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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/LBC/2013/0089**
Property	:	**Ground Floor Flat , 28 Parkland Road Wood Green, London N22 6ST**
Applicant	:	**Mayor and Burgesses of the London Borough of Haringey**
Representative	:	**Mr P Cremin , Legal services**
Respondent	:	**Mr G Bhogal**
Representative	:	**Mr J McLanachan, Counsel**
Type of application	:	**Determination of an alleged breach of covenant**
Tribunal member(s)	:	**Judge: N Haria LLB(Hons)** **Valuer: I Thompson BSc FRICS**
Date and venue of hearing	:	**17 March 2014 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**18 March 2014**

DECISION

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Decisions of the tribunal

(1) The tribunal is satisfied that the Lease is a long lease within the meaning of Section 169(5) of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The Lease contains covenants that are binding and may be enforced by the Applicant.

(2) The Tribunal finds the Respondent has breached the provisions of the covenants under Clauses 4(13) and 4(15) of the Lease.

The application

1. The applicant seeks a determination pursuant to subsection 168(4) of the Act, that the Respondent is in breach of the covenants under Clauses 4(13) and 4(15) of the Lease.

2. The alleged breaches are as detailed in the application form dated 24th October 2013.

Background

3. The Applicant holds the freehold title to the Property registered at the H M Land Registry under Title Number MX165922.

4. The Respondent holds the leasehold title to the Property registered at the H M Land Registry under Title Number EGL 286812 pursuant to a lease dated 15 July 1991 made between The Mayor and Burgesses of the London Borough of Haringey (1) and Tarlochan Singh Bhogal (2) ("The Lease")

Directions

5. A directions hearing was held on the 21 November 2013 and directions were issued and the case was scheduled for hearing on the 17 and 18 March 2014. The Applicant was represented By Mr Cremin at the directions hearing. The Respondent attended the directions hearing represented by Mr McLanachan of Counsel.

The Lease

6. Paragraph 4 of the Particulars of the Lease defines the "DEMISED PREMISES" as "ALL THAT five bedroom the flat numbered 28 in the building (hereinafter called "the Building") known as 20-108 (even) Parkland Road Wood Green, N22 on the estate ......"

7. The recitals of the Lease defines "the Corporation" as the Landlord and the Landlord is defined under paragraph 2 of the Particulars of the Lease as "THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY of Civic Centre Wood Green London N22 4LE"

8. The Respondent as lessee covenants under Clause 4 of the Lease as follows:

"(13) Not at any time without the licence in writing of the Corporation first obtained nor except in accordance with plans and specification previously submitted in triplicate to the Corporation and approved by the Corporation and to its satisfaction to make any alteration or addition whatsoever in or to the Flat either externally or internally or to make any alteration or aperture in the plan external construction height walls timbers elevations or architectural appearance thereof nor to cut or remove the main walls or timbers of the Flat unless for the purpose of repairing and making good any defect therein nor to do or suffer in or upon the Flat any wilful or voluntary waste or spoil.

....

(15) To use and occupy the Flat solely and exclusively as a self – contained residential flat."

The Statutory Provisions

9. The relevant provisions are set out under the Commonhold and Leasehold Reform act 2002 (the 2002 Act). These provide as follows:

Section168: 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

Section169: Section 168: supplementary

......

(5) In section 168

"long lease" has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant's total share.

Section 76: Long leases

(1) This section and section 77 specify what is a long lease for the purposes of this Chapter.

(2) Subject to section 77, a lease is a long lease if—

(a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise"

The Hearing

10. **Application to Postpone**: At the start of the hearing, Counsel for the Respondent made an oral application requesting a postponement of the hearing in order to find and call two further witnesses (Ms Carol Brown and Ms Angela Lawson) as they have direct knowledge of the facts relied upon by the Respondent and it would be prejudicial to the Respondent's case if he were not afforded the opportunity of tracing and calling Ms Brown and Ms Lawson. Counsel submitted that it is vital that Ms Brown attends the hearing in order to deal with the facts and answer questions relating to alleged telephone conversations between the Respondent and Ms Brown and Ms Lawson and as to why the planning permission was sent to Mr Williams as opposed to the Respondent. He stated there would be gaps in the evidence if he was not permitted to call Ms Brown.

11. Counsel had sought a postponement of the hearing in writing prior to the date of the hearing on the same grounds and this had been considered and refused.

