



**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/45UH/LBC/2008/0016

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

Premises: Flat 5, 10 Western Place Worthing West Sussex BN11 3LU

Applicants: Townplot Ltd (Landlords)

Respondents: Patrick Sanderson and Nicole Sanderson (Tenants)

Date of Hearing: 12 December 2008

Date of Decision: 18 December 2008

**Leasehold Valuation Tribunal: Mrs F J Silverman LLM
Mr P Turner Powell FRICS**

DECISION

The Tribunal declares that the Tenants are in breach of covenants contained in clauses 4(d), 4 (i) and 4(g) of their lease.
The Tenants application under section 20 C Landlord and Tenant Act 1985 is refused.



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The Tenants application under section 20 C Landlord and Tenant Act 1985 is refused.

REASONS

1 The Applicant is the landlord and freeholder of the premises known as Flat 5, 10 Western Place, Worthing, West Sussex BN 11 3LU (the property). The Respondent Tenants are the current leaseholders under a lease dated 3 March 2000 and made between R C C Futcher and M L Futcher (1) and F B Semus and I Semus (2) (the lease).

2 By an application dated 12 September 2008 the Applicant sought a declaration from the Tribunal that the Respondents are in breach of covenant in relation to a number of provisions contained in the lease.

3 The parties agreed that the matter should be dealt with on a paper hearing and the Tribunal took into account the bundle of documents supplied together with two witness statements from Kim Buckingham (for the Applicant) and two witness statements from Nicole Sanderson (for the Respondent).

4 Prior to its consideration of the papers the Tribunal inspected the property. The Respondents attended the inspection and were reminded that no evidence could be taken by the Tribunal at the inspection. No representative from the Applicant was present at the inspection.

5 The property comprises a top floor studio flat in a mid-terraced late Victorian house in a quiet residential street in the centre of Worthing. The property is close to the sea front and shops. Restricted parking is available in Western Place and on adjacent streets. The exterior of the property appeared to be in reasonably good condition. The common parts of the property were clean but shabby. A narrow carpeted staircase leads to the flat which comprises one medium sized room with bay window overlooking the street, a separate small modern shower room/toilet and, at the time of inspection a small rear room currently used as a child's bedroom.

6 By clause 4(i) of the lease the tenants covenant : ' not to make any structural alterations to any part of the Flat nor to alter the present appearance of the exterior (the same being absolutely prohibited) and not to make any other alterations without the consent of the Landlord which shall not be unreasonably withheld'.

7 It is common ground that, as let, the kitchen area of the flat was situated in the small rear room of the property (see lease plan page 38). The Respondents acknowledge that they have removed the kitchen from this area and have re-sited it within the main living/sleeping area of the flat. They did not obtain the Applicants' consent to this alteration. This alteration was evident on inspection.

8 This alteration falls within the 'not to make any other alterations' provision of Clause 4(i) cited above and constitutes a clear breach of this covenant.

9 The Respondents argued that the alteration had added value to the property and that the breach had been waived by the Applicants. The Tribunal is not concerned with these matters, its only jurisdiction is to determine whether or not a breach has occurred. It is clear from the evidence within the flat and from the Respondents own evidence that such a breach has taken place.

10 By Clause 4(d) of the lease the tenants covenant : ' to allow the Landlord and those authorised by the Landlord twice a year by prior appointment to enter the Flat in order to inspect its condition'.

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10 By Clause 4(d) of the lease the tenants covenant : ' to allow the Landlord and those authorised by the Landlord twice a year by prior appointment to enter the Flat in order to inspect its condition'.

11 On becoming aware of the possible breaches by the Respondents, the Applicants sought to exercise their right to inspect the property under the above Clause. Despite correspondence between the parties, the Applicants have been unable to gain access to the property and indeed on August 15 2008, the Respondents' letting agent confirmed that his clients had refused to give access to the Applicants for the purpose of an inspection. Two dates for an inspection were proposed by the Applicant but neither date was confirmed by the Respondents as being convenient. As at the date of the consideration of the papers the Applicants had still been unable to gain access to the property. The Tribunal concludes that there has therefore been a breach of Clause 4(d) of the lease.

