



**Residential
Property**
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AZ/LBC/2008/0024

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND
LEASEHOLD ACT 2002**

Applicant: Consultants in Care Ltd

Respondent: Craig Lee Powell

Premises: 18A Queensthorpe Road, London SE26 4PH

Date of Application: 27 May 2008

Date of Paper Determination: 28 August 2008

**Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA
Mr R A Potter FRICS
Ms S Wilby**

Date of Tribunal's Decision: 9 September 2008

18A QUEENSTHORPE ROAD, LONDON, SE26 4PH

BACKGROUND

1. This was an application dated 23 May 2008 by the Lessor of the subject property for the determination that a breach of a covenant or condition in the lease had occurred, pursuant to s 168(4) of the Commonhold and Leasehold Act 2002 ("the Act"). Following a Pre-Trial Review on 25 June 2008 (which neither party attended) the Leasehold Valuation Tribunal issued Directions setting the case down for hearing on 26 August 2008, provided such a hearing was requested. No such request was received.

2. The Leasehold Valuation Tribunal having then, with the presumed consent of the parties, set the case down for determination on the paper track without an oral hearing, duly considered the matter on 28 August 2008 on the basis of the papers in the file which comprised

- the Lease dated 23 August 1982 between Eaglemanor Limited and Adonis John Christofinis, of which the parties are assignees
- the Statement of Ron Flint on behalf of the Applicant
- correspondence between the parties
- estate agents' particulars of sale, both on sale to the Applicant and of the proposed sale of the new 2 bedroom flat offered on the market by the Respondent
- The Land Registry official copy of the register showing the leasehold title to the property in the name of the Respondent
- correspondence between the parties' solicitors and the Tribunal, including notice of a separate claim by a third party against the Respondent in relation to an alleged share of the leasehold interest which is not pertinent to the present proceedings

The Respondent tendered no documentation having indicated in correspondence to the Tribunal through his solicitors that he was unable to prepare a bundle as directed by the Tribunal's Directions.

3. The following issues to be determined were identified as set out in the application:

- Breach of Clause 3(f) which reads as follows:
“Not to make any structural alterations or structural additions to the Flat nor to erect any new buildings thereon or remove any of the Landlord’s fixtures without the previous consent in writing of the Lessor such consent not to be unreasonably withheld”.

- Breach of Clause 1 of the First Schedule which reads as follows:
“Not to use the Flat nor permit the same to be used for any purpose whatsoever other than as a private dwelling house in the occupation of one family only nor for any purpose from which a nuisance can arise to the owners, lessees and occupiers of the flat comprised in the Mansion nor to the neighbourhood nor for any illegal or immoral purpose”.

The Applicant alleged that the Respondent had breached the above clauses by converting the flat, previously situated on two floors, into two separate flats by carrying out structural alterations. The Respondent, having carried out such alterations, had then placed one of the two flats on the market for sale as a leasehold flat despite its not having its own Lease.

4. The property is a four to five bed maisonette in a period building with significant period features, located in a residential street in the suburb of Sydenham.

THE PAPER TRACK DETERMINATION

5. At the paper track determination the Tribunal perused the statement of Ron Flint on behalf of the Applicant and the additional papers in the Applicant’s hearing bundle.

THE APPLICANT’S CASE

6. For the Applicant Company Mr Flint set out (in a detailed statement dated 17 July 2008) its ownership of the freehold of the building, which comprises 18 Queensthorpe Road (containing a basement and a ground floor flat) and 18A Queensthorpe Road, the subject property comprising the two upper floors, and the circumstances of the sale of the subject property to the Respondent. His statement recounted how the Respondent, when purchasing the subject property, had specifically asked Mr Flint if it would be possible to convert the upper floors maisonette into two flats, to which he had replied that this could *not* be done under the present Lease, but that if the Respondent cared to purchase the freehold and there were no objections from others he would then be able to do as he wished. Mr Flint was subsequently advised that, following discussions with his solicitors, the Respondent had decided not to purchase the freehold. He had therefore assumed that the suggested conversion would not go ahead and the purchase of the subject property duly completed with the Respondent in January 2007. However in February 2008 one of the other lessees in the building informed Mr Flint that the conversion had taken place and that one of the resulting 2 flats was advertised for sale.

7. Mr Flint's own inspection of the premises, which he arranged through the Respondent's instructed estate agents by posing as a potential purchaser, revealed that much of the period staircase banisters had been removed to form a dividing wall between the first floor and the remainder of the property; in the new flat the kitchen had been converted into a bedroom; the smaller of two bedrooms had become the kitchen; parts of the bedroom and sitting room had been used to provide an additional bathroom; the hall had been altered to provide a separate self contained entrance to the new flat. There was a For Sale board outside the property. Mr Flint noted that much of the work was of very poor quality and he stated that he was doubtful whether it would even comply with Building Regulations. No attempt had been made to provide separate utility supplies to the new flat. The estate agent was (unsurprisingly) unable to provide details of the Lease.