12. Mr Cremin opposed the application for a postponement. He stated that Ms Brown and Ms Lawson are no longer employed by the Applicant. There is a Ms Brown currently employed by the Applicant but she is not the same Ms Brown who worked as a Housing Manager. He stated that the details of the telephone call between Ms Brown and the Respondent did not satisfy the requirement of the covenant under Clause 4(13) to obtain a licence in writing and to submit plans and specifications in triplicate and obtain the approval of the plans and specifications. Mr Cremin stated that Mr Williams was the Architect employed by the Respondent in relation to his application for Planning Permission and also in relation to the Building Regulations consent, and so he was authorised to act on behalf of the Respondent and as a result the Notice of grant of Planning Permission was sent to Mr Williams.

13. The Tribunal considered the application for postponement and refused the application. The Respondent had been aware of the hearing date since the 21 November 2013. The Respondent had been allowed sufficient time to obtain a witness statement from Ms Brown and Ms Lawson. The Tribunal agreed with Mr Cremin that the details of a telephone conversation would not satisfy the requirement of the covenant under Clause 4(13) to obtain a licence in writing prior to the commencement of the works. Ms Brown and Ms Lawson did not work in the Planning Department so they would be unlikely to be able to shed much light on the question as to why the Notice of Grant of Planning Permission was sent to Mr Williams. Accordingly, the Tribunal was not

persuaded that there would be much to gain by postponing the hearing and allowing the Respondent the chance to call Ms Brown and Ms Lawson.

14. Counsel for the Respondent produced a witness statement prepared by Mr Bhogal. The Applicant did not object and it was duly submitted in evidence.

15. **Matters Agreed:** The parties agreed that the property was originally a five bedroom flat and that it had been converted into two flats after the grant of the planning permission in 2008 and the works were completed by the 1st March 2009.

16. The underlying facts and chronology of events of the case are not in dispute. These can be summarised as follows:

    (i) 10 Sept 2003 – Respondent writes to C Brown advising her of his intention to convert the flat into two separate flats,

    (ii) 12 September 2003 – Respondent is informed by S. Prince, the Repairs Surveyor in the Applicant's Home and Building Services Surveyors Department, that his letter has been passed to Building Control,

    (iii) 19 September 2003 – Building Control write to the Respondent informing him that Building Regulation approval was required and planning permission may be required,

    (iv) 16 September 2008 – Notice of grant of Planning Permission is issued to Mr Williams,

    (v) 1 March 2009 – Building Control issue a certificate of completion,

    (vi) 8 November 2010 - Applicant writes to John Bays & Co Solicitors for the Respondent,

    (vii) November 2010 – John Bays & Co writes to the Applicant requesting grant of formal licence to the works,

    (viii) 16th November 2010 – Applicant writes to John Bays & Co denying consent to the works; no reasons are given,

(ix) 16th November 2012 – Diamond Solicitors for the Respondent writes to the Applicant repeating request for grant of formal licence to the works,

(x) 17 January 2013 – Applicant writes to Diamond Solicitors, again denying consent to the works, citing two reasons.

17. **The Applicant's Case:** The Applicant relied on the witness statement of Paul Cox who is employed as a Lease Compliance & Home Sales Manager by Homes for Haringey. Mr Cox stated that the Applicant appointed Homes for Haringey to act as it's agent in 2008 and prior to that the Applicant's employees in the Home Ownership department dealt with any queries from and undertook the management of leaseholders. He explained that Homes for Haringey is an arms length management organisation managing the leasehold homes for the Applicant, and they are located in the same building as the Applicant. He confirmed that his witness statement and evidence is based on his review of the documents and he has not spoken to either Ms Brown or Ms Lawson.

18. It is the Applicant's case that the Respondent has breached covenants under clauses 4(13) and 4(15) of the Lease. The Applicant accepts that the Respondent communicated with Ms Brown the Housing Manager on the 10 September 2003 advising her of his intention to convert the flat into two separate flats. The Applicant also accepts that the Respondent sought and obtained Planning Permission and Building Regulation consent in respect of the conversion.

19. It is the Applicant's case that in breach of the covenant under Clause 4(13), because prior to the commencement of the conversion the Respondent did not

(i) submit plans and specifications in triplicate to the Applicant, and

(ii) did not obtain the approval of the plans and specifications from Applicant, and

(iii) obtain a licence in writing from the Applicant.

20. Mr Cox stated that having considered the files there was no record of any telephone conversation between the Respondent and either Ms Brown or Ms Lawson. Mr Cremin stated that even if a telephone conversation did take place, the Applicant did not accept that Ms Brown or Ms Lawson would have given approval of the plans and specifications on behalf of the Applicant over the telephone.

