Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/00ML/LBC/2007/0011

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 168(4) of the COMMONHOLD AND LEASHOLD REFORM ACT 2002

Property:	Flat 2 8 St Michael's Place Brighton BN1 3FT
Applicant:	8 St Michael's Place (Brighton) Limited (landlord)
Respondent:	Leo James Horsfield (tenant)
Date of Application:	26 April 2007
Directions:	30 April 2007
Hearing:	18 June 2007
Attendances:	For the Applicant: Mr J Donegan, Solicitor, Osler Donegan Taylor Mr M Waterson, Ms P Prole For the Respondent: Mr L Horsfield in person
Decision:	16 July 2007

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Mr R A Wilkey FRICS
Ms J Herrington

Ref: CHI/00ML/LBC/2007/0011

Property: Flat 2, 8 St Michael's Place, Brighton BN1 3FT

Application

1. This was an application made on 26 April 2007 by solicitors Osler Donegan Taylor ("ODT") on behalf of the landlord, 8 St Michael's Place (Brighton) Limited ("the freehold company"), for a determination pursuant to Section 168(4) of the 2002 Act as to whether a breach of covenant by the respondent tenant, Mr Leo Horsfield, has occurred.

2. Directions were issued by the Tribunal on 30 April 2007. The Directions provided that if the respondent wished to contest the application he should provide a statement of case together with all documents upon which he intended to rely by 30 May 2007. Mr Horsfield did not comply with the Directions or contact ODT

3. On 1 June 2007, in the absence of any response from Mr Horsfield, ODT requested that the matter be dealt with on the papers. However, the Chairman of the Tribunal decided that in view of the issues to be decided a hearing was necessary and this was set down for 18 June. On 15 June, a letter was received at the Tribunal office from Mr Horsfield responding to the application and a copy sent to ODT.

Law

4. Section 168(1) and (2) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") provides that a landlord may not serve a notice under Section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined, on an application to the Leasehold Valuation Tribunal under Section 168(4), that the breach has occurred.

5. A determination under Section 168(4) does not require the Tribunal to consider any issue relating to forfeiture other than the question of whether a breach has occurred.

Lease

6. The Tribunal was provided with a copy of the lease of Flat 2, 8 St Michael's Place. The lease is dated 22 September 1983, and is for a term of 125 years from 14 October 1982, at an initial ground rent of £30 and rising thereafter.

7. Insofar as is material to the application, the lease contains the following covenants on the part of the tenant:

   Clause 2(5)
   Not to make or allow to be made any structural alteration to the plan elevation or appearance of the Flat nor make any addition thereto nor cut maim alter or injure any of the walls or timbers thereof nor erect or remove any internal partition for dividing rooms without the Lessor's consent in writing

   Clause 2(6)

At all times during the said term at the Lessee's own expense to do and execute all such works as are or may be under or by virtue of any Act or Acts of Parliament or Bye-Law of the Public Health Local or other competent authority for the time being directed to be done or executed at any time during the term in respect of the Flat whether by the Lessor Lessee or occupier thereof

Clause 2(16)
Not to do or permit of suffer anything which may render any increased or extra premium payable for the insurance of the Flat or other parts of the Building or which may render void or voidable any policy for such insurance and to repay to the Lessor all expenses rendered necessary by reason of any breach of this covenant committed by the Lessee

Clause 4
... The Lessee will at all times hereafter observe and perform the regulations in the First Schedule hereto ...

The First Schedule: The Regulations
1. ... nor to do or allow to be done in or upon the Flat in or about any part of the Building any act or thing which may annoy or tend to cause annoyance nuisance damage or danger to the Lessor or any of the other Lessees or occupiers of any part of the Building ...

20. Except in the case of the Lower Ground Floor Flat to keep the floors of the Flat covered with carpet and underfelt or with such other effective sound-deadening floor covering material as shall previously be approved by the Lessor's Agents

Alleged Breaches

8. The alleged breached were shortly described in the application as follows:

   (A) The Respondent has made a number of structural alterations to the internal layout without the Lessor's consent. The alterations include (1) the conversion of the kitchen area to a second bedroom (2) installation of a kitchen area in the lounge area without sufficient ventilation. The Respondent has additionally failed to obtain all necessary Planning and Building Regulation consents from Brighton and Hove City Council.

