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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BK/LBC/0074**
Property	:	**Flat 9, Lavington, 24 Greville Place, London, NW6 5JU (the Flat")**
Applicant	:	**Lavington Residents Association Limited**
Representative	:	**C G Naylor LLP, solicitors ("the Landlord")**
Respondent	:	**Mr Lionel Rebibo ("the Tenant")**
Representative	:	**In Person**
Type of application	:	**An application under section 168 (4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal members	:	**1. Mr A Vance, Tribunal Judge** **2. Mrs A Flynn, MA MRICS**
Date and venue of hearing	:	**28 September 2015 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**29 September 2015**

DECISION

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Decision of the tribunal

1. The Tribunal determines that the Respondent has breached the covenant set out at clause 2(viii) of his lease in that he has, without the previous formal license of the Landlord cut, maimed or removed part of the exterior wall to the Flat when installing a flue servicing a new boiler installation.

The application

2. This is an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that the Respondent has breached a covenant contained in the lease of the Flat, a two-bedroom third floor flat within a purpose built residential block of 17 flats ("the Building").

3. Numbers in square brackets below refer to the hearing bundle provided by the applicant.

Introduction

4. The Applicant is the freehold owner of the Building whose title was registered at HM Land Registry under Title Number 309394 on 13 August 1986 **[61]**.

5. The Respondent is the lessee of the Flat. His leasehold interest was registered at HM Land Registry on 10 April 2015 under title number NGL631579 **[65]**.

6. The relevant lease is dated 20 January 1989 and was entered into by (1) the Applicant and (2) Samira Abbas Moustafa Al-Timimi for a term of 999 years commencing 24 June 1974 ("the Lease"). The Lease was granted on surrender of a lease dated 25 December 1979 ("the Surrendered Lease") and was made subject to the same covenants as contained in the Surrendered Lease except as modified on the grant of the new Lease.

7. Case management directions were issued by the Tribunal on 14 August 2015 in which it was directed that both parties were to prepare a bundle of documents to be used at the hearing of the application. Whilst a bundle has been received from the Applicant nothing was received from the Respondent.

8. In its Application the applicant alleged that the following covenant under the Lease had been breached (as incorporated from the Surrendered Lease"):

Clause 2(viii)

"That the Lessee will not alter the internal planning or the height elevation or appearance of the flat nor at any time make any alterations or additions thereto nor cut maim or remove any of the party or other walls or the principal or bearing timbers or iron steel or other supports thereof nor carry out any development thereto nor change the user thereof (within the meaning of any legislation for the time being relating to Town and Country Planning) without the previous formal license of the Lessor.

The Law

9. The relevant parts of s.168 of the Act provide 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 a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*

Inspection

10. The Tribunal carried out an inspection of the Flat on the morning of 28 September 2015, prior to the hearing of the application. The Building is a purpose built four storey block built circa 1979 with mansard slate cladding. It is located in a quiet, primarily residential street.

11. The Flat comprises: two bedrooms, a master bedroom with an en suite bathroom/WC; a separate bathroom containing a shower/WC; a kitchen and a living room. It has the benefit of full central heating throughout.

12. It was apparent to the Tribunal that recent works had been carried out to the bathrooms, kitchen and living room. The kitchen units and fittings appeared to be new as did the furniture in the two bathrooms. The hand basin in the bathroom containing the shower had not yet been connected to the water supply and the adjacent wall needed to be made good. New laminate flooring appeared to have been installed in each reception room. These works, apart from the laminate flooring, had been carried out to what appeared to be a good standard using good quality materials. The overall visual impression was of an attractive modernised flat. The laminate flooring however was very spongy and squeaky underfoot.

13. The Tribunal was granted access to the patio on the first floor of the Building, allowing inspection of part of the rear elevation. It was clear that original boiler flue was still in situ but that a new flue had been installed above it, emerging from the mansard cladding.

The hearing

14. The Applicant was represented by its solicitor, Mr Naylor. The Respondent and his wife, Magali Rebibo attended and both gave oral evidence. The Respondent was cross-examined by Mr Naylor.

15. The Tribunal had before it a written witness statement from Mr Clive Winton who is employed at Crabtree Property Management LLP ("Crabtree") as a property manager **[102]**. Mr Winton was, however, on holiday at the date of the Tribunal hearing and did not attend.

