

868



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/24UH/LBC/2015/0003

Property : 47, Norfolk Crescent, Hayling Island,
Hampshire PO11 0AN

Applicants : Mr S Katz

Representative :

Respondent : Mr R Jones

Representative :

Type of Application : Breach of Covenant section 168(4)
Commonhold and Leasehold Reform Act
2002

Tribunal Member : Mr D Banfield FRICS

**Date and venue of
Hearing** : Determination on the papers

Date of Decision : 23 April 2015

DECISION

Decisions of the Tribunal

The Tribunal determines that there has not been a breach of the lease.

The Application

1. The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent is in breach of a covenant contained in the lease not to alter the premises at 47 Norfolk Crescent, Hayling Island, Hampshire PO11 0AN.
2. Directions were made on 5 February 2015 setting out a timetable for the exchange of documents between the parties and for the Applicant to prepare a hearing bundle.
3. In his application Mr Katz named Mr R Jones and Ms A Peers as Respondents both being leaseholders at the premises. During the subsequent exchange of correspondence Mr Katz acknowledged that he had named Ms Peers in error and requested her removal as a Respondent. The Tribunal has agreed to this request and Mr Jones is now the sole Respondent.
4. In the event Mr Katz did not provide a hearing bundle as directed but the Tribunal does have Mr Jones letters of 11 February and 11 March 2015 and Mr Katz' application and amplified reasons dated 26 February 2015.
5. Whilst both parties refer to a number of matters not relevant to this Tribunal the essence of Mr Katz's complaint is that Mr Jones is in contravention of clause 3.(6) of his lease "*Not at any time during the Term to make any structural alterations in or additions to the Demised Premises or to cut or maim or alter or injure any of the structural walls or timbers thereof or to alter the external appearance or to alter the Lessor's fixtures thereof without first having made a written application (accompanied by all relevant plans and specifications) in respect thereof to the Lessor and received the written consent of the Lessor thereto (such consent not to be unreasonably withheld or delayed)*".
6. The Respondent holds Flat 3A by way of a lease dated 4 October 2007 for a term of 125 years from 1 September 2007.
7. In the official copy of the register of title provided the Applicant is described as the freeholder of 47 Sea Front Hayling Island (PO11 0AN) and shows that he acquired the interest on 30 August 2011. Although no explanation is provided as to the difference in address between Sea Front and Norfolk Crescent nothing appears to ride on it.

The Findings on the Purported Breach

8. There seems to be no dispute that the windows of the flat are UPVC framed units. It seems unlikely that in a building of this age that they are original and it follows therefore that at some stage alterations have taken place. Mr Jones in his statement accepts this to be the case but says that he is unaware who carried out the alterations as the windows were in place when he purchased the property. He further confirms that he has had no need to seek landlord's approval for any works as none have been carried out by him.
9. Mr Katz takes the view that the date when the windows were changed is immaterial and that Mr Jones as the current lessee must take responsibility.
10. For Mr Katz to succeed in his application he must show that unauthorised alterations requiring landlord's consent have been carried out during the currency of this lease. Mr Jones who is an original party to the lease confirms that no work has been carried out to date. Mr Katz who became the freeholder some 4 years later does not challenge that statement but says it is immaterial.
11. Mr Jones is a party to the lease the term of which commenced in 2007. Mr Jones has been the lessee since that date and has confirmed that no alterations have taken place; a statement which we accept.
12. **On the evidence put before us we are satisfied that Mr Jones has not carried out unauthorised works during the currency of the lease and the Tribunal therefore finds that no breach has occurred.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

S.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.

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(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.

(5) But a landlord may not make an application under subsection (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.