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**HM Courts
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**Residential
Property
TRIBUNAL SERVICE**

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00BG/LSC/2013/0038

Premises: FLATS 5,11,18,19,20 ROCHELLE COURT,
COMMERCIAL ROAD, LONDON E1 0HF

Applicant(s): BOYD AND HEFFRON LTD

Representative: MR S TYDEMAN, PROPERTY MANAGER

Respondent(s): CHALFORDS LTD

Representative: MR S TUCKER, BLR PROPERTY
MANAGEMENT LTD

Date of hearing: 11 APRIL 2013

**Appearance for
Applicant(s):** MR S TYDEMAN

**Appearance for
Respondent(s):** MR S TUCKER

**Leasehold Valuation
Tribunal:** (1) MS L SMITH (LEGAL CHAIR)
(2) MR P ROBERTS (PROFESSIONAL
MEMBER) Dip Arch, RICA

Date of decision: 7 MAY 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the Respondent is limited to recovering the sum of the greater of £50 multiplied by the number of dwellings in the building or £1000 from the Applicant in respect of the service charges for the year 2003/4 in relation to each of Flats 18,19 and 20 by reason of the application of s20 Landlord and Tenant Act 1985 (prior to its amendment by s151 of the Commonhold and Leasehold Reform Act 2002)
- (2) The Tribunal determines that it has no jurisdiction to make an order under s20ZA Landlord and Tenant Act 1985 in relation to the major works
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by it in respect of the service charge year 2003/4 in relation to Flats 18,19 and 20 Rochelle Court only.
2. The original application sought also a determination in relation to service charges for the year 2006 but that is no longer in issue.
3. The original application sought a determination in relation also to Flats 5 and 11 Rochelle Court. Those are not affected by the issue in relation to the service charge for the years 2003/4 and accordingly no determination is required in relation to those flats.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant was represented by Mr Tydeman at the hearing and the Respondent was represented by Mr Tucker.
6. At the start of the hearing, the parties confirmed that the application in relation to the service charge year 2006 was no longer pursued. They also confirmed that the issue between the parties in relation to the service charge year 2003/4 related only to Flats 18,19 and 20 Rochelle Court.

The background

7. The properties which are the subject of this application are numbers 18,19 and 20 which are 3 flats within a block of flats (hereafter referred to as "the properties").

8. Neither party requested an inspection and the Tribunal did not consider that one was necessary, given that the issue did not relate to the quality of the works carried out and those were carried out many years ago.
9. The Applicant holds a long lease of the properties which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge ("the Lease"). The specific provisions of the Lease are not relevant to the issue which the Tribunal has to determine but are referred to below where relevant.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the service charge year 2003/4 relating to major works which are claimed in the sum of £5077.55 for each of the properties.
 - (ii) In the event that the Tribunal determined that the Respondent had failed to comply with s20 of the 1985 Act, the Respondent sought an order under s20ZA of the 1985 Act (insofar as the Tribunal had jurisdiction to make such an order) dispensing with compliance.
11. Having heard submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Issue 1: whether the Respondent had complied with s20 of the 1985 Act and if not the limitation of the Applicant's liability for the service charge for the year 2003/4

12. The Respondent claims the sum of £5077.55 for each of the properties in relation to major works claimed in the service charge year 2003/4. The Applicant claims that the Respondent did not properly serve notices under s20 of the 1985 Act and is accordingly debarred from claiming anything above the statutory maximum under the 1985 Act.

The Tribunal's decision

13. The Tribunal determines that the Respondent did fail to comply with s20 of the 1985 Act in relation to service of notices and accordingly that the amount payable in respect of the major works is limited to the statutory maximum which is to be determined under section 20 of the 1985 Act as it stood prior to the amendment by s151 of the Commonhold and Leasehold Reform Act 2002 as being the greater of £50 multiplied by the number of dwellings and £1000. That statutory maximum applies to the service charge for each of the properties.

Reasons for the Tribunal's decision

14. Clause 2(f)(i) of the Lease provides for the Tenant to pay a proportion of the service charges. That proportion is stated at Part 7 of the Schedule to the Lease to be one twentieth. Clauses 2(f)(ii) and 2(f)(iii) provide for the manner

in which the service charge is to be calculated. By Clause 2(k) of the Lease, the Tenant covenants to notify the Lessor of any "assignment assent transfer charge underlease or other devolution of the Flat", to produce a certified copy of the relevant documentation and to pay a registration fee.

