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**Residential
Property**
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**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

Section 168(4) Commonhold and Leasehold Reform Act 2002

LON/00AN/LBC/2011/0027

Applicant:	Tofay Investments Ltd
Represented by:	Ms Sato
Respondent:	Mr M Lewis
Property:	Flat A 176 New Kings Rd, London SW6 4 NE
Appearances	Ms Sato appeared on behalf of the Applicant. Ms Lewis appeared on behalf of Mr Lewis
Leasehold Valuation Tribunal:	Dr Helen Carr Mr Chris Gowman Mr Alan Ring
Date of Decision	16th June 2011

Decision

The Tribunal determines that no breach of covenant or condition of the lease has occurred.

Background

1. The Applicant, Tofay Investments Ltd, is the freeholder of 176 New Kings Road London SW6 4 NE (the property) which includes the basement flat, 176A, (the premises) which is the subject of this application and is more particularly described below.
2. The Respondent, Mr Lewis, is the lessee of the premises. He holds his interest under a lease dated 31st January 1989 made between Tofay Investments Limited and Joan Ruth Aitken. Mr Lewis acquired his leasehold interest on 7th November 1997.
3. The Applicant seeks a determination, under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) that the Respondent, Mr Lewis, is in breach of various covenants contained in his lease.
4. The Tribunal issued Directions on 4th May 2011. It determined that it did not have jurisdiction under this application to consider arrears of service charges, nor any jurisdiction in respect of ground rent or council tax. The matters before the Tribunal are therefore limited to alleged breach of covenants. The Directions clarified the issues which were to be determined by the Tribunal and notified the parties that the burden of proof lay with the Applicant.

The Inspection

5. The Tribunal inspected the property on the morning of the hearing. The inspection took place in the presence of Mrs Sato and Ms Johnson. The premises is a maisonette on the ground and basement floor of 176 New Kings Road Fulham which is a Victorian three storey terraced house divided into flats.
6. The premises is described in the lease as a ground floor flat together with the basement and the staircase leading thereto. The basement area directly beneath the ground floor of the premises has subsequently been converted into a habitable space comprising two bedrooms. There is access to the living area via a spiral staircase within the premises.

7. There is a small forecourt to the property which is part tiled with black and white octagonal tiles, some of which are loose or missing. In two areas of the forecourt, within the tiled area, there were glass bricks which allowed light into the basement.
8. The hallway (which is common to the flats) is L shaped and approximately four foot wide. The floor is tiled and the walls are plastered and painted. One area of the walls in the hallway has been redecorated recently. The area felt dry to the touch. At the far end of the hallway there is a door leading to a poorly lit staircase to the basement. There is access from the basement area to the converted basement rooms which are part of the premises.

The Hearing

9. The hearing of this application took place on 16th June 2011. The Applicant was represented by Ms Sato. Ms Johnson, the long term partner of Mr Lewis, attended the hearing on Mr Lewis's behalf. During the course of the hearing the Tribunal received an email from Mr Lewis, who was working abroad, authorising Ms Johnson to represent him.
10. The Tribunal determined that the alleged breaches before it relate to:-
 - a. The Respondent allowing the premises to fall into disrepair such that it affects the common parts:
 - b. The Respondent removing Victorian tiles from the front garden without the Landlord's consent.
 - c. The Respondent carrying on a business at the premises by using the basement as a studio for producing CDs.
 - d. The Respondent storing items in the common parts.
11. The Tribunal heard evidence from both parties. Part way through the hearing Ms Johnson requested an adjournment on the grounds that she considered that Mr Lewis needed to be present to answer the questions of the Tribunal. The Tribunal considered her application carefully. It noted that the Respondent had been aware of the date of the hearing since he received the Directions and that he had had ample opportunity to request an adjournment. He was aware of the issues and had submitted a statement of case with supporting documents. At an earlier point in the hearing he had confirmed by email that he was content for Ms Johnson to represent his interests. It also noted that Ms Johnson is a property professional. She is a letting agent and a member of ARLA. Taking these matters into account the Tribunal declined the request and proceeded with the hearing.
12. The allegations of breaches of covenant were considered by the Tribunal in turn. The evidence of the parties, where salient, is referred to under the appropriate heading below.

