



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

Case Reference : **LON/00AU/LBC/2013/091**

Property : **Basement and Ground Floor Flat,
13 Compton Terrace, London N1
2UN**

Applicant : **13 Compton Terrace Limited**

Representative : **Brethertons LLP**

Respondents : **Teresa Helen Wells (1)
Daniel James Holliday (2)**

Representative : **None**

Type of Application : **For the determination of an alleged
breach of covenant**

Tribunal Members : **Judge O'Sullivan**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **6 January 2014**

DECISION

Decision of the tribunal

The Tribunal determines that there has been a breach of clause 3.1(5) of the basement lease and accordingly a breach of clause 4 of the Lease.

The application

1. The Applicant seeks a determination pursuant to s. 168(4) of the Commonhold and Leasehold Reform Act 2002 that the respondent tenants are in breach of covenants contained in the lease.
2. Directions were made dated 8 November 2013 which set out the steps to be taken by the parties and provided for this matter to be considered by way of a paper determination, that is, without the presence of the parties.
3. The Respondents have not complied with the directions. By a letter dated 2 December 2013 they informed the tribunal that they had been in negotiations with the Applicant in relation to this matter and were in the process of agreeing a retrospective licence for alterations. The Applicant has however not requested that the application be withdrawn and in such circumstances the tribunal will proceed with its determination.

The Applicant's case

4. The Applicant set out its case in a statement of case attached to the application. The lease of the property is dated 13 February 2004 and was made between (1) 13 Compton Terrace Limited and (2) Teresa Helen Wells and Dennis Robert Hastings (the "Lease"). It combines two previous leases of the basement flat and the ground floor flat respectively. Pursuant to clause 4 of the Lease the Respondents covenanted;

"SAVE as hereby modified this Lease is made upon the same terms and subject to the same covenants conditions and stipulations in all respects as those contained n the leases save as modified hereby and shall be read and construed as if such covenants conditions and provisions were herein set forth verbatim with such modifications only as are necessary to make the same applicable to this present demise instead of the demise created by the Leases."

5. The Applicant says that in 2013 it was brought to its attention that works had been carried out to the property. These works were commenced and completed in the basement area of the property. On 11 April 2013 the Applicant's solicitors wrote to the Respondents in

relation to those works and on 12 April 2013 the First Respondent confirmed in a telephone conversation that those works had been done.

6. The Applicant relies on a surveyors report dated September 2013. It followed a site inspection on 30 July 2013. This confirmed the works carried out and made recommendations as to the form of licence required. The works carried out were identified as the partial in-fill of the basement level rear courtyard to contain relocated bedroom 3 and the creation of a new ensuite bathroom and built-in storage area.
7. The Applicant freehold company asks for a determination that the lessees of the property are in breach of the following covenant in the basement lease:

Clause 3.1(5) : "not to make or suffer to be made any structural alterations or structural additions to the demised premises or any part thereof or remove any of the Lessor's fixtures and fittings without the previous consent in writing of the Lessor which consent shall not be unreasonably withheld."

The Respondents' case

8. The Respondents have not filed any statement of case. It appears however that they accept that the works complained of have been carried out as they have entered into negotiations for the grant of a retrospective licence for alterations.

The Law

9. Section 168(4) provides that;

"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 covenant or condition in the lease has occurred."

The Tribunal's decision

1. The Tribunal determines that there has been a breach of the covenant 3.1(5) of the Basement Lease and a breach of clause 4 of the Lease.
2. The Tribunal notes that the property is subject to a charge to Barclays Bank Plc dated 24 June 2010. The Tribunal directs that a copy of this determination is sent to Barclays Bank within 14 days of the date of this decision.

Name: S O'Sullivan

Date: 6 January 2014

