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

Case Reference : **LON/00BH/LBC/2013/0071**

Property : **Ground Floor Flat, 189 High Street,
Leyton, London E15 2BY**

Applicant : **Meryon Properties Limited**

Representative : **Circle Residential Management
Limited**

Respondents : **Hasan Yusuf Patel
Fatmaben Hasan Patel
Yusuf Loonat**

Representative : **Vicarage Court Solicitors**

Type of application : **Determination of whether there
has been a breach of a covenant in
the tenants' lease**

Tribunal : **Margaret Wilson
Stephen Mason FRICS**

Date of decision : **14 October 2013**

DECISION

Introduction

1. This is an application by a freeholder ("the landlord") under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that the respondent tenants are in breach of the covenant against alterations in clause 5(h) of their lease which provides that the tenant *must not carry out alterations or additions to the property nor erect any other buildings of a permanent or structural nature save with the prior written approval of the landlord and the owner of the other [flat in the building]*.
2. The determination is made on the basis of the papers alone in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), none of the parties having asked for an oral hearing.
3. Pre-determination directions were made on 13 September 2013 and the parties have complied with them.

The dispute

4. 189 High Road is a house which has been converted into two flats. The flat concerned is on the ground floor. The alterations or additions complained of are the creation of a doorway from the rear of the flat into a back extension and the alteration of the layout of the bathroom. The extension was the subject of a decision of the Tribunal dated 13 February 2013 by which it was determined that the extension had been built without the landlord's prior consent, in breach of clause 5(h) of the lease. That breach was admitted by the tenants but it appears from the Tribunal's decision that the tenants submitted that the breach had been waived by the landlord's acceptance of ground rent. The Tribunal decided that the question whether the right to forfeit the lease and therefore to obtain a determination under section 168(4) had been waived was not within its jurisdiction. The tenants say that that decision is under appeal to the Upper Tribunal but we are not told whether permission to appeal has been granted or, if it has been granted, how far the appeal has progressed.
5. The tenants say that the doorway was created as part of and at the same time as the works to create the extension which was the breach previously considered by the Tribunal. They agree that the bathroom was refurbished when they acquired the lease in 2011 but deny that the layout of the bathroom has been altered. They say that the present application was unnecessary in

view of the previous determination and ask that it be dismissed. They have asked for their costs, amounting to £450 plus VAT, to be awarded to them.

Decision

6. In our view there has been a breach of covenant in that, without the landlord's prior consent, a doorway has been created between the existing flat and the unauthorised extension and we so determine. We are not satisfied on the state of the evidence that the works to the bathroom amounted to a breach of the lease. However the doorway was in our view an integral part of the extension which has already been considered by the Tribunal and it ought to have been brought to the attention of the Tribunal in the course of the previous proceedings. It is difficult to understand the purpose of the present application and, provisionally, it seems to us that it was unreasonable of the landlord to have made it and we are, provisionally, minded to make an order for some or all of the tenants' costs to be paid by the landlord under the provisions of rule 13 of the Rules which provides that an order for costs may be made *if a person has acted unreasonably in bringing, defending or conducting proceedings*. The application was made after 1 July and the amount of such costs is not therefore subject to an upper limit. By rule 13(6) *the Tribunal may not make an order for costs against a person ... without giving that person an opportunity to make representations*.

7. We therefore direct that within 14 days of receipt of this decision the tenants must serve on the landlord and lodge with the tribunal an itemised breakdown of their costs, showing any relevant hourly rates and a copy of any relevant invoices and proof of payment of such invoices and that the landlord must, within 14 days of the receipt of that information, serve on the tenants and lodge with the tribunal their response to the tenants' request for costs. If the tenants wish to make an application under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord from placing any of its costs on any service charge they may make such an application and should deal with it in their submissions on costs.

Judge: Margaret Wilson