21. Mr Cremin submitted that the Planning Permission granted by the Applicant as the Planning Authority is not the same as the grant of a licence as the freeholder, and it cannot be relied upon by the Respondent as satisfying the requirement of Clause 4(13) of the Lease.

22. Mr Cremin referred to the Planning Permission which is granted subject to a Schedule of Conditions listed in the permission, and underneath those conditions is a heading titled INFORMATIVE in capital letters where it is stated "you are advised that the consent of Homes for Haringey as freeholders of the site must be obtained if any works are carried out". Mr Cremin clarified that in fact there is an error in the Informative in that it states Homes for Haringey are the freeholders when in fact they are the freeholder's agent.

23. Mr Cremin submitted that the Respondent should have appreciated from the terms of his Lease that he should obtain a licence in writing and the approval of the plans and specifications prior to commencing the works, and in any event the Respondent had been advised to obtain consent from the Applicant as freeholder by the informative in the planning permission.

24. On being examined Mr Cox confirmed that prior to the grant of a licence, terms would have to be agreed between the parties, the licence may also include a deed of variation of the lease if it was appropriate and Applicant would normally charge an administration fee as well as a premium for the grant of a licence. He stated that such licences are usually also subject to the condition that planning permission and building regulation consent is obtained in respect of the alteration works. He stated that the Housing Managers are aware of the process and they refer any applications to his department and a file would be opened in his department to deal with the licence. He stated that in this case he can find no record of a file.

25. The Applicant also contends that the Respondent is in breach of the covenant under Clause 4(15) as the Flat is no longer being used and occupied as a self contained residential flat since it has been converted into two self contained flats and is being used and occupied as such.

26. **The Respondent's case:** The Respondent submitted that on acquiring the leasehold title to the Flat he was informed that Ms Brown was the Housing Manager for his building and he would contact her with any issues concerning the Flat or the building. He submitted that he had several telephone conversations with Ms Brown and she informed him that written consent for the conversion was not required so she did not send him written permission.

27. Counsel referred to the Respondent's letter of the 10 September 2003 and in particular the 6th paragraph of the letter which states "....COULD YOU KIND ENOUGH TO INFORM ME WHETHER I NEED

PERMISSION FOR THE ABOVE OR NOT AND IF NOT _ WHY NOT?". Counsel submitted that the Respondent had done all he could to ensure he complied with any requirements of the Applicant but he was misinformed and misled by the Applicant's Housing Manager.

28. The Respondent stated that before he started the works in 2008 he spoke to Ms Lawson who raised no objection and said words to the effect that "if it was okay with Carol Brown it was okay with her." The Respondent employed a professional architect Mr Williams and obtained planning permission and building regulation consent. The Applicant submitted that the building work was carried out openly with the full knowledge of the Applicant and its Housing Manager, as well as its Building Control and Planning Department.

29. The Respondent claimed that upon the grant of Planning Permission he had not seen the Notice dated the 16 September 2008. He stated that the first time he saw the Notice was on the 15 March 2014. He stated that upon grant of the planning permission his architect had simply forwarded to him a set of the plans stamped "PASSED".

30. The Respondent on being examined by the Tribunal stated that he had not checked the Lease. He stated that he had a solicitor acting for him on the acquisition of the Lease but he had not been advised as to the terms and conditions of the Lease and he was unaware that he was required to obtain written consent from the Applicant to the conversion and had relied on Ms Brown and Ms Lawson to inform him as to what was required.

31. He admitted the Flat has been converted into two self contained flats, he occupies one flat and he has let the other flat out to students.

32. Counsel in his closing submission added that the tribunal had a very narrow issue to address. He stated that it was very odd that there appears to have been no response to the Respondent's letter of 10 September 2003. He stated that the fact that there has been no response is consistent with the Respondent's version of events. As far as the informative on the planning permission is concerned, he stated that much more should have been done to inform the Respondent of the informative and to highlight that the informative had not been complied with, and although it appears as if the Respondent has been in flagrant breach of the covenants of the Lease in fact the blame lies elsewhere.

33. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

34. A determination under Section 168(4) of the Act does not require the Tribunal to consider any issue relating to forfeiture other than the question of whether or not a breach has occurred. The Tribunal does not have jurisdiction to consider whether the landlord has waived the right to forfeit the lease, this is a matter for the court to determine when considering an application for forfeiture. Accordingly, the tribunal limits this decision to the narrow issue of whether or not the Respondent is in breach of the covenants in the Lease.