12 A further right to inspect is granted to the landlord under Clause 5 (c) of the Lease which states: 'to allow the Landlord and all persons authorised by him access to the Flat if necessary for the due performance of the Service Obligations after reasonable notice save in the case of emergency'.

13 The Applicants claimed that the Respondents were also in breach of Clause 5 (c). The Tribunal does not consider that the Applicants' request for access to the property fell within the ambit of this Clause and does not find that there has been a breach of this Clause.

14 The Applicants have received complaints from the owner of the flat beneath the property relating to noise disturbance experienced by her during the alteration works which were carried out by the Respondents to the kitchen and on going noise caused by the removal by the Respondents of the carpet from part of the main living area of the property. On inspection it was observed that an area of carpeted flooring surrounding the new kitchen area had been removed and replaced by a hard floor covering .

15 Under Clause 4 (g) of the Lease, the tenants must 'ensure that nothing at any time be done on and in the Flat or the Block or the Estate which shall be a nuisance or annoyance to any occupiers of the Block or cause an injury to any part of the fabric of the Block or the Estate'. Further, Paragraph 9 of the Second Schedule to the Lease requires 'all floors in the Flat shall be close carpeted or covered by some sound deadening material'.

16 The Tribunal did not have access to the flat beneath the property but , as stated above, it noted that the carpet in part of the main living area of the property had been replaced by a hard floor covering surrounding the new kitchen area. It is likely that pedestrian traffic in this area of the room would be heard by occupants in the flat beneath, and in any event the removal of the carpet constitutes a breach of Paragraph 9 of the Second Schedule of the lease. On balance therefore the Tribunal finds that there has been a breach of Clause 4 (g) and Paragraph 9 of the Second Schedule of the lease.

17 Paragraph 8 of the Second Schedule of the lease states that : 'no obstruction shall be caused or any articles of any nature left in the common entrance halls passageways and staircases or any other common parts of the Block'.

18 The Applicants had received complaints from another flat owner that the occupiers of the property had frequently left a pushchair in the entrance hall which was causing an obstruction to the fire exits.

19 The Respondents acknowledged that this had occurred but said that they had requested the occupiers to remove the pushchair. At the time of the Tribunal's inspection there was no evidence of any obstruction in the

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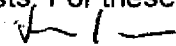
entrance hall or common parts of the property . The Tribunal does not therefore find any breach of Paragraph 8 of the Second Schedule to the lease.

20 By Clause 4 (f) (iii) of the lease the tenants covenant: 'Not without the prior written consent of the Landlord which shall not be unreasonably withheld to create any sub-tenancy or other occupancy of the whole of the Flat other than a furnished sub-tenancy for a period not exceeding twelve months but as a condition of any such consent the Landlord shall have the discretion to insist that the subtenant shall enter into direct covenants with the Landlord to pay the Tenant's Contribution direct to the Landlord and otherwise to observe the Tenant's covenants contained herein other than in respect of the payment of rent'.

21 The Applicants complained that the Respondents were in breach of Clause 4 (f) (iii) in that they had created an subtenancy without the landlord's consent and had refused to provide a direct deed of covenant as required by the Clause.

22 It is common ground that the Respondents have sub-let the property . However it appears that the sub-letting so created is a furnished assured shorthold tenancy for a period of six months (page 85) which does not offend the provisions of Clause 4 (f) (iii) , does not require the prior consent of the landlord and does not entitle the landlord to require a direct deed of covenant from the sub-tenant. The Tribunal finds that there has been no breach of this Clause.

23 The Tenants made an application under section 20 C Landlord and Tenant act 1985. The Tribunal considers that had the Tenants co-operated in permitting the Landlord to have access to inspect the property when requested this matter might have been resolved without the necessity for it to be referred to the Tribunal. Given that lack of co-operation and the evident breaches of covenant by the Tenants the Tribunal does not consider that it would be reasonable to prevent the Landlords from seeking to recover their costs. For these reasons the Tenants' application is refused.


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