The Determination

The Respondent allowing the premises to fall into disrepair such that it affects the common parts

13. Ms Santo on behalf of the Applicant referred the tribunal to clause 3.2 of the lease which (inter alia) provides that the Lessee covenants with the Lessor 'To keep the interior of the Flat and all pipes cables wires drains installations and appurtenances therein and thereto belonging insofar as the same are solely installed or used only for the purpose of the Flat in good and tenantable repair and condition'.
14. She provided copies of photographs of damage to the skirting and wall of the hall which abuts the Respondent's bathroom. The photographs were taken by Ms Santo in May 2010. Ms Santo explained that the wall was very wet and the paintwork was peeling off. She informed the Tribunal that the Managing Agent reported to her that the hall wall was still in the same condition in late [2009]???. She stated that a dilapidations survey was carried out which involved inspecting the interior of the premises which concluded that the damage was caused by a leak to the Respondent's bathroom. She told the Tribunal that she did not have the dilapidations survey with her. It later transpired that the dilapidations survey was contained in the Applicant's bundle. It consisted of a letter dated 15th February 2010 from the then managing agents to the Respondent stating that 'damage is being caused to the common parts by overflowing pipework or damaged tiling within your property'. The Tribunal did not consider that such a letter could be described as a dilapidations survey.
15. Ms Johnson gave evidence that she and her partner had installed the bathroom several years ago and that after they had received the letter from the Applicant they investigated the condition of the bathroom. It was unclear from Ms Johnson's account whether she was accepting that there were leaks which were repaired or that she was denying that there were leaks which caused the alleged damage. She was also confused about whether a letter had been received from the managing agents in connection with alleged disrepair. The Respondent had carried out some redecorating works to the affected part of the hall about three weeks prior to the hearing.
16. The Tribunal did not consider that the Applicant had proved to the requisite standard that there was internal disrepair to the premises and therefore DETERMINED that there was no breach of clause 3.2 of the lease.

The Respondent removing Victorian tiles from the front garden without the Landlord's consent

17. Ms Santo referred to paragraph (6) of clause 2 of the lease which provides that the Lessee will not 'without the previous consent in writing of the Lessor make any structural alteration of the Flat or the external appearance thereof nor to erect any new building thereon or remove any of the Landlord's fixtures'.

18. The allegation of the Applicant is that the Respondent removed tiles to insert glass bricks that allow natural light to the basement. This work appears to have gone on as part of the conversion process of the basement area.
19. Ms Santo had no evidence to substantiate the removal of the tiles or indeed that the tiles were in situ in earlier years, and agreed that any removal may have been consented to either expressly or implicitly as part of the conversion of the basement to bedrooms.
20. The Tribunal therefore DETERMINED that there was insufficient proof that this clause of the lease had been breached.

The Respondent carrying on a business at the premises by using the basement as a studio for producing CDs

21. Carrying on a business in the premises would be a breach of paragraph 1 of the Third Schedule to the lease. Ms Santo informed the Tribunal that she had no evidence to substantiate this allegation and therefore the Tribunal DETERMINED that there has been no breach of this covenant.

The Respondent storing items in the common parts

22. Such an allegation would be a breach of paragraph 8 of the Third Schedule. Ms Santo informed the Tribunal that she had no evidence to substantiate this allegation other than a letter of complaint from the lessee of the other ground floor flat which appears to have been written in response to concerns about that lessee's arrears of service charges. The letter is dated 10th April 2006. There is no proof that the items in the hallway belonged to the Respondent other than the claim within this letter.
23. The Tribunal therefore DETERMINED that there is insufficient evidence to substantiate the allegation of breach of covenant.

Signed



Helen Carr

Dated 16th June 2011