



Residential  
Property  
TRIBUNAL SERVICE

**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL**  
**FOR THE LONDON RENT ASSESSMENT PANEL**

**COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 168**

**Ref: LON/00BH/LBC/2008/0065**

**Property:** 115B Colworth Road, Leytonstone, London E11  
1JE

**Applicant:** Humrose Developments Ltd

**Respondents:** Derek Lloyd Roberts, Lara Marie Roberts,  
Southern Pacific Mortgage Ltd, Kensington  
Mortgage Co Ltd

**Date of decision:** 27th January 2009

**Tribunal:** Mr Adrian Jack

1. The Applicant applies for a determination that the tenants, Derek Lloyd Roberts and Lara Marie Roberts, are in breach of the terms of their lease.
2. Under section 168(4) of the Commonhold and Leasehold Reform Act 2002 the Tribunal has jurisdiction to determine on the application of a landlord whether a tenant is in breach of the covenants or conditions of a lease of a dwelling held on a long lease.
3. Mr and Mrs Roberts hold a lease of for 99 years from 24th June 1984. The property is a residential flat. By a registered charge dated 15th June

2005 the lease was charged to Southern Pacific Mortgage Ltd. By an equitable charge created by a final charging order of the Bow County Court dated 12th December 2006 the lease was further charged to Kensington Mortgage Co Ltd.

4. Both Southern Pacific and Kensington have been served with notice of the landlord's application to the Tribunal, but neither have made any representations. The tenants in their letter of 5th January 2009 say that their business collapsed in September 2005 and that on 16th October 2006 they surrendered the keys to Kensington. Since then, they say, Kensington have been unable to sell the lease.

5. The lease contains a covenant by the tenants (clause 5(xii)) that the tenants would:

"Not at any time during the said term without the licence in writing of the Landlord first obtained erect or place any additional building or erection on any part of the demised premises or remove any of the Landlord's fixtures and not without such licence as aforesaid to make any alteration in the plan or elevation of the said flat hereby demised or in any part of the party walls or the principal or bearing walls or timbers thereof nor construct any gateway or opening in any of the fences or walls bounding the demised premises."

6. The landlord complains that the tenants have constructed a large conservatory at the back of the demised premises and that they have changed the use of the kitchen into that of a bedroom.

7. The tenants admit that they have constructed a conservatory. They complain that Kensington have not permitted them access to remove the same and impliedly accept that they are in breach of the terms of the lease in that respect.

8. The tenants do not comment on the allegation that the kitchen has been turned into a bedroom. The photograph on which the landlord relies to show the change of use certainly showed the kitchen being stripped out, however, there is nothing in it to suggest that the room is in use as a bedroom. Indeed the boiler is still there, hanging in the air with all its pipework visible, and with all the kitchen tiling still on wall. The landlord

does not suggest where the kitchen is now, so in the Tribunal's judgment it is likely that any use as a bedroom would have been very temporary.

9. In any event a change from a kitchen to a bedroom would not in my judgment have been a breach of the covenant. True it is that the plan attached to the lease shows the kitchen, but a mere change of use does not in my judgment result in a change in the plan.
10. Accordingly there is no breach of covenant by change of use.
11. There is no dispute that the conservatory was erected by the tenants on the demised premises. This in my judgment is a clear breach of the terms of the lease. No issue as to waiver arises.

#### Decision

**Accordingly the Tribunal finds that the tenants are in breach of the covenants of the lease by virtue of erecting a conservatory on the premises, but does not find that the tenants are in breach by changing the use of the kitchen into that of a bedroom.**

Chairman: Adrian Jack 27th January 2009