15. The Applicant acquired the properties at various dates between 18 June and 17 July 2003. It also acquired Flats 5 and 11 on 3 December 2004 and 14 March 2005 respectively but since those dates post-date the service of notices under s20 of the 1985 Act, no issue arises in relation to compliance with the s20 procedures.
16. The issue relates to major works which were carried out to Rochelle Court at some time in 2004. At the time of the s20 consultation procedure, the Respondent's agents were Mandells. The Applicant's predecessor in title to the properties was Compstar Ltd in relation to flats 19 and 20 and Finespray Ltd in relation to flat 18.
17. It is fair to say that both the Applicant and Respondent were somewhat hampered in the presentation of their cases by the change of agent for the Respondent from that in place at the time of the s20 consultation procedure. However, their statements of case set out with clarity the factual background supported by such documents as they had been able to track down as to what had occurred in 2003.
18. On 18 July 2003, the Applicant wrote to Mandells asking that they change the billing and correspondence address for the properties "following completion of Flat 18". The heading on that letter refers to "Flat 18, 19 and 20 Rochelle Court". Also on 29 July 2003, the Applicant notified Mandells that it would be carrying out certain works to the flat and asked Mandells to notify the leaseholder of the adjoining flat that there might be some disturbance.
19. It is clear from the above that Mandells were at the very least on notice that the lessee of the 3 properties had changed by 18 July 2003 at the latest. However, notwithstanding this, Ian Hyman who was surveyor for the major works, served notice under s20 of the 1985 Act on Compstar Ltd and Finespray Ltd, the Applicant's predecessors in title. The notices were copied to Mandells who, as property agents at the relevant time, would have been responsible for instructing the surveyor as to the identity of the lessees for service.
20. On 4 September 2003, Compstar Ltd wrote to the surveyor in response to the s20 notices, in relation to Flats 5 and 11 (which it still owned), objecting to the works on the basis that the surveyors were connected to the managing agent and that an independent survey should be carried out and an independent surveyor appointed. The Respondent rightly points out that the majority of the leaseholders of the flats (under the title "Owner Occupier Leaseholders") wrote on 15 December 2003 in response to the s20 consultation procedure confirming their agreement to the major works proposals. It is however clear

from that letter that issues had been raised in correspondence before that date and that the consultation procedure was not entirely uncontentious.

21. On 16 September 2003, Compstar Ltd wrote to Mandells confirming that Flats 18, 19 and 20 Rochelle Court had been sold to the Applicant and noting that all future invoices or correspondence for those flats should be sent to the Applicant's address. It is common ground that, notwithstanding that notice, no attempt was made (even on a without prejudice basis) to send a copy of the s20 notices to the Applicant. Indeed, Mr Tydeman for the Applicant said that the first time that the Applicant had seen the s20 notices for the major works was when it had received the Respondent's statement of case in relation to this application. That was notwithstanding a chain of correspondence asking for copies from at the latest 2005.
22. The Respondent relies on the fact that it was not properly notified of the sale of the properties to the Applicant. The Applicant admits that its solicitors failed to give proper notice in accordance with clause 2(k) of the Lease until 24 September 2003. For some reason, the solicitors had sent the notice of transfer and registration fee to the vendor's solicitors rather than the lessor.
23. The nub of this issue therefore was whether the Respondent had complied with the s20 consultation procedure by, through its agents, serving notice to the Applicant's predecessor in title notwithstanding that its agents were on notice that the properties had been sold before the date of the notice. The Respondent contends that it was not obliged to recognise the transfer of ownership until proper notice was given in accordance with the Lease and that until that had been done any notices were properly served if given to the previous owner.
24. Section 20 of the 1985 Act provides only that notice shall be "given" to "the tenant". In the view of the Tribunal the issue of who is the tenant is a matter of fact. Whilst the tenant may have been in breach of its covenant to give notice of the transfer in accordance with clause 2(k) of the Lease, the Applicant was nonetheless the person entitled to the leasehold interest in the properties from the dates of purchase, all of which pre-dated the service of the s20 notices. In the view of the Tribunal, therefore, notice should have been served on the Applicant in respect of the properties. The letter from the Applicant to the Respondent's agent was sufficient notice of the change in identity of the lessee. Of course, if that letter had not been sent, the position would have been different since the agent could not be expected to give notice to someone whose identity was unknown to it. The fact is though that notice was given albeit not in accordance with the terms of the Lease.
25. A further issue arises though as to the amount which the Applicant is obliged to pay as the statutory maximum. The Applicant has indicated in its statement of case that it should be obliged to pay £250 per flat as the statutory maximum under s20 of the 1985 Act as amended by section 151 of the Commonhold and Leasehold Reform Act 2002.

