



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

Case Reference : **LON/OOAW/LBC/2013/0042**

Property : **80 Cadogan Square London SW1X
OEA**

Applicant : **76-82 Cadogan Square Limited**

Representative : **Guillaumes Solicitors**

Respondent : **Matar Al Romaithi**

Representative : **Child and Child Solicitors**

Type of Application : **Breach of Covenant Application**

Tribunal Members : **Judge Leighton LLB
Ms S Coughlin MCIEH**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Oral Decision : **3rd July 2013**

Date of written Decision : **23rd August 2013**

DECISION

Background

- 1 By an application dated 30th April 2013, the landlord 76-82 Cadogan Square Limited applied to the tribunal for a determination that the tenant Mr Matar al Romaithi was in breach of covenant in respect of a clause in the lease which he held of 80 Cadogan Square London S W
- 2 Clause 2 (8) which is in fact contained in a variation to the original lease and reads as follows
:-
insert as a new clause 2 (8) of the lease
"not without the prior written consent of the landlord such consent not to be unreasonably withheld or delayed to carry out any alteration either structural or non structural to the demised premises nor save as aforesaid to carry out any alterations to the plan, layout or to the landlord's fixtures.
- 3 The tenant applied for a licence to carry out a number of alterations to the premises and a licence was granted on 21st June 2011 in the following terms :-
- 4 Clause 1.9 of the licence defined the works as "the works to be carried out to the premises as per the drawings and specifications"
By clause 6.2 the licence provided that it was to be *"restricted to the works here by authorised and is not to be construed so as to extend or to authorise any further or other alterations to the premises."*

The Hearing

- 5 Directions were given on 7th May 2013 and the matter came before the tribunal for hearing on 3rd July 2013 when Mr Sandham of counsel appeared on behalf of the Applicant and Mrs Wilson solicitor of Child and Child appeared on behalf of the Respondent
- 6 the respondent who resides in Abu Dhabi has failed to comply with any of the directions which relate to him and Mrs Wilson applied for an adjournment of the proceedings. That application was refused for the following reasons .
- 7 Mrs Wilson submitted that the Respondent wished to be present and to submit a witness statement and make himself available for cross examination, that he would be prejudiced by the matter being determined in his absence He would not be available until September 2013 after the feast of Ramadan
- 8 Mr Sandham submitted that the application was misconceived as the Respondent had failed to submit a statement of case and it was still unclear as to what defence if any he had to the application. There was nothing to prevent him having prepared and submitted a witness statement setting out his case.

- 9 The tribunal considered that the sole reason for the application was the fault of the Respondent who had not put forward a defence and if the suggestion was that the landlord was unreasonably refusing consent to the demolition of the wall he could raise this matter in any subsequent forfeiture proceedings and to counterclaim. The purpose of Section 168(4) was to place another hurdle in the landlord's path before he could proceed to forfeiture and there seemed no useful point in extending the period within which that matter could be determined . If the tenant's defence was waiver that was not a matter which the tribunal could determine but could be considered in the county court.

The Application

- 10 Accordingly Mr Sandham, , set out his case explaining that the works carried out by the Respondent included the demolition of a wall between the bedroom and the reception area in the lower ground floor. It appears from the correspondence that the Respondent does not deny that the wall in question has been removed and has not been reinstated.
- 11 The tribunal has also been referred to the schedule of the works, in pages 83 to 125 of the bundle defined in the licence and it is clear from those provisions that the demolition of this particular wall was not to be included. There was provision for the demolition of certain walls in the vaults and a small section of the wall in question to allow doorways to be cut but not the whole of the wall in question.
- 12 In addition to Mrs Wilson, a Mr Slade who has been advising the Respondent on a technical basis submitted to the tribunal originally that the schedule was wide enough to include the demolition of the wall in that it involved taking out some boxing and that demolition of the wall was incidental to this.
- 13 The tribunal was not satisfied that the works there envisaged included the demolition of a wall and that had they done so it would have been explicitly stated.
- 14 Mr Slade then submitted that it only became apparent after some of the wall had already been demolished that it was necessary to demolish the remainder. At that stage it is said the consent was requested and it is correct that there is an application for consent before the landlord which has not been acceded to by the landlord. No attempt has been made to reinstate the wall pending the grant of consent.
- 15 The position therefore is that the demolition of the wall was not covered by the original licence, it remains demolished and has not been reinstated. It is the intention of the tenant for the works to remain in that condition in the hope that he will obtain consent to an extension to the licence and in the event that proceedings go further is likely to counterclaim that the refusal by the landlord or the failure by the landlord to grant consent is being unreasonably withheld.

- 16 Mr Sandham submits, however, that even if this were so, which he denies, the tenant is at risk in that he has proceeded with the work without obtaining the prior written consent and is therefore directly in breach of the terms of the lease and at that point the landlord is entitled to refuse consent in any event until such time as satisfactory arrangements are made in order that various breaches are not committed by other leaseholders and to ensure that the matter is dealt with in an orderly way.
- 17 It is apparent to the tribunal that there will be other issues which may need to be litigated between these parties but as far as the question of a breach is concerned the tribunal is satisfied that the action of demolishing the wall, when there was no licence in place to do so and no prior written consent to an extension of the licence, amounts to a breach. Accordingly the tribunal will make the determination which the landlord seeks.

Chairman Judge Peter Leighton

Date 23rd August 2013