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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00AN/LBC/2012/0138
Premises:	270 Wandsworth Bridge Road, London SW6 2UA
Applicants:	Amek Investments Limited
Representative:	Mr Chegwidden of Counsel instructed by SA Law
Respondents:	Francois Kotze and Michael Lazarevic
Representative:	Did not appear and were un-represented
Date of hearing:	03 April 2013
Appearance on behalf of the Applicant	Mr Phillip Mizon property manager for Amek Investments Limited
Leasehold Valuation Tribunal:	Ms M W Daley LLB (hons) Mr W R Shaw FRICS

Date of decision: 3 April 2012

The Tribunal's decision and reasons

The Decision

1. The Tribunal have determined that the Respondents, are in breach of Clauses 3(4), 3(5), 3(10) and 3(11) of the lease as set out below.
2. The Tribunal find that the Applicant has provided evidence upon which the Tribunal is entitled to determine on a balance of probabilities that a breach of the terms of the lease occurred as alleged in the application.
3. **Accordingly the Tribunal grants a determination that breaches of covenant or condition in the lease has occurred.**
4. **The Respondent is urged to seek independent legal advice and to inform his/her mortgagees (if any). That the determination granted may be relied upon by his landlord as a preliminary to forfeiture of his lease (i.e. he could lose the flat).**
5. The Relevant Regulation is set out in the appendix.

The Background

6. The Applicants applied to the Leasehold Valuation Tribunal on 12 December 2012 for a determination that a breach of the lease had occurred. The Applicants cited five grounds that is-:(a) that the Respondent had not complied with the covenant to repair and maintain the demised premises (clause 3(4)). (b) had not complied with the requirement to decorate the premises at intervals of not more than 7 years (clause 3(5)),(c) the requirement to permit the Lessor or its agents on written notice to inspection (clause 3(7)) (d) to obtain licences and permission and consents in respect of work carried out by the

Lessee(clause 3(10)) and (e) not to make unauthorised alterations to the premises (clause 3(11).

7. The Tribunal were informed that the premises are a basement flat situated in a three storey, inner terrace Victorian property which has been converted into three flats nos. 266-270. Each property has its own independent access via external stairs; To the rear of the building is a small terraced garden.

8. Directions were given on 14 December 2012, the Directions required the Respondent to provide a full statement of reply to the application by 4 January 2013, and additionally stated that the matter be set down for hearing on 4 February 2013. These directions were subsequently amended following a letter dated 21 January 2013, sent by Mostert & Bosman (a firm of South African Attorneys) instructed on behalf of the Respondent.

9. In paragraph 4 of their letter they states-: "*Our client is residing in South Africa and subsequently not all correspondence in this regard had reached him timorously or at all because it had to be forwarded by post from the UK to South Africa...*" The letter further asked for the hearing to be postponed in order to enable their client to instruct Solicitors in the UK.

10. The Tribunal, by a letter dated 31. January 2013 granted a postponement, and provided for further time for the directions to be complied with and re-scheduled the hearing for the week beginning 1st April 2013.

11. At the hearing on 3 April 2013, the Respondent had not complied with the directions, and had not served a statement of reply.

The Hearing

12. At the hearing the Applicant was represented by Mr Chegwidden counsel, also in attendance was Mr Mizon who was employed by the Respondent as a property manager.

13. The Respondent was not in attendance or represented.

14. During the course of the hearing the Tribunal were handed three additional documents (i). a photograph of the interior of the premises, (the Tribunal were informed that this photograph which showed the missing partition wall). The Tribunal were informed that this photograph had been provided by the Respondent Mr Kotze as an attachment to an email. ii. A copy of an architects plan for reinstatement of the internal wall and iii. Email correspondence between the Applicant and Respondent (various dates between 11.03.2013-27.03.2013.

15. At the hearing the Tribunal heard from Mr Mizon who stated that the most serious breach relied upon by the landlord was in relation to the removal of a partition wall, which he claimed was "semi- load bearing due to the age of the building." In his statement dated 18 January 2013, he stated that in October 2012 there was a leak from flat 268. In to the Respondents flat, as a result Mr Goater director of the Applicant company inspected the premises and noted that work had been carried out to the Respondents' premises, which included the removal of the partition wall between the living room and the corridor. Mr Goater was not aware of permission having been sought, for this work to be carried out, accordingly he was of the view that the work was in breach of the lease.

16. During the course of the inspection, Mr Goater took some photographs which were included in the bundle at pages 67-74 which showed disrepair and want of decoration within the flat in breach of the terms of clause 3(4) and clause (5) of the lease.

17. Mr Mizon in a further statement dated 26 March 2013, at paragraphs 4-6. stated- "I *have spoken to an architect about the nature of the alleged works at the property and he advised that we should as a matter of some urgency gain access to the flat to prop up the area where the wall has apparently been removed. Fortunately I was able to contact Thomas Nothnagel {the Respondents' tenant residing in the flat} by telephone*

and he agreed to allow access to the property on Friday 1 March 2013. I inspected on this day accompanied by one of the freeholders-John Goater, his structural engineer-Dan Wilkinson and our own structural engineer-Jon Evans of Metropolitan Development Consultancy. Our inspection confirmed that a section of wall had been removed between the hallway and what is currently an area utilised as a home office. No consent has been given in relation to these works..."

