



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

Case Reference : **LON/00BK/LBC/2019/0036**

Property : **Flat 38C, 36-40 Randolph Avenue
London W9 1BE**

Applicant : **38 Randolph Avenue Ltd (Landlord)**

Representative : **Mr R Eshraghi**

Respondent : **Mr A Al-Saraj (Tenant)**

Representative : **Mr J Al-Saraj**

Type of Application : **Breach of covenant**

Tribunal Members : **Judge F J Silverman Dip Fr LLM
Mr P Roberts Dip Arch RIBA**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR
03 February 2020**

Date of Decision : **07 February 2020**

DECISION

Decision of the Tribunal

The Tribunal determines that the Respondent Tenant is in breach of covenant in relation to Clauses 2(12)(2), 2(6), 2(7), 2(8), and 2(10)(3) of the lease.

Reasons

1 The Applicant landlord sought a determination from the Tribunal that the Respondent tenant was and remains in breach of covenants of his lease. Directions were issued by the Tribunal on 23 May, 8 August, and 5 September 2019 as varied on 8 November, 21 November and 3 December 2019.

2 The matter was heard by a Tribunal sitting in London on 02 February 2020 at which the Applicant was represented by Mr R Eshraghi and the Respondent by Mr J Al-Saraj. Page references below refer to pages in the Applicant's hearing bundle. The Respondent did not file a bundle nor did he file any witness statements in support of his case.

3 The Applicant landlord is the freeholder of the building known as 36- 40 Randolph Avenue London W9 1BE (the building) of which Flat 38C (the property) occupies the 3rd floor. The building, having been converted from three terraced houses contains eleven flats in total spread over the basement, ground floor and four upper floors.

4 The Respondent is the tenant of the property.

5 The lease under which the Respondent holds the property is dated the 30 November 1983 (page 105) originally made between the Church Commissioners for England (1) 38 Randolph Avenue Ltd (2) and Richard Simon Randolph and Phillipa Elizabeth Randolph (3).

6 The Tribunal was not invited to inspect the property and did not do so considering that an inspection was not needed in order properly to understand the issues in the case and that to do so would not be proportionate.

7 The Applicant made a number of substantive allegations of breach of covenant against the Respondent which are dealt with in turn below. The Respondent did not dispute the wording of the relevant clauses in the lease nor, in essence, the factual situations on which the Applicant relies. For that reason it has not been considered necessary in this document to set out the full wording of each of the covenants in the lease. The relevant number of the lease clauses is referred to in the context of the discussion below of each of the alleged breaches.

8 The first allegation made by the Applicant was that the Respondent is in breach of Clause 2(12)(2)) (page 131) in that he had failed to maintain carpet on the floors of the property as required by the clause. The Respondent conceded that this was the case but stated that other flats had also installed hard floor surfaces and that the tiles in the property had been present when he acquired the property. The factual situation remains however that the lease covenant requires the floors to be carpeted and they are not. This therefore is a breach of the covenant. The suggestion by the Respondent that other flats in the building had also had their carpets removed is not relevant to this application.

9 The Applicant alleged that the weight of the tiles on the floor of the property caused the floors to be overloaded in breach of clause 2(12)(3). No substantive evidence was produced by the Applicant in support of this allegation which the Tribunal therefore finds unproven. Similarly, the Tribunal did not consider that the Applicant produced sufficient evidence to sustain the allegations under Clause 2(18) relating to damage to the common parts through removal of the chimney breast flues or under Clause 2 (17) which concerned obtaining the requisite consents under planning legislation.

10 The Applicant alleged that the Respondent was in breach of clause 2(6) of the lease which clause prohibited alterations to the structure of the property without the landlord's consent. In the instant case the load bearing wall between the kitchen and living room had been removed as had a number of chimney breasts. The Applicant alleged that five chimney breasts had been removed and left unsupported. The Respondent admitted that he had removed one but conceded that other chimney breasts which are shown in the plan of the property on page 227 were no longer in place.

11 An allegation by the Applicant that a further breach of this covenant had occurred by the Respondent shaving wood from the floor joists and cutting several centimetres from their depth was denied by the Respondent. Since the floors have now been re-laid an inspection of the property by the Tribunal was unlikely to assist. Despite the evidence of Ms Eshraghi, a lay witness, the photographs of this item in the bundle were inconclusive (page 219-224) and the Tribunal does not consider that sufficient evidence exists to be confident that a breach of covenant had taken place in relation to the floor joists.

12 The Respondent maintained that the Applicant had at all times been aware of the renovations being carried out by the Respondent and that the Respondent had applied for a licence to do these works. The Respondent accepted that they had never obtained a licence from the Applicant but had nevertheless continued with the works.

13 In respect of breach of clause 2(6) therefore, the Tribunal finds that this has been broken in respect of the unauthorised removal of a load bearing wall and at least one chimney breast.

14 The Applicant's assertions that these breaches, together with a confused allegation about the placing of a beam by the Respondents outside their flat, also constituted a breach of clause 2(18) (not obstructing common parts) is, on the

evidence presented to the Tribunal, somewhat tenuous and not accepted by the Tribunal.

15 In relation to the chimney breast removal and alleged damage to joists the Applicant also asserted that there was a breach of clause 2(7) of the lease (waste). In so far as there has been a breach of clause 2(6) (ie in respect of the chimney breast) the wording of clause 2(7) : ‘not to... cut maim or injure any roof wall or ceiling within or enclosing the demised premises...’ would appear also to be broken and the Tribunal declares that to be the case.

16 Clause 2(8) of the lease requires the Respondent tenant to allow the Applicant landlord entry to the demised premises on notice. In the present case the Applicant requested entry to inspect and access was denied (page 198). This is a clear breach of the clause. The Respondent’s reference to a court order is factually incorrect. The proceedings referred to in the Respondent’s email on page 198 were a Directions hearing before the Tribunal and rights of entry were not within the Tribunal’s jurisdiction at that hearing.

17 The Applicant’s final allegation relates to clause 2.10(3) where it was alleged that the Respondent had sub-let the property without consent. Pages 310-314 show rental advertisements for the flat with colour photographs showing the open plan layout (removed kitchen wall and chimney breast) and hard flooring. The Respondent said that the tenants left some days previously, and that the flat had been let for a period of four months. They conceded that the advertisements on pages 310-314 did relate to the property, they had applied to the Applicant for permission to sub-let and it had been refused. They had proceeded to sub-let without consent. This is patently a breach of clause 2.10(3).

18 Clause 2.10(3) contains the usual proviso that the landlord’s consent is not to be unreasonably withheld, any arguments about the unreasonableness of consent are matters for the county court.

19 In the light of the above, the Tribunal has little option but to find that the Respondent’s breaches of covenant are breaches of his lease.

20 This does not however preclude him from seeking relief against forfeiture in the event of such action being taken by the Applicant.

21 The Law

Commonhold and Leasehold Reform Act 2002 168

No forfeiture notice before determination of breach

(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) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(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.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

Name: Judge Frances Silverman
as Chairman **Date:** 07 February 2020

Note:
Appeals

1. 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.

2. 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.

3. 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.

4. 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.