The Applicant's Case

16. Mr Winton's evidence, as contained in his witness statement, was that:

(a) The Respondent's wife, Magali Rebibo, telephoned him on 14 April 2015 and informed him that the Respondent intended to change the boiler in the Flat and to replace

some of the windows. He informed her that such works would require formal consent from the Applicant by way of a Licence to Alter before they could be undertaken;

(b) He heard nothing further about these intended works until 15 June 2015 when he was again telephoned by Mrs Rebibo who stated that the Respondent wanted to replace the plumbing in the Flat in its entirety and to install a new boiler in advance of getting a new kitchen installed. He again told her a Licence to Alter was needed to undertake such works. This was confirmed in an email of the same date to him **[90]** in which Mrs Rebibo states

> *"As mentioned today on the phone we want to replace all the plumbing system in our property and install a combi-boiler.*
>
> *Therefore I would like to know if you could send a member of Crabtree survey team to advice [sic] us on what we are allowed to do or not and tell me how much we would be charged?*
>
> *Could you also please launch the process of authorisation with the Association in order to have all the necessary rights when the job will have to be done.*
>
> *As I told you I need to have all of this done quickly as my new kitchen is arriving very soon."*

(c) Mr Wilton began the authorisation process immediately and both directors of the Applicant company, Valerie Saunders and Beverley Kleiman, responded by email **[85-86]** indicating that they had no particular objections provided the proper licensing procedure was followed.

(d) He set out that procedure in detail in an email to Mrs Rebibo dated 18 June 2015 **[84]** in which he reiterated that the proposed works require a Licence to Alter before works commence.

(e) Later that day, on 18 June 2015, the Applicant's solicitor, sent an email to Mr Winton, copied to Mrs Rebibo, in which it was stated that his anticipated fees for dealing with the Licence to Alter would be £600 plus VAT.

(f) On 22 July 2015, Mr Wilton received a telephone call from another resident in the Building who informed him that

workmen were carrying out works to the Flat. On the same day the Applicant's solicitor sent the Respondent a letter **[77]** requiring him to stop any works underway and stating that he was in breach of the terms of the Lease in undertaking alterations to the Flat without first having obtained the Applicant's prior approval.

(g) Mrs Rebibo responded to the Applicant's solicitors by email the following day saying that the costs quoted for obtaining a licence were prohibitively high and that the Respondent had decided not to carry out work to the pipework but only work to the boiler for which they did not consider they needed consent.

(h) Also on 23 July 2015, in response to an email from the Applicant's solicitor stating that she did not have consent to carry out the works , Mrs Rebibo wrote *"I indeed confirm hereby that we have stopped the works yesterday as it has been ask"* [sic].

(i) On 30 July 2015, responding to another email from the Applicant's solicitor stating that he had been told that drilling was taking place in the Flat Ms Rebibo states that *The only drilling that is taking place relates to the installation of our furniture which, as far as I know does not necessitate any particular proposal".*

(j) On attending the Flat on the evening of 30 July 2015 he noticed that a new flue had been installed in the brickwork above the exterior door to the Flat. This, he says, had not been their previously. Photographs of the area showing the new flue and showing it as it had been, without the flue, are at **[93-4]** and **[95]** respectively.

17. The Applicant contends that the Respondent has breached the relevant covenant by installing, without consent:

    (i) New laminate flooring and new kitchen and bathroom suites which amount to alterations or additions to the *"internal planning, and/or height, and/or appearance of the Flat"*; and

    (ii) A flue servicing a new boiler which required the removal of several bricks from the exterior wall. By doing so he made *alterations or additions* to the Flat and *"cut maim*[ed] *or remove[ed]"* one of the walls to the Flat.

18. The Applicant is also concerned that works carried out by the Respondent may have impacted on the integrity of the *"principal or*

bearing timbers or iron steel all or other supports" and that the clanging of pipes reported by one of the other residents in the Building may have been the result unauthorised alterations of additions to the Flat.

19. Mr Naylor also submitted that the inspection of the Flat on the morning of the hearing indicated that laminate flooring had been installed to a poor standard.

20. During the course of the hearing he decided not to pursue an assertion that the erection of a scaffolding tower to install the flue was, in itself, a breach of covenant by the Respondent.

The Respondent's Case

21. Before us, the Respondent agreed that his contractors had cut a hole about 17 cm wide by 5-6 cm deep into the wall and cut into the mansard cladding in order to install the flue to the boiler.