18. Mr Chegwidden of counsel stated that the Respondent had complied with the requirement to enable the landlord to inspect, and accordingly clause 3 (7) of the lease was no longer relied upon. Counsel noted however that although the photographs provided by the Applicant in the bundle were not dated, on instruction from Mr Mizon he stated that the matters noted in the photograph had not been addressed.

19. Counsel also referred to the lease, and noted that the terms in clause 3(4) and clause 3(5) were wide, and that the terms provided that the demised premises should be repaired, and that the photographs revealed that they were in disrepair. He stated that the Respondent had purchased the lease in 2005, and that from the condition of the premises, it could be inferred on a balance of probabilities that the demised premises had not been decorated over the last 7 years as required by clause 3(5) of the lease.

20. Counsel also referred the Tribunal to email correspondence dated 19.November.2012, in which the breach appears to have been accepted. It was stated by the Respondent, that the works had been carried out by his tenant Mr Thomas Nothnagel, (it was unclear from the correspondence whether this work had been undertaken with the Respondents permission) and that the works would cease until the plans were approved.

21. Mr Chegwidden referred the Tribunal to the seventh paragraph of the email in which the Respondent Mr Kotze stated-: "*Tracey this is turning into a personal matter and John made public comments that he will do everything in his power to block our plans which I feel is unfair.* **We did wrong by starting without plans and stop when you ask us to ...get everything in place**... " .

22. Mr Chegwidden also referred to the email correspondence 11 March 2013- 27 March 2013 in which, the Respondent stated they would reinstate the stud- partition wall during the Easter weekend. In this correspondence, Mr Mizon in his email dated 27 March 2013, asked to be allowed to inspect this work on 2 April 2013. Mr Chegwidden stated that the Respondent had not replied, and no information had been provided to the Applicant that the work had been undertaken.

23.

The Reason for the Tribunal's decision

24. The Tribunal in reaching its decision, noted that the onus was upon the Applicants to prove that a breach had occurred of the lease clauses 3(4)-3(11) of which states-: Clause 3(4) *From time to time and at all times during the said term well and substantially to repair cleanse maintain amend support uphold and keep the Demised Premises and all chimneys, conduits and fixtures therein exclusively used or enjoyed by the owner or occupier for the time being thereof..."*

Clause 3(5) Once in the first seven years of the said term... and thereafter at intervals of not more than seven years and during the last year thereof...to paint all the interior of the Demised premises and all additions thereto but excluding the exterior surface of the door and doorframe giving access to the Demised Premises from the retained Property... to be painted with two coats at least of good quality paint in proper and worklike manner..."

Clause 3(10) "... the Lessee will at his own expense obtain all licences permission and consents and execute and do all works and things and bear and pay all expenses required or imposed by any existing or future legislation in respect of any work carried out by the Lessee to the Demised Premises..."

Clause 3(11) Not at any time during the said term without the licence in writing of the Lessor which shall not be unreasonably withheld first obtained to make any alterations in or additions to the plan elevation or appearance of the Demised Premises

25. The Tribunal noted that the demised premises had been altered by the removal of the partition wall, and that despite the Respondents' having

been granted an adjournment effectively from 1 February 2013, which would have enabled the Respondents to seek advice (or reinstate the partition wall), and notwithstanding their assurance that the work would be undertaken by 1st April 2013, there was no evidence that this had been carried out.

26. The Tribunal also noted the wide ranging terms of the lease, and the condition of the property as set out in the photographs, the Tribunal noted that the Respondents had been given additional time to serve a statement of case, and that they had not availed themselves of this opportunity, neither had they addressed any of the breaches set out by the landlord in the Application.

27. The Tribunal accordingly found that the condition of the property as seen from the photographs was in breach of clauses 3(4) and 3(5) of the lease. There was nothing to suggest contrary to the evidence of Mr Mizon that the Respondents had carried out the obligations in clause 3(4) and 3 (5) of the lease, since the property was inspected on 1 March 2013.

28. The Tribunal noted Mr Chegwidden was aware of the obligation to inform the Tribunal should the breaches be remedied, prior to the determination. **Accordingly the Tribunal find that the terms of the lease in particular clauses 3(4), 3(5) 3(10) and 3(11) have been breached and make a determination to that effect in accordance with section 168 (2) of The Commonhold and Leasehold Reform Act 2002.**

Signed: Ms M W Daley

Dated 3 April 2012

Appendix

Section 168 (2) of Commonhold and Leasehold Reform Act 2002

(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 covenant or condition in the lease has occurred.
(5) But a landlord may not make an application under (4) in respect of a matter which-
(a) has been, or is to be, referred to arbitration pursuant to a post- dispute arbitration agreement, to which the tenant is a party,
(b) has been the subject of determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post- dispute arbitration agreement