

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

**S.168 (4) of the Commonhold & Leasehold Reform Act 2002**

**Case Number: CHI/29UE/LBC/2008/0015**

In the matter of Flat 1, 5 Albert Terrace, Deal, Kent, CT14 9TA

Applicant: Mr. Sean Powell

Respondent: Ms. Jane Fisher

Date of Application: 11<sup>th</sup> September 2008

Date of Hearing: 18<sup>th</sup> November 2008

Tribunal Members: Mr. S Lal LI.M (Legal Chairman)  
Mr. R. Athow FRICS MIRPM  
Mr. P A Gammon MBE BA

**Representation/ Appearance:**

**Applicant:**

Michael Lee, Property Manager Powell & Co  
Sean Powell

**Respondent:**

Ms. Jane Fisher

**The Application**

1. The Applicant in this matter seeks a determination from the Tribunal that the Respondent has committed a breach of the Lease under which she holds the property dated 19<sup>th</sup> December 2007 and made between the Applicant on the one part and the Respondent on the other.
2. If such a determination is made the Applicant will then be in a position to serve a notice under Section 146 of the Law of Property Act 1925 as a precursor to possible action for the forfeiture of the lease.

3. Specifically the Applicant alleges that the Respondent has installed UPVC windows at the property in contravention of terms in the lease requiring prior consent.

### **The Inspection**

4. The property is situated about 400 yards from the town centre close to the mainline railway station. The Tribunal were informed that it was built about 1870 and forms the centre property of a terrace of five similar houses built in the Georgian style over four floors, the lower floor being at semi-basement level.
5. The construction of the subject property appears to be of solid brick walls and most of the remainder of the terrace is either of a similar construction or render and colour wash elevations. The construction of the roof could not be seen because of the parapet wall at high level. When originally constructed the windows were of wooden sliding sash design with six panes.
6. The subject flat has recently had its windows replaced in uPVC windows which have a top hung sash constructional finish but the silhouette appears to be as close to the original design as possible, having one vertical central glazing bar giving four panes (see page 65 of the bundle of evidence).
7. At the inspection it was noted that many of the windows to various properties in the terrace had been replaced over a long period of time with uPVC windows. House number 1 had all four front windows replaced in uPVC; house number 3 still had all wooden windows; house number 5 originally had all four windows in wood but the subject flat has now replaced its two windows in uPVC; house 7 has replaced all four front windows in uPVC and house 9 has replaced the two upper windows in uPVC whilst the two lower windows remain in wooden sash style.
8. This gives a total of ten windows to the front elevation of the terrace which have been replaced in uPVC prior to the subject flat's alterations, whilst at that time there remained ten in wooden sliding sash form. Thus at the time the lessee of the subject flat considered replacement windows there 50% of the windows were in the original style and 50% had been replaced in uPVC.

### **The Case for the Applicant**

9. The Applicant alleges that the Respondent has breached term of the lease by installing UPVC windows without his consent and despite his efforts has not remedied the breach of the alteration covenant by reinstating wooden sash windows in keeping with the original windows. He said in evidence to the Tribunal that he viewed it as a tragedy when people altered buildings of an historical nature. He said it was a matter of principle for him that made him take the action he did because he did not want to see a beautiful building destroyed in this way. He said that uPVC windows did not "breathe" in the same way as wooden windows do and that the uPVC windows lowers the tone of the area and also the value of any possible reversion.
  
10. When it was pointed out to him that 50% of the windows in the terrace had uPVC he said that although that may be the case, it did not make it right as a matter of principle in respect of the subject property.
  
11. He admitted that the subject property was not listed nor in conservation area and he had not applied to the local council for such a designation. He also acknowledged that a "without prejudice" offer had been made on 19<sup>th</sup> May 2008 for retrospective consent for the uPVC windows, notwithstanding his earlier principled objections, in the sum of £6000. This had not been conditional on the installation of wooden sash windows but rather as part of an overall settlement of Section 146 Notice procedure. The Applicant stated that this offer was essentially an attempt to break the "log jam" and the figure was designed to reflect damage to the reversionary interest.

