



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

**Case Reference** : **LON/00AC/LBC/2014/0036**

**Property** : **25 Alexandra Road, London NW4  
2SB**

**Applicant** : **Mr J Abrams**

**Representatives** : **In person**

**Respondent** : **Mr B Hobdell**

**Representative** : **Did not attend**

**Type of Application** : **Determination of an alleged breach  
of covenant**

**Tribunal Members** : **Judge W Hansen (chairman)  
Mr M Taylor FRICS, Mrs J Hawkins**

**Date and venue of  
Hearing** : **7<sup>th</sup> August 2014 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **19<sup>th</sup> August 2014**

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**DECISION**

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## **Decision of the Tribunal**

- (1) The Tribunal determines that the Respondent is in breach of the covenant contained in Clause 3(6) of the lease dated 26<sup>th</sup> February 1988 “to observe ... the restrictions set forth in the Fourth Schedule”, namely the restriction in paragraph 1 of the Fourth Schedule “not to use the demised premises or permit the same to be used for any purpose whatsoever than a private dwelling house in the occupation of one family only”.
- (2) The Tribunal determines that there has been no breach of the covenant contained in Clause 2(1)(c) of the lease “not to make any structural alterations or structural additions to the demised premises ... without the previous consent in writing of the Landlord”.

## **The Application**

1. By an application dated 12/5/14 the Applicant seeks an order under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002” Act”) that a breach of covenant has occurred.
2. The two particular breaches alleged are firstly a breach of the covenant “not to use the demised premises or permit the same to be used for any purpose whatsoever than a private dwelling house in the occupation of one family only” (“the User Breach”) and secondly a breach of the covenant “not to make any structural alterations or structural additions without the previous consent in writing of the Landlord” (“the Alterations Breach”).

## **Background**

3. The Applicant is the landlord of the first floor maisonette known as 25 Alexandra Road, London NW4 2SB (“the Flat”). His freehold title is registered at HM Land Registry under title number NGL658515. He is also the leasehold owner and occupier of the ground floor flat in the same building. The Respondent is the lessee of the Flat and holds under a 99-year lease from 24<sup>th</sup> June 1984 (“the Lease”). His title is registered at HM Land Registry under title number NGL611857.
4. Somewhat unusually the Lease was not produced by the Applicant at the hearing; neither the original nor a copy. The Applicant said he believed that he did not have even a copy but that his conveyancing solicitors, Teacher Stern Selby (“TSS”), might have retained a copy and be able to fax a copy to the Tribunal. The Tribunal adjourned briefly to enable enquiries to be made. The Applicant spoke to his solicitors but they were unable to lay their hands on a copy of the Lease at short notice. The Applicant agreed that he would endeavour to obtain a copy

as soon as possible and send it to the Tribunal. However, the Tribunal was content to proceed in the absence of the Lease because the Applicant produced the original of a detailed Report on Title dated 12<sup>th</sup> November 1998 prepared by TSS which we considered to provide satisfactory secondary evidence as to the contents of the Lease and the terms of the leasehold covenants. We therefore proceeded on that basis. The Applicant subsequently obtained a copy of the Lease from the Land Registry and sent a copy to the Tribunal on 18<sup>th</sup> August 2014 by e-mail. The Tribunal has considered the terms of the Lease and it does indeed contain the two covenants relied on.

5. There was no attendance by the Respondent or any representative. An application for an adjournment had made in an undated and unsigned document filed by or on behalf of the Respondent in response to this application on the grounds that the Respondent was out of the country until 28/09/14. However, this hearing had been fixed on 3<sup>rd</sup> June 2014 and we were not told when and in what circumstances the Respondent had arranged to be away or why he could not have arranged representation. The Applicant told us that in fact all his dealings were generally with the Applicant's mother who had in fact been contacted by telephone by the Tribunal but who had decided not to attend. In the circumstances, having regard to the overriding objective in the 2013 Tribunal Procedure Rules, the Tribunal decided to proceed with the hearing.

### **The User Breach**

6. The Lease contains a tenant's covenant at Clause 3(6) "to observe the restrictions set forth in the Fourth Schedule". The restriction in paragraph 1 of the Fourth Schedule is "not to use the demised premises or permit the same to be used for any purpose whatsoever than a private dwelling house in the occupation of one family only".

There can be no serious doubt as to the meaning of such a covenant. The important words are "in the occupation of one family only".

7. According to the lease plan, the Flat is a first floor maisonette comprising 3 bedrooms, a hall, a bathroom/WC, a kitchen and a separate diner. According to the Applicant, the two larger bedrooms have each been sub-divided into two rooms and the diner has been converted into a bedroom. We have no doubt that the front bedroom has been divided into two rooms because there is a photograph showing the partition but on the evidence currently before us we are not satisfied as to the position in relation to the rear bedroom or the diner.
8. The evidence as to user is that the Flat has been sub-let and is being occupied by at least 4 people none of whom are related. The Applicant told us that there were at least 4 people living there at present of various different nationalities. He said that there have been more on

occasion. He said rooms in the Flat were regularly being advertised on the internet. The Respondent does not deny this in his response document. Furthermore, there is an e-mail from his mother dated 18/08/13 confirming that at that date there were 4 friends living in the Flat. Whilst we are now a year further on, the Tribunal is satisfied on the evidence of the Applicant that there are presently at least 4 people living in the Flat who are not part of a single family.

9. Accordingly, the Tribunal finds that the user covenant has been breached.

### **The Alterations Breach**

10. The Lease contains a tenant's covenant at Clause 2(1)(c) not to make any structural alterations or structural additions to the demised premises without the previous consent in writing of the Landlord".
11. Insofar as the Applicant alleged a breach of this covenant in relation to alterations made to the wall between the kitchen and the diner, the Tribunal is not satisfied on the evidence that there has been a breach. The position shown in the photographs appears to be consistent with the layout shown in the lease plan.
12. Nor is the Tribunal satisfied that there has been any breach in relation to the middle bedroom shown on the lease plan between the bathroom and the front bedroom. The Applicant said he had been told by a neighbour that the bedroom had been partitioned but there is no photograph or other evidence to prove it.
13. That leaves the front bedroom. There is no doubt that that bedroom has been partitioned. The photographs show a partition (on a line running perpendicular to the front elevation) effectively splitting the room into two. However, there are no internal photographs to show what the partition amounts to. It appears to comprise wooden studs with plasterboard fixed to either side. The Tribunal was unable to identify the manner of its fixing or the precise nature of the work that has been involved in building this partition.
14. In *Irvine v. Moran* [1991] 1 EGLR 261 Mr Recorder Thayne Forbes concluded that "the structure of [a] dwellinghouse consists of those elements of the overall dwelling house which give it its essential appearance, stability and shape".
15. In *Marlborough Park Services Ltd v Rowe* [2006] 2 P & CR 165, Neuberger LJ (as he then was) accepted that definition as "a good working definition to bear in mind, albeit not one to apply slavishly."
16. There is a distinct lack of evidence before the Tribunal as to what exactly has gone on inside the Flat in terms of alterations or as to the

nature of those alterations, and in particular whether they are structural in nature.

17. In the circumstances the Tribunal is not satisfied on the rather sparse evidence presented to it that there has been a breach of the covenant in clause 2(1)(c) of the Lease not to make structural alterations or structural additions to the demised premises.

**Name:** Judge W Hansen

**Date:** 19<sup>th</sup> August 2014