22. This work was, he believed, necessary because the existing boiler was dated. Whilst it was operational when he bought the Flat there were, he said, stickers from British Gas on the boiler saying that it had previously been deemed unsafe. He was told by plumbers that the boiler was too low and that it was required to be over 20cm from the ground. Given that he had two young children he was concerned that the boiler be relocated from its former location to somewhere safer. It is now housed in a cupboard unit above the kitchen worktop. He had been told that due to the size of modern boilers it was not possible to use the existing flue and this is why a new one was created.

23. The installation of the boiler took place on 22 July 2015 and the Respondent's evidence was that he believed that the Directors of the Applicant Company had granted permission for the installation. This information had, he said, been conveyed to him by his wife. She informed us that she believed that the consent was contained in the emails from Valerie Saunders and Beverley Kleiman **[85-86]**. However, the Tribunal directed the Respondent to the email from Mr Winton to his wife dated 23 June 2015 **[80]** in which Mr Winton said:

    "We note your comments that you do not now intend to remove most of the pipework in flat 9 but you still need a Licence to Alter for the boiler as a new flue hole will be created in the external wall. The Directors have agreed that you can change the boiler subject to your obtaining a Licence beforehand and you will still need to present to Crabtree surveying team the proposed site of any flue hole and positioning of the boiler."

24. On reading that email the Respondent conceded that the consent of the Directors was conditional on the grant of a Licence to Alter and that he was mistaken to think otherwise. He and Mrs Rebibo said they had experienced a family loss at around this time and therefore the email must have escaped their attention.

25. However, neither the Respondent nor his wife believed that they needed the Landlord's express consent for any of the other works they had carried out in the Flat because, it appeared from their evidence, that they did not consider the works affected the structure or fabric of the Flat.

26. The Respondent stated that when they bought the Flat it was in poor condition and that all they were doing was seeking to improve it. The existing laminate flooring was worn and dirty and he had it replaced with better quality flooring from Homebase together with underlay for sound-proofing. Mrs Rebibo stated that she was at home when the flooring was installed at the end of May/beginning of June and that she could confirm that the workmen did not affix either the underlay or the laminate flooring to surface below. Instead, they were simply laid on top of the base of the floor. He agreed that there was a problem with the floor rising. This problem started about two weeks ago and Homebase had agreed to send an expert to investigate why this had happened.

27. In both bathrooms they had removed the old tiles and re-tiled throughout as well as replacing the WC's and hand basins in both bathrooms. They had replaced the bath in the en suite bathroom and swapped the locations of the bath and the shower in the other bathroom. No work, however, had been done to the pipework in either bathroom with the water supply to the shower being obtained from the pipe servicing the former hand basin. The hand basin in that room, once installed, was to obtain its water supply from the pipe that previously serviced the shower. In the bathroom containing the shower the Respondent had also replaced the existing radiator in the same location and installed a suspended ceiling with spot lighting. The works to both bathrooms took place at the end of May/early July.

28. Works to the kitchen were carried out at the end of July. The Respondent stated that he had removed very old dirty units and installed new ones and new kitchen furniture. Again, he said that he had not interfered with the existing pipework. The cooker hood, he said, simply recirculated air before recycling it back into the kitchen and did not extract it through a duct. It was, said Mrs Rebibo, fixed to the wall using the same screw holes as the previous cooker hood.

The tribunal's decision and reasons

29. The tribunal is satisfied that the Respondent has breached the covenant set out at clause 2(viii) of the Lease in that the installation of the flue to

the exterior of the Building has resulted in the cutting, maiming or removal of part of the exterior wall to the Flat. The Respondent admitted that the wall had been cut into in this way and that part of it had been removed for the installation of the flue. He conceded before us that he needed, but did not have, the relevant Licence from the Applicant to carry out these works. He acknowledged that the emails from the Directors did not giving unqualified consent and that a formal Licence was required before the works to the flue were carried out.

30. Both the Respondent and Mrs Rebibo appeared to us to be entirely frank and honest in their evidence and we accept his explanation that he was under the mistaken impression that consent had, in fact, been granted before he commenced the works to the flue. In fact we accept the entirety of the Respondent's evidence concerning the nature and extent of the works carried out in the Flat as being both credible and accurate.

31. We do not accept that the installation of wooden flooring and new furniture suites in the bathrooms and kitchen were in carried out in breach of the covenant at clause 2(viii) of the Lease.

32. Firstly, in the absence of any evidence to the contrary, we accept the Respondent's evidence the works consisted, primarily, of replacing what was already in situ. New flooring was installed for old (without being fixed to the structure of the Flat) and dated kitchen and bathroom units were replaced with modern ones.