### **The Case for the Respondent**

12. The Respondent in her written statement to the Tribunal dated 24<sup>th</sup> October 2008 and confirmed in oral evidence, stated that she purchased the leasehold interest on 19<sup>th</sup> December 2007 and it had always been her intention to purchase the freehold. This was a matter that had been raised as part of the sale negotiation but interestingly had not been provided for in a sale contract.

13. She added that the subject property had been advertised as renovated to a high standard but that this was not the case and a "snagging list" of remedial work to be done had been prepared by her conveyancing solicitors, which included work on the windows as most of them had been painted closed and could not be opened and therefore there was inadequate ventilation in the flat. Some of the timber frame was rotten. Despite the list being passed to the vendors solicitors prior to completion the work was not done and the Respondent was not actually able to move into the flat. She alleges that she tried to contact the Applicant but to no avail and eventually she replaced the windows at her own expense with uPVC in February 2008.
14. She adds that she now has windows that she can open and shut providing ventilation and a means of escape in the event of a fire. She says that the installation is of a high quality and that provision has been made for ventilation.
15. She admits that she has breached the terms of the lease in that she should have obtained prior consent but she seeks to place the matter in the context of the "snagging list" of work to be done prior to purchase. She adds that her current solicitors have requested retrospective consent and she notes the request made by the Applicant in paragraph 11 above but says that she did not think consent was needed in the context of what was happening or indeed not happening as regards building work.

### **The Law**

16. In terms of the jurisdiction of this Tribunal, this is determined by s.168 (4) of the Commonhold & Leashold Reform Act 2002 (the "Act") which says as follows:

#### ***"168 No forfeiture notice before determination of breach***

*(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.*

*(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 in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.*

*(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.*

## **The Decision**

17. In the instant case the Applicant alleges and the Respondent admits that a breach has occurred with regard to the installation of the uPVC windows. Specifically Clause 3(c) of the Lease says as part of the Tenants covenants that the Tenant :

*“not to make any structural alterations or structural additions to the Maisonette nor to erect any new buildings thereon or remove any of the Landlord’s fixtures and without the previous consent in writing of the Landlord such consent not to be unreasonably withheld.”*

18. It was not in dispute that the wooden sashes were part of the fixtures and that the Respondent did not obtain the prior consent of the Landlord. To that extent the Applicant must succeed in his application to this Tribunal in that he has established that a breach of covenant has occurred in respect of s.168 of the Act.

19. The jurisdiction of this Tribunal does not extend to any notions of reasonable breach but only to the finding of whether there has been a breach and accordingly the Tribunal determine that the Respondent has breached Clause 3(c) of the Lease.

20. However the Tribunal are of the view that the breach as such is a breach in the technical sense only. The terrace of which the subject property is part of has about 50% of the properties fitted with uPVC windows and is neither listed nor in a conservation area and that installation of the same cannot be described as having lowered the tone of the area or indeed of the surrounding properties.

21. The Tribunal also finds that the Applicant’s objection to uPVC may not be as deeply held as he indicated in that he was clearly prepared to grant retrospective consent for the sum of £6000 in May 2008 without any condition that the monies be used to install wooden sash windows and nor has he ever applied for listed building or conservation status.

22. The Tribunal accepts the evidence of the Respondent that repairs to the windows were part of the "snagging list" agreed by the conveyancing solicitors but unfortunately not really pursued by her previous solicitors and that the Respondent's actions in installing the uPVC should be seen in the context of her attempts to have this work carried out. It should of course have been done prior to her moving in but was not.

23. The Application is therefore allowed in that the Tribunal does find that a technical breach of covenant has occurred although this is within the context as described above.

Chairman.....

Date.....