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**LEASEHOLD VALUATION TRIBUNAL  
SOUTHERN PANEL**

**Case Reference: CHI/00ML/LBC/2013/0012**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2003**

**Applicant: 6 PALMEIRA SQUARE (HOVE) LIMITED**

**Respondent: TADAS GRIGAS**

**Property: FLAT 5A  
6 PALMEIRA SQUARE  
HOVE  
EAST SUSSEX BN3 2JA**

**Date of Hearing 1<sup>ST</sup> MAY 2013**

**Leasehold Valuation Tribunal**

**Mr D. R. Whitney LLB(Hons)  
Mr N. I. Robinson FRICS**

## **Introduction**

1. This matter concerns an application by the Freeholder of 6 Palmeira Square, Hove, East Sussex BN3 2JA (“the Property”) that the Respondent, who is the Leaseholder of Flat 5A (“the Flat”) at the Property, has breached the terms of his lease. The Respondent is a leaseholder under a lease dated 28<sup>th</sup> September 2010.
2. The Applicant made application dated 12<sup>th</sup> February 2013. The application alleges various breaches of the lease by the Respondent.
3. The Tribunal issued Directions on 18<sup>th</sup> February 2013. The Applicant complied with the Directions. No written statement contesting the application was received from the Respondent save for a letter dated 23<sup>rd</sup> April 2013 acknowledging papers and informing the Tribunal office that he would arrange for access to be provided to his flat for the purpose of inspection by the Tribunal.

## **The Law**

4. The relevant law for the Tribunal to apply is set out in section 168 of the Commonhold and Leasehold Reform Act 2002 as set out below:

Section 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

## **THE LEASE**

5. The lease was granted on 28<sup>th</sup> September 2010. It was granted by a mortgagee in possession. It was for a term of 120 years from 25 March 1977 and was said to be a lease of a studio flat known as Flat 5A at the Property. All references to clause numbers are to clauses in this lease a copy of which was supplied to the Tribunal as part of the Applicants bundle.

## **INSPECTION**

6. Prior to the hearing the Tribunal inspected the property. Mr Cawthorne-Ringer (a member of the Applicant company and also a leaseholder) opened the communal door for the Tribunal and contacted the tenant of Flat 5 to arrange access to this flat. He did not stay for the inspection. Ms Justine Grigaite who introduced herself as the Respondents sister said she was there to provide access to flat 5A.
7. The Property is a mid terrace Regency building which the tribunal believes to be Grade II listed. The exterior appeared to be in a reasonable state of repair from a visual inspection. The internal communal areas were in a poor state of

repair. Part of the staircase was carpeted but the carpeting was frayed and in a dangerous state.

8. The Tribunal were allowed into Flat 5 by the residential tenant of the same. The Tribunal were able to access the metal fire escape to the rear of this property. From this they could see what appeared to be external pipeworks which had been recently been undertaken, including an unmade good hole through the rear wall of the building around one part of the pipework.
9. The Tribunal then inspected Flat 5A in the presence of Ms. Grigaite. The flat appeared to consist of a living room/kitchen area. Off this was a shower room and toilet and then via a pull down loft ladder it was possible to access a loft which had two Velux window lights and was being used as a bedroom. This loft appeared to extend partly over Flat 5 and also the communal entrance and stairway.
10. Ms. Grigaite advised that the flat had always had the facilities that the Tribunal was shown from when her brother purchased the same. She told the Tribunal that her brother had only upgraded the appliances. She explained that her brother had tried to put in a proper staircase from the living room to the loft but the local authority objected.
11. Ms. Grigaite tried to hand the Tribunal a bundle of documents which she said referred to breaches of the lease by other leaseholders. The Tribunal refused to accept the same and advised her to get her brother to take separate advice and for her to speak to his solicitor.

## **DECISION**

12. The Tribunal noted that at the date of the application whilst the Applicant had made application to be registered as the owner of the freehold following on from a collective enfranchisement this had not been completed. By the date of the hearing the application to the Land registry had been completed and backdated to the 2<sup>nd</sup> March 2013. The Tribunal were satisfied that at all material times the Applicants were entitled to make and pursue such an application.
13. In reaching its decision the Tribunal had regard to the inspection referred to above and the documents filed by the Applicant. In particular the statement of

case dated 12<sup>th</sup> February 2013 and the witness statement in support of Guity Saadat.

14. Many breaches were complained of. The Tribunal noted that the property had been leased as a flat and clearly the separation of this and flat 5 had taken place prior to the grant of the lease. This separation to create the flat could not in this Tribunal's opinion be a breach of the lease which granted the same.
15. The Tribunal was mindful that it needed to be satisfied on a balance of probabilities that there was a breach of the lease.
16. The Tribunal determined that the following were breaches of the lease:
  - Use of the roof space by the Respondent
  - Unlawful alterations to the premises by way of external pipeworks
  - Use of the property in breach of Planning regulations
17. It was clear to the tribunal upon inspection that the Respondent (or his servant, agent, licensee or tenant) was using the roof space as part of the demised premises. It was clearly being used as a bedroom by the current occupant of the flat. The Flat is demised in the First Schedule of the Lease and this specifically excludes "the roof and the roof space". The Tribunal is satisfied that roof space is being used in breach of what is demised.
18. The Tribunal saw the external pipework coming out of Flat 5A at the rear of the property. From the Tribunal's inspection they are of the opinion this pipework had been recently undertaken. This was supported by the unchallenged witness statement of Ms Saadat. In the Tribunal's judgement this is a breach of clause 5-23 of the Fourth Schedule of the Lease. This clause prohibits external alterations to the Property.
19. The Tribunal noted that clause 7.1 of the lease specifically excluded any warranty on the part of the Landlord under the lease that the Flat may be lawfully used under the Planning Acts and rules and regulations. What was clear from the bundle was that the local authority had not granted permission for the property to be used as a flat. In particular a Notice of Refusal of Permission to use the flat as "one bed studio flat" dated 29<sup>th</sup> August 2012 was in the bundle. Other refusals were also attached as well as evidence that the Respondent had been prosecuted for a breach of Planning laws in connection with this flat.

20. The Tribunal was satisfied that the Respondent was in breach of clause 5-28 of the Fourth Schedule which required the respondent to comply with all planning requirements.
21. The Applicants also appeared to assert that there were other breaches. The Tribunal would have found it useful if the Applicant in their statement of case had set out a clear list of what breaches by reference to clauses of the lease they were inviting the Tribunal to make.
22. The Tribunal was not satisfied that the following were breaches of the lease:
- Installation of velux windows: whilst it was clear that under the Respondents lease he was not entitled to install any windows in the roof it was unclear to the Tribunal when these windows were installed. The Tribunal could not be satisfied having inspected that these windows were not installed prior to the grant of the lease.
  - The Tribunal had no evidence that cabling had been installed by the respondent in breach of the lease. Whilst the Tribunal noted the exhibit to Ms. Saadats statement again it was not clear as to whether the offending works were undertaken prior to completion of the lease.
  - Reference is made to other alterations such as to the entranceway. Again it was unclear to the Tribunal whether or not such works had been undertaken prior to the completion of the lease.
23. The Tribunal finds as set out above that the Respondent is in breach of the terms of the lease.

Signed

David R. Whitney LLB (Hons)

Lawyer Chair

2<sup>nd</sup> May 2013