8. Following this visit, Mr Flint had revealed his connection with the subject property, pointed out that the works had been carried out without the freeholder's consent, indicated that in the circumstances the new flat would not have its own Lease and invited the estate agent to cease marketing it. He also wrote to the Respondent's

conveyancing solicitors to inform them of the breaches of the Lease and to require reinstatement of the original layout within 30 days. However the Respondent had then contacted him by email requesting that Mr Flint contact him, to which he had immediately replied by telephone, whereupon he had been told by the Respondent that there was planning permission from the local authority, Lewisham Council, and that the Respondent had attempted to contact him in advance of the work but had been unsuccessful. The Respondent had claimed to have lost Mr Flint's contact details, to have changed solicitors, but admitted that he had not apparently sought contact details for Mr Flint from either the estate agents who acted in the sale to the Respondent or the Land Registry, and nor from either of the other lessees in the building. Mr Flint had therefore concluded that no attempts had in fact been made to contact him prior to the commencement of the works, and that he stated was not surprised to hear from the Respondent in connection with property ownership and use and that the conversion was the Respondent's first attempt at property development and that he was not conversant with the associated legal formalities. He had asked Mr Flint to correspond with his new solicitors in this respect.

9. Mr Flint stated that he had then attempted to correspond with the Respondent's new solicitor, a Mr Tom Flatou, but never received any acknowledgement or reply. He had however received an acknowledgement from the original conveyancing solicitors, Willmetts & Co, to say that they would revert to their client, but he had since heard nothing further. Following this, Mr Flint stated that he had had a lengthy email correspondence (provided in the Applicant's bundle) and had engaged in various telephone calls with the Respondent, in order to explore how the situation could best be rectified, and had requested copies of the alleged planning permission, which he had, however, never received despite reassurances that it would be forthcoming. Having on 18 February 2008 originally given the Respondent 30 days to rectify the illegal conversion with the results mentioned above, Mr Flint had then on 14 April 2008 given him notice of instructions to his solicitors to commence legal proceedings for forfeiture of the Lease. On the following day he had received a reply to the effect that the Respondent intended to commence proceedings under s 610 of the Housing Act 1985 (for determination of an application to vary clause 1 of the First Schedule, which restricts sub-division of the subject property) but to the date of his statement (17 July 2008, some 3 months after the Respondent claimed to be making

such an application) he had received no such proceedings, despite the Respondent's apparently having made the same claim to the Tribunal.

10. In summary, Mr Flint stated that he believed that the Respondent's breaches of the Lease were blatant and intentional, and that they need never have occurred if the Respondent had purchased the freehold when it was offered, or alternatively taken one of the other various options offered to him to resolve the matter, such as consent for the works together with the grant of a new Lease or repurchase of the unconverted flat with regularisation of the position of the converted flat, or had not attempted to get involved in a market of which he clearly has no knowledge. He added that he believed that the poor quality of the work and the removal of many period features had seriously devalued the Company's valuable freehold asset, and that it was for this reason that he wished to forfeit the Respondent's Lease since he believed that the property could not be returned to its original condition and that the conversion into two flats could only be achieved by someone with much greater knowledge and financial capability than the Respondent appeared to have..

THE RESPONDENT'S CASE

11. No representations were received from the Respondent.

INSPECTION

12. It was not thought that an inspection would be helpful. The Tribunal had the benefit of seeing the estate agents' particulars, both on sale to the Respondent indicating the original condition and when the new 2 bed conversion flat was offered for sale, and was able to be satisfied from these particulars that the works had indeed taken place and that the works were structural and such as should have had the freeholder's prior consent.

DECISION

15. It is clear to the Tribunal that there has been breach of the terms of the Lease as set out in paragraph 3 above. The Respondent has not provided any written

representations but it is clear from the email correspondence in the Applicant's bundle that he did undertake the structural works requiring consent pursuant to clause 3(f) in full knowledge that he needed consent for them, and in view of the absolute prohibition in paragraph 1 of the First Schedule that a new Lease would also be required for the newly converted flat which would otherwise have no Lease of its own (and thus no separate legal existence). It also appears, from the persistent failure of the Respondent to produce the alleged permission and drawings, that there is unlikely to be planning permission for the conversion and from Mr Flint's description of the quality of the work, that it is unlikely that there is Building Regulations approval either. It is further clear that the restoration of missing or vandalised period detail, if not impossible to restore, would in any event be costly to reinstate. It is unclear how the Respondent hoped to obtain an order from the County Court under s 610 of the Landlord and Tenant Act 1985 in the circumstances of this case.

OTHER ISSUES

16. There is no application for payment by the Respondent of the Applicant's fees for application to and hearing by the Tribunal (since no fees are currently charged for this application) or for costs pursuant to Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). However in the circumstances that the Applicant Company should never have had to incur the costs of application and determination the Applicant may wish to make such a application under the 2002 Act. The Tribunal does have a limited power pursuant to paragraph 10 of Schedule 12 of the Act to award costs up to a statutory maximum of £500 where a party has acted vexatiously, abusively or otherwise unreasonably in connection with the proceedings, and does in this instance consider that this power might well be exercised since the Respondent clearly had no reasonable belief in his right to carry out the works in breach of the Lease and should have admitted as much as soon as the case came to the Tribunal rather than persisting in a claim to be making a County Court application for relief from forfeiture which had no reasonable prospect of success. Should the Applicant Company therefore make an application for costs, the Tribunal will copy such application to the Respondent for his response, if any, and upon receipt of any such response the Tribunal will consider whether such an order should be made.

19. The Tribunal therefore determines that the Respondent has breached the covenants in Clause 3(f) and paragraph 1 of the First Schedule to the Lease in carrying out structural works without the necessary consent and in using or permitting the Flat to be used other than as a private dwelling house for one family.

Chairman..... *F. L. Burt*

Date..... *9. 9. 08*