35. It is not uncommon for leases to include covenants requiring a leaseholder to seek the written consent of the landlord to any alteration of the demised premises. The Lease in this case under Clause 4(13) includes a qualified covenant permitting the repair and making good of any defect but expressly prohibiting any alteration or addition to the Flat without:

    (i) first submitting plans and specifications in triplicate to the Applicant and obtaining the approval of the Applicant to the plans and specification, and

    (ii) obtaining a licence in writing from the Applicant before commencing the works.

36. The covenant is subject to the implied terms under Section 19(2) of the Landlord and Tenant Act 1927 that such consent is not to be unreasonably withheld.

37. The implied term that such consent is not to be unreasonably withheld does not preclude the right to require, as a condition of such licence or consent, the payment of a reasonable sum of money in respect of any damage to, or diminution in, the value of the premises, or any neighbouring premises belonging to the landlord, or of any legal or other expenses properly incurred in connection with such licence or consent. In addition it does it preclude the right to require, as a condition of the licence or consent, an undertaking on the part of the tenant to reinstate the premises in the condition in which it was before the alteration was executed (provided it is not unreasonable to require such reinstatement).

38. The Tribunal accepts that the Respondent attempted to obtain advice from Ms Brown as to what was required and in particular whether he required permission from the Applicant to undertake the conversion. The letter of 10 September 2003 informed Ms Brown in her capacity as the Applicant's Housing Manager of the Respondent's intention to

convert the Flat into two self contained flats. Mr Cox stated that he was unable to find a copy of any letter sent to the Respondent in response to his letter of the 10 September. This could mean either there was no response to the letter of the 10 September or that any response may have gone astray and cannot be located. The Respondent seeks to rely on the verbal assurances of Ms Brown and Ms Lawson that written permission was not required from the Applicant to the conversion. The Tribunal appreciates that the Respondent is a layman and may not be familiar with the nature of a leaseholders obligations under a Lease, but the Tribunal does not consider it reasonable for the Respondent to ignore the Lease and rely solely on the verbal assurance of a third party albeit an employee of the Applicant. Whether the Respondent was given any verbal assurance and whether this can be relied upon (in support of an application for waiver of the breach) are matters for the court to determine when considering an application for forfeiture. The Tribunal finds that the oral assurance if any given by Ms Brown and/or Ms Lawson is not sufficient to comply with the requirements of the covenant under Clause 4(13).

39. The Tribunal is of the view that if the Respondent had checked the Lease or sought advice on the covenants in the Lease he would have appreciated the need to ensure that he submitted plans and specifications to the Applicant in triplicate for approval and that he obtained a licence in writing prior to the commencement of the conversion works.

40. The Notice of grant of planning permission was sent to the Architect appointed by the Respondent as his agent. The Notice of grant of Planning Permission does include an Informative, it is unfortunate that the Respondent's agent failed to send him a copy. The Applicant cannot be held liable for a failure on the part of the Respondent's agent. The Applicant as a planning authority could be criticised for failing to send a copy of the Notice of grant Planning Permission to the Respondent but the Tribunal understands that it is common practice where an agent is appointed for the Notice of grant Planning Permission to be sent to the agent only. The Tribunal is of the view that had the Respondent's agent forwarded the Notice to the Respondent he would have been left in no doubt that in addition to obtaining planning permission he also needed to obtain the consent of the freeholder (albeit that the informative incorrectly states that Homes for Haringey is the freeholder).

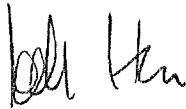
41. The approval of plans for the purpose of the granting planning permission and building regulation consent is not the same as the approval of plans and specifications and a licence in writing envisaged by the provisions of Clause 4(13). The approval of the plans for planning purposes and the grant of planning permission and building regulations consent does not negate the need to comply with the provision of Clause 4(13) of the Lease. It is not unusual for a premium to be paid upon the grant of a licence to alter a premises (as stated in

paragraph 36 above) and if appropriate for a deed of variation of lease to be completed in the event that the works are undertaken.

42. Further, the Respondent has on at least two occasions sought to obtain formal consent for the works retrospectively. Those applications had not been made on a without prejudice basis and that correspondence (referred to in paragraph 16 (vii) and (ix)) implies a recognition that the formal granting of consent as required by clause 4(13) has not been observed.

43. For these reasons, the Tribunal finds that the Respondent has breached the covenant under Clause 4(13) of the Lease.

44. The Respondent admitted that the flat is now used and occupied as two self contained flats as opposed to one self contained flat. Thus the Tribunal finds the Respondent is in breach of the covenant under clause 4(15) of the Lease.



Name: N Haria **Date:** 18 March 2014