not answering the door.

8. The tribunal were unable to inspect the retail premises below the flat as they were shuttered and closed.

The hearing

9. The hearing took place on 19 June 2018. Ms Murray represented the applicant and the tribunal heard evidence from Mr Wilson, of Barnet Homes who manage the block of which the flat forms part for the applicant. The respondent did not appear and did not provide the tribunal with the occupier information or with a bundle, as he had been requested to in the directions.

10. The bundle of documents provided by the applicant included two witness statements of Ms Liz James of Barnet Homes dated 26 April 2017 and 17 May 2018. She did not appear at the hearing to give oral evidence, however her manager Mr Sean Wilson did and the tribunal heard evidence from him. Ms Murray provided the tribunal with a skeleton argument and copies of the cases referred to in it. In reaching their decision the tribunal have had regard to all of the above.

The alleged breaches of covenant

11. The relevant clauses of the Lease of the flat which are said to have been breached, and which were considered by the tribunal, are set out below, together with a summary of the applicant's position and the tribunal's decision.

Clause 3(ix) failure to prevent and remedy leaks

12. For the applicant Ms Murray accepted that there was insufficient evidence before the tribunal as to the existence of any leak from the flat into the retail premises below and submitted that there was no intention by the applicant to pursue a breach of clause 3(ix).

13. Accordingly the tribunal make no determination as to a breach of this clause.

Clause 3(xiii) – alterations without consent

14. By clause 3 (xiii) of the respondent covenants;

"Not without the Corporation's written consent to alter the internal planning or height elevation or appearance of the Flat not at any time to make any alterations or additions thereto nor cut maim or remove

any of the party walls....nor change the user thereof (within the meaning of any legislation for the time being in force relating to town and country planning)".

15. Ms James' witness statements referred to the respondent having made unauthorised alterations to the flat by converting it into four bedsits. The tribunal were unable to gain access to the flat to confirm that this had occurred however Ms James' witness statement of 17 May 2018 referred to her attendance at the flat with Mr Wilson on 29 January 2018 when they were able to obtain access to one of the rooms in the flat which contained a cooker, small fridge freezer, washing machine, shower cubicle, single bed, small table and chair. In her opinion the room was clearly set up as a bedsit. At the hearing Mr Wilson confirmed this description and confirmed that the room to which he and Ms James had access was the former kitchen. Mr Wilson confirmed that there were three other locked doors in the flat to which they could not obtain access, and Ms James' witness statement stated that the occupant they had met had confirmed that there were two other occupants living in the flat and that the fourth room was then vacant. Mr Wilson further stated that at the inspection they had noted a communal toilet, but no other separate bathroom.

16. Ms Murray submitted that the tribunal should accept Ms James' written evidence notwithstanding her non-attendance at the hearing, and should give appropriate weight to them pointing out that the respondent had not contested the statements, had not complied with the directions and was not at the hearing.

17. Ms Murray referred the tribunal to the decision in *Westminster (Duke) v Swinton* [1948] 1 K.B. 524 which held that the conversion of a dwelling-house into flats by making internal structural alterations is a breach of covenant not to make any alteration in the arrangement of the premises; and to the decision in *London County Council v Hutter* [1925] Ch 626 in which it was held that a covenant not to cut or maim any of the principal walls or timbers was breached by the attaching a large electric light iron advertisement to the facade of a building by brackets cemented into holes in the stone work.

18. As to whether the conversion of the flat into four bedsits constituted a breach of clause 3(xiii) by reason of it being a change of use Ms Murray confirmed that under planning legislation a house in multiple occupation does not involve a change of use if it is occupied by fewer than six people. There was no evidence before the tribunal as to the number of people occupying the flat.

19. The tribunal accept the evidence of Ms James and Mr Wilson that the flat has been converted into four self-contained bedsits. This can only have been done by the removal of the original bathroom and kitchen and, having regard to the cases cited by Ms Murray, the tribunal

determine that this can only have been possible by making alterations to the internal planning or appearance of the flat in breach of clause 3 (xiii).

20. The tribunal do not have sufficient information before them to determine whether there has been a further breach of the clause as to a change of use in planning terms.

Clause 3(xvi) permitting the landlord access

21. By clause 3(xvi) the respondent covenants;

"To permit the Corporation with or without workmen and all other persons authorised by it at all reasonable times and upon reasonable notice.....to enter upon and view and examine the condition of the Flat....".

22. The bundle provided by the applicant included an Injunction Order dated 24 May 2017 (Claim Number D01WI352) ordering the respondent to provide access to the flat to the applicant to view and examine its condition and an Order dated 26 July 2017 deeming the Injunction Order to have been served on the respondent. Ms James' original witness statement referred to the numerous unsuccessful attempts made by the applicant to obtain access to the flat culminating with the applicant obtaining the Injunction Order. Mr Wilson made it clear at the hearing that when he and Ms James obtained access on 29 January 2018 it was because the front door had been left open, not because they were permitted access by the respondent.

23. The tribunal was unable to obtain access to the flat, although someone was clearly in occupation.

24. The tribunal consider that the evidence before it confirms that the respondent is refusing access to the flat to the landlord. The tribunal therefore determine that the respondent is in breach of clause 3(xvi) of the lease, in failing to permit the applicant and those authorised by it (in particular Barnet Housing) to enter and view the condition of the flat.

Clause 3 (xviii) – not to inconvenience the landlord

25. By clause 3 (xviii) the respondent covenants;

"Not to do or permit any thing to be done in or upon the Flat, Block or Estate which may .....cause damage or inconvenience to the Corporation or any adjoining owners or occupiers".

26. Ms Murray submitted that failing to permit the applicant to have access to the flat was causing inconvenience to the applicant, without clarifying what that inconvenience was.

27. The tribunal accept that the applicant has had to take proceedings in an attempt to obtain access to the flat and that this may cause them inconvenience but do not believe it is the sort of inconvenience that the draftsman had in mind when drafting this clause; the word follows immediately after reference to "damage" which suggests that the inconvenience should be causing the applicant some loss, and there is no evidence before the tribunal as to any such loss. The tribunal therefore do not determine that there has been a breach of this clause.

Clause 3 (xix) – not to vitiate insurance

28. By clause 3(xix) of the lease the respondent covenants

"Not to do or permit nor suffer to be done any act or thing whereby the Corporation's policy or policies of insurance in respect of the Estate or any part thereof may be or become void or voidable"

29. It was unfortunate that the applicant had not included details of its insurance policy in the bundle provided to the tribunal.

30. Ms Murray initially submitted that the alteration of the internal configuration "surely" rendered the insurance policy void or voidable. Having taken instructions Ms Murray then further submitted that by reason of being unable to obtain access to the flat the applicant was unable to undertake a full risk assessment so as to satisfy the insurers of the risks for which insurance was required; and it was this that was likely to render the insurance policy void or voidable.

31. The tribunal were not told whether the reconfiguration of the flat into bedsits has been notified to the applicant's insurers. If it has and the insurers are continuing to insure there is no longer an undisclosed act which might render the insurance void or voidable. However until the use as bedsits was notified to the insurers there will have been a breach of clause 3(xix) of the lease.

Name: J Pittaway **Date:** 19 June 2018