26. Section 151 of the Commonhold and Leasehold Reform Act 2002 was not commenced in relation to the changes to the consultation requirements and limits until 31 October 2003. The Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings) (England) Order 2003 (SI 1986 of 2003) provides that section 151 should have no effect where the notices under s20 had been served prior to the commencement date. In such cases, the Service Charge (Estimates and Consultation) Order 1988 ("the 1988 Order") continues to apply.
27. The statutory maximum under the "old section 20" is provided by the 1988 Order to be the greater of £50 multiplied by the number of dwellings or £1000. The Tribunal was not told how many dwellings there are in Rochelle Court but it appears likely that there are 20 since the service charge contribution per flat is one-twentieth. As such, the amount which the Applicant has to pay per flat is £1000 in any event. In case the Tribunal has misunderstood the position in relation to numbers of dwellings however, the Tribunal has determined that the Applicant should pay the greater of £50 multiplied by the number of dwellings or £1000 per flat leaving the parties to calculate this for themselves.

Issue 2: order under s20ZA of the 1985 Act

28. In the event that the Tribunal determined (as it has) that the Respondent had failed to comply with the proper procedures under s20 of the 1985 Act, the Respondent sought an order under s20ZA dispensing with the requirements of s20 (although the Respondent fairly pointed out that it did not consider that the Tribunal had the jurisdiction to make one).

The Tribunal's decision

29. The Tribunal has no jurisdiction to make an order under s20ZA of the 1985 Act.

Reasons for the Tribunal's decision

30. The Respondent properly drew the Tribunal's attention to the fact that the consultation process for the major works pre-dated the changes made by s151 of the Commonhold Leasehold and Reform Act 2002 which had given jurisdiction to the Tribunal to determine whether an order should be made under s20ZA. Prior to that the jurisdiction to dispense with the consultation requirements was vested in the Court. Mr Tucker invited the Tribunal to make an order under s20ZA if it had jurisdiction to do so and the Tribunal did hear submissions about the effect of dispensation.
31. As noted at paragraph 26 above, section 151 has no effect in this case. Accordingly only the Court would have jurisdiction to dispense with the consultation requirements and the Tribunal has no jurisdiction to make the order sought.

Application under s.20C and refund of fees

32. In the application form and in its statement of case, the Applicant applied for an order under section 20C of the 1985. Taking into account the

determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with these proceedings before the Tribunal through the service charge.

Chairman:



Lesley Smith

Date:

7 May 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
- (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20 (unamended)

- (1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either -
- (a) complied with, or
 - (b) dispensed with by the court in accordance with subsection (9) and the amount payable shall be limited accordingly.
- (2) In subsection (1) "qualifying works" in relation to a service charge means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may

- be required under the terms of his lease to contribute the payment of such a charge
- (3) The limit is whichever is the greater of –
- (a) £50 or such other amount as may be prescribed by order of the Secretary of State, multiplied by the number of dwellings let to the tenants concerned; or
- (b) £1000 or such other sum as may be so prescribed¹
- (4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognized tenants' association are-
- (a) At least two estimates for the works shall be obtained, one of them from a person unconnected to the landlord.
- (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.
- (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.
- (d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).
- (e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.
- (9) In proceedings relating to a service charge the court may, if satisfied that the landlord acted reasonably, dispense with all or any of the relevant requirements.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,

¹ Amounts amended from £25 and £500 respectively by The Service Charge (Estimates and Consultation) Order 1988

- (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (e) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

- be required under the terms of his lease to contribute the payment of such a charge
- (3) The limit is whichever is the greater of –
- (a) £50 or such other amount as may be prescribed by order of the Secretary of State, multiplied by the number of dwellings let to the tenants concerned; or
- (b) £1000 or such other sum as may be so prescribed¹
- (4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognized tenants' association are-
- (a) At least two estimates for the works shall be obtained, one of them from a person unconnected to the landlord.
- (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.
- (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.
- (d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).
- (e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.
- (9) In proceedings relating to a service charge the court may, if satisfied that the landlord acted reasonably, dispense with all or any of the relevant requirements.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,

¹ Amounts amended from £25 and £500 respectively by The Service Charge (Estimates and Consultation) Order 1988

- (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (e) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.