   (B) The Respondent has removed fire doors within the flat. There are also a number of ill-fitting doors and inadequately located smoke and heat detectors.

   (C) The Respondent has stripped the flat of carpets. The Respondent may have carpeted the flat after several requests from the Applicants, however there has been no inspection to confirm.

Inspection

9. On 18 June 2007 before the hearing the members of the Tribunal inspected the property and the interior of Flat 2. Access was given by Mr Horsfield's mother. Mr Horsfield did not attend the inspection. The members were accompanied by Mr Donegan, solicitor for the applicant, and Mr Waterson and Ms Prole, who were directors of the freehold company as well as tenants and residents at the property.

10. 8 St Michael's Place comprised a terraced house constructed in the 19th century with rendered and painted elevations under a dormer style roof, situated in a residential area in central Brighton. The property was converted into flats with accommodation arranged over the lower ground, ground, first second and third floors with a further floor in the dormer. There was a bay window to the ground and first floors with a balcony and iron railings.

11. Flat 2 was on the first floor. The front door opened onto a small hall leading to the main front room containing a modern built-in corner kitchen area with a fitted hob, oven, extractor hood and microwave, sink, worktop and fitted cupboards. There was a single smoke detector fitted to the ceiling. The double doorway to the living room from the hall had been widened at some point, leaving a visible line showing the position of the old door. A second front room used as bedroom also led off the hall, which according to the lease plan had previously been the kitchen. This room had a mezzanine level used as a sleeping platform which contained two smoke detectors.

12. A door from the lounge gave access to a small lobby leading to a bathroom and rear bedroom. The bathroom had a lowered ceiling and the space above this in the bedroom was used as a sleeping platform. The Flat also had the use of a separate store room on the landing below. Overall the Flat was in good decorative order. There was new carpeting to the hall and lounge. The internal doors were wooden and were not fire doors.

Hearing

13. The hearing was held in Hove Town Hall on 18 June 2007. It was attended by Mr Donegan, solicitor for the applicant, Mr Waterson and Ms Prole. Mr Horsfield also attended in person. The hearing was scheduled for 10.45. It started at 10.55 in case Mr Horsfield decided to attend. He arrived at 11.00. He said that he no longer lived at the property which was sub-let. He had moved out 3 months previously. He collected mail once a week but said he had not received notice of the hearing that had been posted to him on 1 May by the Tribunal office. The Chairman stressed to Mr Horsfield the importance of the matter and adjourned the hearing for 30 minutes to allow Mr Horsfield to familiarize himself again with the documents.

Facts

14. Mr Horsfield purchased Flat 2 in April 2004. The freehold company acquired the freehold of the property in November 2004. Mr Waterson first became aware of the lack of carpets and fire doors in February 2006 when he visited Flat 2 during an "open day" for potential purchasers when Mr Horsfield was marketing his flat for sale. At that time, Mr Horsfield had some items stacked on the landing outside his store room and had carried out some unauthorised partial decoration to the common parts. These latter points had been rectified and are not material to the application.

15. Mr Waterson wrote to Mr Horsfield on behalf of the freehold company on 8 April 2006 listing all these matters. In relation to the doors, the letter stated that fire doors were required with a 30 minute resistance to fire. This was necessary to comply with a Notice under S.352 of the Housing Act 1985 served on 23/05/2000. No further details of the Notice were available. With

regard to carpeting, the letter stated: "some time ago your [i.e. Mr Horsfield's] assurance was given that carpets would be laid down in Flat 2 in accordance with the terms of the lease. However, as there has been no discernible reduction in the level of noise from the flat, it is assumed that no such action has been taken. The Company requires that you comply with the lease by giving your prompt attention to this matter".

