



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

Case Reference : **LON/OOAG/LBC/2014/0042**

Property : **Flat C, 17 South Hill Park Gardens,
London, NW3 2TD**

Applicant : **Pledream Properties Ltd**

Representative : **Crabtree Law LLP**

Respondent : **Dr. N Lakovidou**

Representative : **None notified**

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

Tribunal : **Mrs H C Bowers MRICS**

**Date and venue of
Paper Determination** : **Tuesday, 29th July 2014 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **29th July 2014**

DECISION

. The Tribunal finds that

- The Respondent has been in breach of clauses 2(6) and 2(9) and in relation to clause 2(9) to paragraphs 2(H) and 2(G) of the Second Schedule of the subject lease.
- The Respondent has not been in breach of clause 2(4) of the subject lease.

Background:

(1) The Applicant landlord seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”), that the Respondent tenant is in breach of the lease dated 5th May 1988 under which Flat C, 17 South Hill Park Gardens, London NW3 2TD (“the subject property”) is held.

(2) An application was made on 13th May 2014, requiring a determination of various breaches of covenant. Directions were issued on 6th June 2014. It was directed that this matter would be considered by means of a paper determination, unless either party requested a hearing. There was no request for an oral hearing and therefore this case was considered on the papers submitted to the Tribunal on Tuesday 29th July 2014.

(3) It is maintained that the Respondent is in breach of clauses of the lease and of regulations set out in the Second Schedule in respect of the replacement of carpet with wooden flooring and of creating a nuisance by means of singing, playing of musical instruments and stamping.

(4) Written representations were received from the Applicant. There were no written representations from the Respondent, although included in the papers provided by the Applicant is correspondence from a Public Access Barrister. In the witness statement of Mr. Osgood, considered below it was explained that the Applicant has not been notified of any other contact address for the Respondent other than the subject flat. It was confirmed that the statement and Core Bundle was served on Homelink as the Respondent’s agent and on Mr Patros as providing legal advice to the Respondent.

(5) As stated in the Tribunal’s Directions, the Tribunal must reach its decision on the basis of the evidence produced to it. The burden of proof rests with the Applicant. The Tribunal will need to be satisfied:

- (a) that the lease include the covenants relied on by the Applicant; and
- (b) that, if proved, the alleged facts constitute a breach of those covenants.

The Law:

(6) Section 168 of the 2002 Act provides as follows:

“(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)

(4) *A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for a determination that a breach of a covenant or condition in the lease has occurred.*"

Terms of the Lease:

(7) The "subject lease" is dated 5th May 1988 and was originally between Peter Ernest Razzell, Edward James Razzell and Jeremy Huxley Ward as "the Lessor" and Alan David Morris as "the Lessee". The Land Registry extract indicates that the Respondent acquired the lease on 5th November 2012. The Applicant holds the freehold interest of the building in which the subject property is located.

(8) The relevant lease terms are set out in clause 2 and the Second Schedule. In particular under clause 2 the Lessee covenants to

"2(4) Not without previous consent in writing of the Lessor (such consent not to be unreasonably withheld) to make or permit or suffer to be made any alteration in the construction or arrangements of the demised premises nor to cut alter or injure or to suffer to be cut altered or injured any of the walls timbers ceiling floors doors or windows"

"2(6) Not through out the said term to use or occupy or permit or suffer to be used or occupied the demised premises otherwise than for private residential purposes and not to do or suffer to be done on the demised premises any act or thing which may be or become a nuisance annoyance or inconvenience to the Lessor or his tenants or the occupiers of the said Building or the owners lessees or occupiers of any adjoining or neighbouring premises."

2(9) At all times during the said term to perform and observe and procure the performance and observance with respect to the demised premises and the occupants for the time being thereof of all and singular the regulations set forth in the Second Schedule".

(9) The Second Schedule sets out the rules and regulations referred to elsewhere in the lease. Of relevance is paragraph 2 which required the lessees and the occupiers of the flats:

"(G) shall not practise singing or permit any singing or cause or permit the playing of any musical instrument so as to cause annoyance or nuisance to the Lessor or the Lessees of the Building..."