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LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/OOBA/LBC/2013/0036

Premises: 4C Pelham Road, Wimbledon, London SW19
1SX

Applicant(s): Mrs Judith Katherine Willing

Respondent(s): Mr Thomas William Day

Date of Application: 26th March 2013

Date of Hearing: 16th April 2013

**Leasehold Valuation
Tribunal:** Mr A A Dutton – chair
Mr L Jarero, BSc FRICS
Mr A D Ring

Date of decision: 2nd May 2013

DECISION

The Tribunal determines that there has been no breach of covenant or condition of the lease and the application is dismissed.

REASONS

Background

1. On the 26th March 2013 the Applicant, Mrs Willing made an application to the Tribunal seeking an order that there had been a breach of covenant or condition of the lease of the premises at 4C Pelham Road, Wimbledon, London SW19 1SX (the property) by the Respondent Mr Day. The allegation of the breach was contained in the Applicant's statement dated 12th April 2013. Her case was based on the premise that there had in her view been various alterations made to the premises which had been carried out during the term without licence in writing from her. The alterations were as follows:
 1. The removal of the kitchen from one location to another.
 2. The alteration of a wall to accommodate the new kitchen.
 3. The installation of waste pipes from the kitchen running externally to the property.
 4. The removal of the boiler from its original position and its resiting.
 5. The cutting of two allegedly weight bearing walls to accommodate the boiler flue and a further allegation of a chimney breast being removed which was not in fact pursued.

The relevant section of the lease upon which Mrs Willing relied was to be found at clause 2(17) which states as follows:

(17) "Not at any time during the said term without the licence in writing of the lessor first obtained to erect or replace any addition building or erection on any part of the demised premises other than a shed for domestic purposes only and not without such licence as aforesaid to make any alteration in the plan or elevation of the maisonette building hereby demised or in any of the party walls or the principle or bearing walls of timbers thereof nor construct any gateway or opening in any of the fences bounding the demised premises."

It is this covenant that she alleges has been breached.

2. We were told that the original kitchen was brand new when sold to the first lessee, the cabinet doors being mahogany and the counter tops stainless steel. It was suggested by Mrs Willing that kept in good condition these items

would still be good today. It was alleged also that by altering the premises, by destroying the original kitchen there had been waste committed and a breach of duty owed to the Landlord. In paragraph six of her statement she said as follows: *"The Landlord cannot reasonably withhold consent and does not intend to do so but the Landlord is entitled to protect her interests by requiring reinstatement at the end of the lease as a condition of giving consent, and requiring the tenant to make payment for reasonable legal and surveyor services for the current consideration of these matters and the current loss to the Landlord."*

3. During the Hearing Mrs Willing, who had not provided any further written evidence alleged that the breach had occurred and that she wished to serve a Section 146 Notice. She considered that she was entitled to damages, legal expenses and reinstatement. Although she did not wish to seek forfeiture and indicated a willingness to consent to any perceived alterations, nonetheless she wished to pursue the matter to obtain a finding from us that a breach had occurred so that she could take further steps.
4. Her submission was that the moving of the kitchen to the room which on the plan had been designated "child bedroom/study" was an alteration as was the re-siting of the boiler and the flue and the creation of waste pipes to the side elevation of the property.
5. She told us that the original kitchen had been installed in 1980 and that she was, with her husband, the original Lessor who had converted the premises. It is clear that she took considerable pride in the property and could not understand why a subsequent tenant would have wanted to change the kitchen that she installed. She also suggested that there was a breach by the lessee of clause 2(8) of the lease which says as follows:

(8) *"From time to time at all times during the said term well and substantially to repair, uphold, support, cleanse, maintain drain, amend where necessary, rebuild and keep the demised premises and in particular the ceilings and floors of and in the demised premises and the joists or beams on which the said floors are laid and all new buildings which may at any time during the said term be erected on and all additions made to the demised premises and the fixtures therein and all walls and fences, sewers, drains, pathways, easements and appurtenances thereof with all necessary reparation, cleansing and amendments whatever provided always that the lessee shall not repair any joist or beam on which the said floors are laid without giving notice to the occupier of the ground floor maisonette ..."*
6. Her submission was that the kitchen units could not be changed without the consent of the Landlord. She made reference to the fact that kitchens in historic houses last for many many years and she saw no reason why the mahogany kitchen she had installed would not also last. She said there was no right in fact to change the kitchen units at any time during the term of the lease but instead that they should have been repaired. She did not accept

that repair could include replacement. She confirmed that she had not been into the flat for many years and had no idea when the changes had taken place. She did tell us, however, that she returned to the property perhaps on a yearly basis and it appears may have entered the flat with the agreement of Mr Day in December 2008 to collect ground rent.

