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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL UNDER SECTION
168(4) TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference: LON/OOAG/LBC/2012/0114

Premises: FLAT 19 GODOLPHIN HOUSE LONDON NW3
3LG

Applicant(s): (1)GOLDOLPHIN HOUSE (FREEHOLD)LIMITED
(2) GODOLPHIN HOUSE MANAGERMENTS
LIMITED

Representative: PHILIP ROSS, SOLICITORS

Respondent(s): R & K INVESTMENTS LIMITED

Representative: DR R HALOOB

Date of hearing: 26 NOVEMBER 2012

Appearance for Applicant(s): MS C CHORFI OF COUNSEL

Appearance for Respondent(s): DR R HALOOB

Leasehold Valuation Tribunal: MS E SAMUPFONDA LLB (HONS)
MR J BARLOW FRICS

Date of decision:

Decision of the tribunal

- (1) The tribunal determines that the Respondent has breached paragraph 8 of the Sixth Schedule of the lease by boring a hole in the structural wall to accommodate the installation of a new boiler and paragraph 18 of the Sixth Schedule and paragraph 8 of the 2000 Rules by failing to cover all the floors with fitted carpets. The Rules were updated in 2009 and 2011.

The application

1. The Applicant seeks a determination pursuant to s.168 (4) to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent has breached certain covenants of the lease by boring a hole in the structural wall to accommodate the installation of a new boiler condensate pipe and by failing to cover all the floors with fitted carpets.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The hearing of this case was held on 26 November 2012. Ms Chorfi of Counsel appeared on behalf of the Applicant. Mr M Anderson, Chairman of Godolphin House Managements Limited accompanied her together with Mr P Jackson of Capital Property Management, the Applicant's managing agents. Dr R Haloob appeared on behalf of the Respondent. His daughter Dr N Haloob who occupies the subject property with a Mr J Kristensen accompanied him.
4. The property, which is the subject of this application, is a flat situated in a purpose built block of flats comprising two bedrooms, lounge, kitchen, bathroom, and toilet on the first floor of the block.
5. The Respondent holds a long lease, which requires it to comply with various covenants. By paragraph 18 of the Sixth Schedule the lessee covenanted to comply with various management rules ("the Rules".) The Rules in existence at the time the Respondent acquired the lease are dated 2000. They were updated with minor variations in 2009 and 2011.
6. Having heard the parties' submissions the tribunal, on a balance of probabilities, found the following facts relevant to its determination. Paragraph 18 of the Sixth Schedule to the lease provides "The lessee shall comply with and observe all rules and regulations which the Management Company may consistently with the provisions of this Deed make to govern the use and enjoyment of the flats and the reserved property." Paragraph 9 of the 2000 Rules provides "Tenants of all except the ground floor flats must keep the floors of their lounge and bedrooms properly carpeted to avoid annoyance by the sound of footfalls to the tenants in the flat below". Paragraph 8 of the

2011 Rules provides "All floors except for kitchens and bathrooms must be covered with fitted carpets and additional thick underlay to avoid the transmission of noise to adjacent flats." The tribunal was not provided with a copy of the 2009 Rules. There was no dispute as to the terms of the lease and the Rules.

7. From the photographs produced it was clear that the Respondent had fitted laminate wood flooring in the lounge and made a hole in the structural wall to accommodate the condensate pipe serving the newly installed gas boiler. There were two rugs covering the floor. These facts were not disputed. Dr Haloob gave a detailed explanation of how and why the wooden floor was installed and that the boiler was installed by British Gas.

Tribunal's jurisdiction

8. Section 168(4) of the 2002 Act provides

(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 (c20)(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.

(d) Not relevant to these proceedings

(e) A landlord under along lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that the breach of a covenant or condition in the lease has occurred.

The tribunal's determination

9. The tribunal determines that the Respondent has breached paragraph 18 of the Sixth Schedule and paragraph 8 of the 2011 Rules. The tribunal observed that the facts as alleged were not disputed but the Respondent did not admit the breach. Dr Haloob sought to raise a number of issues and gave reasons for the conduct complained of but the tribunal could not take these into

consideration, as its function is limited to considering whether or not a breach of the lease has occurred and to construing the terms of the lease. The tribunal did not accept the Rules were unclear in the meaning of "properly carpeted" or that use of rugs and the action taken to minimise noise nuisance was sufficient compliance. In our view the ordinary meaning of fitted carpets means wall-to-wall carpet held firmly down. With regards to the hole, there may have been legitimate reasons why it was found necessary to place the condensate pipe externally in that manner; it nevertheless does not negate the fact this has led to a breach of covenant.

Application under s.20C and refund of fees

10. The Applicant did not make an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application/ hearing.

Chairman: Evis Samupfonda

Date: 4th December 2012