33. Secondly, we consider that an alteration is effected only when the form or structure of a building is altered (**see *Bickmore v. Dimmer 1 Ch 158; (1903) 72***. We equate this to mean the same as the fabric or construction of a building. The meaning to be attached to the words "*alterations to the internal planning*" of the Flat in the covenant therefore must, in our view, relate to changes in the physical layout of the individual rooms that affect the fabric or construction of the Flat. Here, the layout has not been altered by any works carried out by the Respondent.

34. Thirdly, we do not accept Mr Naylor's submission that replacement of the flooring and the kitchen and bathroom suites breached clause 2(viii) because the Respondent has altered the *"appearance of the flat"*. As stated above, to amount to an *alteration* there must be a change to the construction or fabric of the Flat. The word 'appearance' must be read in conjunction with the word 'alteration' meaning that what is intended to be captured are changes to the construction or fabric of the Flat that alter its appearance.

35. When construing this covenant the Tribunal needs to have regard to the contents of the lease as a whole and the likely mutual intentions of the contracting parties as to what legal obligations each intended to be

assumed by the words used in the Lease. In our view it cannot sensibly have been in the contemplation of the parties that matters such as the replacement of old kitchen units with new ones (for the enjoyment of Flat) would amount to an alteration requiring the landlord's prior consent.

36. Similarly, we do not accept Mr Naylor's submissions that the installation of the flooring and kitchen and bathroom suites amounted to unauthorised *"additions"* to the Flat in breach of the covenant at clause 2(viii). The meaning that the parties must, in our view, have intended to be given to the word 'additions' is the usual one, namely that it relates to a physical addition to the structure of the Flat, which is not the case here.

37. Nor do the works carried out do not amount to *"development"* of the Flat which must, in our view, also relate to works that change the physical construction or fabric of the Flat.

38. Finally, there is no evidence to support Mr Naylor's suggestion that the suggested clanging of pipes heard by another resident in the Building is indicative of works carried out in breach of this covenant or that there has been any negative impact on the *"principal or bearing timbers or iron steel all or other supports"*. That the resident, who had not provided witness evidence and did not attend the hearing may have heard banging on several occasions is wholly inadequate evidence to support an assertion that this covenant has been breached by the Respondent when there is no suggestion that the resident had any idea what works were being carried out at the relevant times.

39. As to the works carried out in the bathroom containing the shower/WC the Tribunal recognises that the Respondent has installed a suspended ceiling thereby adjusting the height of the room. However, it was not suggested by Mr Naylor that this was a permanent change to the height of the room. In fact, he referred to it as a "fake ceiling". In our view the installation of the suspended ceiling does not constitute an *alteration* as there is no change to the construction or fabric of the Flat itself, merely the installation of an artificial ceiling which, we anticipate, could be removed at a later date if necessary, meaning that there should be no difficulty in re-letting the premises after the expiry of the term. This is not going to happen any time soon given that the Lease has an unexpired term of about 958 years.

40. We also recognise that the location of the shower has been swapped with the hand basin. However, the Respondent assured the Tribunal that in doing so they made no changes to the pipework in that room nor to the fabric of the walls or floor in that room. The Tribunal inspected that room and sees no reason not to accept the Respondent's evidence on this point. As these works did not involve change to the construction or fabric of the Flat we do not consider they amount to alterations.

Final Comments

41. At the end of the hearing the Tribunal informed the Respondent that in light of his admission regarding the works carried out to the flue the Tribunal was very likely to make a finding that he had breached the terms of the relevant covenant and that we would consider the other alleged breaches before making our decision.

42. We enquired as to what the Applicant's position was regarding the grant of retrospective consent to the Respondent in respect of works carried out in breach of covenant. Mr Naylor stated that he had no instructions but it was quite likely that the Applicant would consider the grant of retrospective consent. He stated that this application was to do with proper governance of the Building rather than seeking forfeiture of the Respondent's lease.

43. The Tribunal hopes that retrospective consent will be secured without the need for forfeiture proceedings and reminds the Applicant that as this is a qualified covenant it is subject to the statutorily implied covenant at Landlord and Tenant Act 1927, s 19(2) that such consent is not to be unreasonably withheld in the case of alterations which are improvements.

44. The Tribunal also points out that a sum demanded for the grant of a Licence for Alterations is likely to amount to an administration charge under the Lease (as defined by Commonhold and Leasehold Reform Act 2002) and must be reasonable in amount in order for the Applicant to recover the charge.

Name: Amran Vance **Date:** 29 September 2015