



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

Case Reference : **LON/00AT/LBC/2018/0053**

Property : **228 Wheatlands Heston,
Hounslow, Middx TW5 0SQ**

Applicant : **Dr Wui Kheong Chong**

Representative : **William Sturges LLP**

Respondent : **Ranjit Singh Purwaha**

Representative : **JS Law Partnership**

Type of Application : **Breach of covenant**

Tribunal Members : **Judge Nicol**

Date of Decision : **24th September 2018**

DECISION

The Tribunal has determined that the Respondent has breached clauses 2(6)(a) and (11) of his lease of the subject property by the construction of an enclosed front porch.

The Tribunal's reasons

1. The Applicant is the Respondent's landlord at the subject property. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent has breached the following clauses of his lease:-

2. THE Tenant HEREBY COVENANTS with the Landlord ... as follows:-

- (6)(a) Not at any time during the said term to make any addition to or alteration in the plan or elevation of the said premises or any alteration or aperture in any party walls or in the principal and bearing walls timbers or girders without the previous written consent of the Landlord but nothing herein contained shall prevent the partitioning of rooms or the removal of such partitions from time to time as may be necessary for the reasonable occupation of the said premises PROVIDED ALWAYS that no party wall or principal and bearing walls timbers or girders are in any way interfered with or damaged

- (11) Not at any time during the said term without the consent in writing of the Landlord first had and obtained to carry out or permit or suffer to be carried out in on over or under the demised premises or any part thereof any improvement or addition or any building engineering mining or other operations or works

- (18) Not to do or omit or to permit or suffer to be done or omitted any act matter or thing in on or respecting the said premises required to be omitted or done (as the case may be) by the Town & Country Planning Acts 1947-1962 or which shall contravene the provisions of the said Acts or any of them AND at all times hereafter to indemnify and keep indemnified the Landlord against all actions proceedings costs expenses claims and demands in respect of any such act matter or thing contravening the said provisions of the said Acts or any of them as aforesaid

2. It is important to note that the Tribunal's role under the Act is to determine simply whether there has been a breach of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture is irrelevant at this stage.

3. The property is a single-storey terraced house. On 13th August 2007 an inspector on behalf of the Secretary of State for Communities and Local Government determined that a tree located just in front of the house could be felled due to the excessive loss of light caused to the interior of the house. Photos exhibited by the inspector clearly show the tree located in a paved area. Therefore, when the tree was felled, the Respondent reinstated the paved area.
4. The Applicant now objects to the paved area and demands that the "lawn" be "reinstated". The Tribunal cannot follow the Applicant's argument on this issue. There never was an area of "lawn" to be "reinstated". They do not object to the felling of the tree. The tree having been felled, it is difficult to see what else the Respondent was supposed to do.
5. Moreover, it is difficult to see which clause of the lease could have been broken. The area of paving does not alter the plan and is not part of the elevation within the meaning of clause 2(6)(a). Given that the tree had been located in a paved area, putting down paving cannot constitute an improvement within the meaning of clause 2(11). The paving was merely an integral part of works, namely the felling of the tree, to which the Respondent does not object.
6. The Tribunal cannot find that there is a breach of clause 2(18) due to a lack of evidence. This applies not only to the paved area but also to the porch dealt with below. The Tribunal's expertise does not extend to planning control, the particular planning policies of the local authority in whose area the property is located or the Acts referred to in clause 2(18). If a party wishes to establish that planning permission is required, they must provide relevant evidence and direct the Tribunal's attention to relevant law. The papers before the Tribunal do not include anything which could establish that the Respondent had breached planning control, let alone the specific Acts.
7. On 24th June 2016 the Applicant's solicitors wrote to the Respondent objecting to the fact that he had arranged for a canopy to be constructed over the front entrance door. On 25th November 2016 the Respondent's solicitors replied that it was merely a cover from adverse weather conditions. On 11th January 2017 the Applicant's solicitors said he would allow the canopy to be retained so long as it remained an open structure. However, the Respondent has since enclosed it, claiming that it aids the security of the property.
8. The Tribunal is satisfied that the construction of the enclosed porch is a breach of clauses 2(6)(a) and (11). Contrary to the Respondent's extraordinary submissions otherwise, the porch clearly alters both the plan and the elevation and is an improvement. The Respondent claims that the porch is not a permanent fixture but that is not to the point. There is no exception for temporary structures and, even if there were,

the porch can be seen from the photos to be of a type which is intended to be in place indefinitely and for a considerable period of time. The Respondent has not sought, let alone obtained, consent from the Applicant.

9. The Respondent has adduced evidence that some neighbours do not object to what he has done while other neighbours have erected similar structures. None of this is relevant to whether the lease has been breached, although it might be relevant to the issue of relief from forfeiture.
10. On the basis of the material before the Tribunal, the Respondent is in clear breach of clauses 2(6)(a) and (11) of his lease.

Name: NK Nicol

Date: 24th September 2018