16. According to a letter dated 19 October 2006 from Mr Waterson to ODT, Mr Horsfield had replied on 18 October 2006, but this reply was not in the papers before the Tribunal. In any event, Mr Waterson said that the matters raised had not been attended to. On 24 November 2006 ODT wrote to Mr Horsfield stating that he had changed the internal layout of the Flat without consent, and that no carpets were laid. The company was "prepared to give retrospective consent for the alterations to the interior" subject to conditions that Mr Horsfield obtained the necessary consents from Brighton and Hove City Council and laid "close-fitting carpets on all floors". A date for inspection was also requested together with payment of ODT's reasonable costs.

17. No response was received by Horsfield and ODT wrote again in similar terms in January 2007 and indicated that the company would pursue an application to the Tribunal unless the matters were rectified by 31 January. On 30 January Mr Horsfield replied briefly: "We are prepared to meet the points raised on [sic] your letter dated 17 January 2007". On 6 February 2007 Mr Waterson spoke to Mr Horsfield who said that carpets had not yet been laid. The company instructed ODT to issue an application to the Tribunal as the matter had "dragged on" although it was a step "we should naturally prefer not to take". On 12 March 2007 ODT wrote to Mr Horsfield confirming that the freehold company would apply to the Tribunal.

18. On 2 April 2007 Mr Horsfield wrote to ODT stating that the carpets would be "ready for inspection" by 12 April and that building control issues were "addressed ... awaiting final inspection". No further details were forthcoming. In his letter of 14 June Mr Horsfield stated that he had applied to Building Control at the Council after speaking to Mr Waterson in February 2007. He had previously laid wooden flooring in the Flat but had subsequently had carpets fitted. He had employed an electrician to swap the fire detectors so that there was a smoke detector in the kitchen.

19. In relation to building consents, a Building Inspector had recently visited and told him that to meet current building regulations he would need to install fire doors to the required standard and a ventilation fan to the kitchen area. The Building Inspector had also recommended calling in a specialist firm to assess the fire precautions.

The case for the landlord

20. Mr Donegan submitted that the freehold company's paramount concerns were the safety of the property, especially in relation to fire precautions, and compliance with building regulations. He was unable to specify which regulations in particular were engaged but historically (before the freehold company took over) the Council had been involved with the building. Both adequate fire alarms and fire resistant doors were required together with consents for the moving of the kitchen.

21. In relation to the alleged breaches of the lease, Mr Donegan sought a determination that there had been a breach of Clause 4 and Paragraph 20 of the Regulations in the First Schedule in that although Mr Horsfield had now laid carpets, seen at the inspection, he had admitted that he had previously laid wooden floors. Therefore a breach of the lease had occurred.

22. Turning to Clause 2(5), Mr Donegan argued that although the moving of the kitchen from the small front room to the living room was not in itself a structural alteration, the work carried out to install the kitchen must necessarily have involved the cutting of walls and timbers to install drainage, plumbing and electrical wires. This amounted to a breach of the covenant not to "*cut maim alter or injure any walls or timbers*" inside the Flat.

23. Mr Donegan submitted that Mr Horsfield's failure to obtain building regulation consents for moving the kitchen amounted to a breach of Clause 2(6). In particular it was clear that the internal doors did not meet the required fire safety standards. He said that the freehold company required retrospective consent to the widening of the lounge door opening. Under questioning from the Tribunal he accepted that if the widening had been done by a former tenant this did not amount to a breach of covenant by Mr Horsfield.

24. In relation to Clause 2(16), Mr Donegan said it was possible that the lack of fire doors might affect the landlord's insurance policy but it was not known what view the insurers might take of the matter.

The case for the tenant

25. Mr Horsfield contended that he had not carried out any structural alterations to the flat or done anything that could harm the integrity of the flat or the building. He had not widened the lounge door; this had been done before he bought the flat. He had, however, removed existing fire doors and replaced them with stripped wooden doors. In his letter of 14 June he stated that he was "simply a leaseholder trying to do what is best to maintain the value of my flat".

26. Mr Horsfield said he had laid the carpet in April 2007 and that underlay had also been installed. Under questioning from Mr Donegan he acknowledged that he was aware of the lease term to lay carpet by November 2006 when it had been pointed out in ODT's letter. He was unable to explain why he had delayed in laying the carpet.