"(H) shall take reasonable steps to deaden sound being conducted to any adjoining flats in addition to the usual carpets by sound deadening material."

Submissions:

(10) There is a witness statement from Darren Raymond Osgood, signed and dated 18th July 2014. Mr Osgood is a property manager with Crabtree Property Management LLP, who are the managing agents for the building in which the subject flat is located.

(11) Mr Osgood explained that he was first aware that the carpets in the subject flat had been removed and replaced by wooden flooring in February 2013 when he received a complaint from Mr. R Carsley. Mr Carsley is the lessee of Flat A, which is located directly below the subject property. It is also stated that there have been complaints about occupiers of the flat singing at inappropriate times and practicing musical instruments for extended periods.

(12) Attached to the witness statement are various items of correspondence between Mr. Carsley and Crabtree Property Management. The correspondence dates between 27th February 2013 and 20th May 2014 and lists a number of issues that Mr. Carsley experienced with the occupation of his flat. Of particular relevance to this application he notes the removal of the carpets from the subject property, the noise arising from the removal of the carpets, the practising of singing, playing of music and "rhythmical thumping" emanating from the subject flat.

(13) Mr. Osgood makes reference to two internet advertisements, purporting to show the subject flat available to let in 2014 with a description and photographs showing a flat with wooden floors. Mr. Osgood explains that there has been no request from the Respondent for consent for the removal of the carpets and no consent has ever been provided.

(14) Reference is made to other breaches in respect of unpaid service charges, but these aspects are not part of the current application.

(15) Included in the bundle is correspondence from Crabtree Property Management to the Respondent, but no response appears to have been received. There is a letter from Mr. G Patros a Public Access Barrister, representing the Respondent to Mr. Carsley dated 18th July 2014, was attached to an email dated 9th June 2014. Mr Osgood submits that the letter admits that there have been some breaches of the lease. The letter explains that Homelink Residential Limited is the managing agent dealing with the subject property on the behalf of the Respondent and that any communication will be forwarded to the Respondent. It is explained that in respect of the floor covering, the Respondent has instructed the managing agent to fit underlay and fitted carpet throughout the flat. There is an apology in respect of the problems experienced by Mr. Carsley and confirmation that the tenants of the Respondent have now vacated the flat.

(16) Additionally, there is an email from Mr Patros dated 2nd May 2014 to Crabtree in which it is explained that there has been no additional wooden/laminate flooring provided, but the original wooden floor boards have been uncovered and varnished. It is explained that arrangements will be made to replace some floor coverings.

Tribunal's Findings:

(17) To establish its case, the Applicant did not produce logs detailing times and dates of alleged breaches, nor tape recordings of nuisance and no photographic evidence other than the purported letting details. Therefore this case rests solely on the witness statement of Mr. Osgood, the supporting documentation and the correspondence from Mr Patros.

(18) The Tribunal finds the following facts:

(a) The Respondent removed the carpeting from the subject flat and left the original floor boards bare for an unknown period between February 2013 and June 2014.

(b) The Respondent allowed the flat to be occupied by tenant/s who practiced singing, played musical instruments and "rhythmical thumped" the floor of the flat which caused a nuisance.

(c) There is no clear definition of "carpeting" in the lease. But carpeting would not be within the normal definition of "walls timbers ceiling floors doors or windows".

Findings of Breach:

(19) The Tribunal has applied the findings of fact to the terms of the lease. The Tribunal finds that

- By reason of the finding made in paragraph (18)(a) above the Respondent has been in breach of clause 2(6) and 2(9) and in relation to clause 2(9) to paragraph 2(H) of the Second Schedule of the subject lease.
- By reason of the finding made in paragraph (18)(b) above the Respondent has been in breach of clause 2(6) and 2(9) and in relation to clause 2(9) to paragraph 2(G) of the Second Schedule of the subject lease.
- By reason of the finding in paragraph 18(c) above there is no breach of clause 2(4) of the subject lease.

Name: H C Bowers

Date: 29th July 2014