



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

Case Reference : CHI/29UQ/LBC/2013/0043

Property : Top Floor Flat, 17 Park Road,
Tunbridge Wells, Kent TN4 9JN

Applicant : 17 Park Road, Tunbridge Wells Limited

Representative : N/A

Respondent : Mr C Ims

Representative : N/A

Type of Application : Commonhold and Leasehold Reform Act
2002, section 168 breach of covenant

Tribunal Members : Mr S Lal LLM

**Date and venue of
Hearing** : Chairman's home, 6th March 2014

Date of Decision : 6th March 2014

DECISION

Application

1. On 18th December 2013, the Applicant (as freeholder of the Property) applied to the Tribunal for a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the "Act") that a breach of covenant or condition in the lease of the Property dated 9th October 1980 between (1) Robin Scott Lynn and Liane Jill Lynn and (2) Stuart James McTavish (the "Lease") has occurred. The Lease is currently vested in the Respondent and his wife.

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2. The Tribunal issued Directions on 3rd January 2014. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal Hearing. Neither party has objected to this procedure. In accordance with the Directions, the Respondent has served a written statement of his case together with supporting documentation and the Applicant has served its statement of case, including its reply to the Respondent's statement of case together with some supporting documentation.

Facts of the Case

3. The Property consists of a top floor flat in a converted Edwardian house in Tunbridge Wells, Kent. It is understood that the Respondent and his wife acquired the leasehold interest in the Property on 28th May 2010. The vendor was Mr Simon Clifford who has made the Application to the Tribunal on behalf of the freeholder company.

The Applicant's Case

4. The Applicant claims that the Respondent has converted the Property from a one bedroom flat into two studio flats without the consent of the Applicant. Furthermore, the Applicant claims that the Respondent has altered the common parts and drainage to the flats without the consent of the Applicant. The Applicant claims that these actions are a breach of clauses 3(c) and 3(g) of the Lease and clause 1 to the First Schedule of the Lease. The Applicant further notes that the breaches took place after the relevant planning permission had expired and without building regulation approval.

The Respondent's Case

5. The Respondent claims that he and his wife purchased the Property on the understanding that it was to be sold with the benefit of planning permission to convert the one bedroomed flat into two units together with an extension of the Lease to 125 years. The Respondent has provided evidence of the notification of offer and the memorandum of sale from the estate agents, Andrews, to support his case. The Respondent has provided further evidence in his bundle from the vendor's solicitors, Dennis Reed & Co, that the vendor, Mr Clifford, was in agreement with the lease extension and the split of the one flat into two units.

6. The Respondent claims that he began the building works within the planning permission timescale and that Mr Clifford and the managing agent, Dion Bailey, were both fully aware of the works being carried out, having received plans and drawings from the Respondent throughout the process. The Respondent, therefore, has confirmed to the Tribunal that the alleged alterations have taken place to the Property but does not admit that there have been any breaches of the Lease.

The Tribunal's Decision

7. The Tribunal has considered all of the evidence before it, including the written statements of both parties and supporting documents and the relevant terms of the Lease. This is an unfortunate case where it appears that the Respondent may have been led by Mr Clifford and possibly others to believe that the conversion of the one bedroom flat into two studios and the additional work to the common parts and drainage were acceptable to all concerned. However, for whatever reason, and this is not clear from the papers, the parties never reached a formal agreement and the Property was transferred on 28th May 2010 as a one bedroom flat without the formal consent of the Applicant as freeholder to the proposed alterations.

8. The alterations were then carried out by the Respondent and the Tribunal, therefore, finds that there have been technical breaches by the Respondent of the following provisions of the Lease:

Clause 3(c) "Not to make any structural alteration or structural addition to the Flat or erect any new building thereon.....without the previous consent in writing of the Lessors"

Clause 3(g) "Not to assign underlet, charge share or part with possession of part only of the Flat.....without the previous consent in writing of the Lessor, such consent not to be unreasonably withheld".

Paragraph 1 to the First Schedule " Not to use the Flat and not to permit the same to be used for any purpose whatsoever other than as a private dwellinghouse in the occupation of one family only..."

9. The Tribunal therefore finds in favour of the Applicant but is prepared to accept, on the balance of probabilities, that there was no deliberate intention by the Respondent to breach the Lease. Furthermore, it is unclear whether or not the Respondent was at any point advised by his Solicitor to seek the consent of the Applicant, as freeholder, prior to commencing any alterations to the Property.

10. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

11. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

12. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S. Lal LLM.....