27. Under questioning Mr Horsfield said he did not know he needed any building regulations consent until the freehold company had drawn this to his attention. He had now applied for retrospective consent but this was not yet obtained. He admitted that he had not yet got around to dealing with the 3 points raised by the Building Control Inspector in relation to the fire doors, ventilation fan and fire precautions, but intended to do so. He did not have a date for any final inspection.

28. The work to install the kitchen had been carried out by a plumber and an electrician. Mr Horsfield said that there had been no cutting into the wall to install the cooker hood as there was not an extractor fan in the hood but merely a circulating filter. The pipes were already in situ under the floorboards. The electrician had simply modified the wiring. When questioned,

he admitted that there were new electric sockets, but he said he did not know whether to affix these, the walls would need to be cut, or whether holes in the floorboards would need to be made to connect the water pipes. He accepted that the freehold company had not given consent for this work.

Decision

29. From the evidence and facts found, as set out above, the Tribunal found that breaches of the lease had occurred. Although Mr Horsfield had laid carpets, probably in April 2007, the Tribunal accepted that before this there were wooden floors. The wording of Section 168(4) of the 2002 Act requires the Tribunal to determine whether a breach of covenant "has occurred", and not whether it has been remedied. Before the carpet was laid, there was a breach of Clause 4 and a failure to comply with Regulation 20 of the First Schedule. However, this was a largely academic point in that the carpets had eventually been laid and by the hearing date were clearly in situ.

30. The more substantive points related to the fire precautions and relocation of the kitchen. The relevant lease term was Clause 2(5) which had four prohibitions. The Tribunal did not accept that Mr Horsfield had carried out any "*structural alteration*" to the Flat. He was not liable for the widening of the lounge door. The relocation of the kitchen did not amount to a structural alteration. However, in order to carry out and complete the relocation work, it was essential to make holes in the floorboards for plumbing and to cut the stud walls to install electric sockets. He had not asked for or obtained permission from the freehold company before carrying out the work. This amounted to a breach of Clause 2(6) not to "*cut maim alter or injure any of the walls or timbers ... without the Lessor's consent in writing*".

31. The Tribunal was satisfied that building regulations consent was required for the kitchen relocation work, and that in relation to the doors and smoke detectors there was probably a lack of compliance with fire regulations. Although no specific evidence on the regulations was adduced by the landlord, there was an obligation for Mr Horsfield to comply with the requirements of the Council. Clause 2(6) requires the tenant to carry out whatever works are "*directed to be done ... by the local or other competent* authority". Mr Horsfield's failure to obtain building regulations consent, either at the correct time or retrospectively, or to address the points raised by the Building Control Inspector, amounted to a breach of Clause 2(6).

32. The Tribunal was also satisfied, from its own knowledge and expertise, that there was a breach of Clause 2(16) in that, in the event of any insurance claim being necessary for fire damage, the failure to comply with fire regulations "*may render void or voidable any policy for such insurance*".

33. In general, the Tribunal would comment that the freehold company had drawn all relevant matters to Mr Horsfield's attention as long ago as February 2006. Subsequently it had quite properly instructed solicitors who had also written to him on several occasions. The Tribunal accepted that the freehold company's main concern was to ensure the safety of the property and compliance with Council requirements.

34. In the Tribunal's view, Mr Horsfield was given every opportunity over a considerable period of time to deal with the issues raised by the freehold company before the application to the Tribunal. Whilst acknowledging that Mr

Horsfield thought he was enhancing the value of his flat by moving the kitchen, laying wooden flooring and changing the doors, he had carried out this work without giving due consideration to the lease terms and his obligations as a tenant. He had no good explanation for his delay in dealing with the matters raised by the freehold company and more recently by the Building Inspector. His actions were at best naïve and at worst somewhat casual. As a result of this Decision, the freehold company would legally be entitled to apply to the County Court for forfeiture of his lease, unless he takes urgent steps to rectify matters.

Determination

35. For the reasons given above, the Tribunal determines that for each and every reason given above breaches of the lease covenants at Clause 2(5), 2(6). 2(16), 4 and the Regulations in the First Schedule have occurred.

Dated 16 July 2007

Signed

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Ms J A Talbot MA
Solicitor
Chairman of the Tribunal