7. Her submission was that the present leaseholder was responsible for the alleged breaches of the predecessor in title no matter when they occurred and no matter whether he had had notice or not of the said breaches. She accepted that Mr Day did not physically make the changes. She confirmed that she was proceeding with the claim notwithstanding that on the same day in an earlier Hearing she had agreed the terms of acquisition in relation an extension of the lease under the Leasehold Reform, Housing and Urban Development Act 1993 with Mr Day upon payment of a premium of £29,500.
8. Mr Day submitted a form of spread sheet showing the history of the property. He confirmed that the kitchen had been relocated before his purchase. He had acquired the property in 2003 and the change could have occurred some years before that. He did not think that the moving of the kitchen from one room to another constituted a change to the plan or elevation of the flat as provided for in the clause of the lease. He also pointed out that he believed the owner of the flat below had changed their layout but Mrs Willing had not thought it necessary to proceed against that person.
9. The allegation of the change to the wall to accommodate the kitchen was not as suggested. Mr Day told us that the position was that the doors to a cupboard had been moved, not a wall, so that they did not open into what had been designated a child's bedroom or study but instead into a lobby. The cupboard remained and was used to house the washing machine as it had done when he bought the flat in 2003.
10. Insofar as the waste pipes from the kitchen were concerned these run above the level of the flat floor and do not, it appears, cross into the area of demise of other flats and did in his view constitute a change to the plan or elevation.
11. Insofar as the boiler was concerned this change did take place during his occupancy in December of 2011. The existing boiler had reached the end of its life and having consulted with British Gas he was advised to install a new combi boiler but in a different position to meet building requirements which also required the flue to be re-sited. It was suggested by Mr Day that Mrs Willing had in fact visited the property whilst these works were in place and was fully aware of what was being undertaken and raised no issued. It was necessary for one internal wall to be cut through to allow the flue to exit via the bedroom and then through the exterior wall. The work had been done by British Gas to a high standard and the previous flue hole had been blocked.
12. Mrs Willing denied that she had visited the flat and did not recall ever seeing scaffolding in place, which was suggested by Mr Day had been the situation.

She relied on the plans attached to the lease which may have been prepared by her and which contained designations as to the rooms. For example on the first floor of the maisonette the use of the rooms are designated as a 'lounge', 'kitchen', 'hall', 'bedroom', 'child's bedroom or study'. On the floor above the rooms have been designated as 'storage', 'studio', 'bathroom' and what appears to be a separate WC. It was her view that the designation of the rooms was highly relevant. It was an important factor and defined the character of the property she had demised. She accepted, however, that no internal walls had been moved and there had been no structural changes. However, she reiterated that the movement of the kitchen units from one part of the flat to another was a change in the plan as was the moving of the boiler. She also said that the changing of the position of the doors to the cupboard which had previously opened into the child's bedroom/study was also a breach.

The Law

13. The law applicable in the matter is set out on the appendix below.

Findings

14. We will not deny that we were concerned that Mrs Willing should make this application in March 2013 having received the application for the extension of lease by Mr Day last year. In a Hearing which took place in the morning of 16th April 2013 Mrs Willing had attempted to seek changes to the terms of the lease but in those proceedings had accepted that the premium to be paid for the lease extension should be £29,500. This premium had been reached by agreement between the valuers instructed to act on behalf of Mr Day and Mrs Willing. We find it surprising therefore that she should consider it appropriate to make an application for a breach of covenant after she has admitted Mr Day's right to a lease extension and entered into negotiations with him which led to an agreement as to the appropriate price to be paid for that lease extension. This means that the existing lease is now due to run for a term of 189 years from 25th December 1979. In these proceedings Mrs Willing indicated that she did not wish to seek forfeiture but required damages. She said that the value of her flat had been reduced by the changes made. Again we find that surprising, given that she had employed a surveyor to presumably value the flat under the terms of the 1993 Act, and these matters would have come to light at that stage. It is an unattractive claim.
15. Our understanding of the law is that an assignee is liable for breaches of covenants happening after the assignment to him and possibly after he has assigned on, but generally not before. Where the breach continues, i.e in the case of a non-repairing obligation which continues, the assignee can be liable but if the breach is completed before the assignment, he is not. We accept that this relates to personal liabilities only and the proprietary remedy of forfeiture may still apply to the Landlord. In those circumstances, therefore, we must consider whether or not the alleged breach of clause 2(17) is in fact a breach of covenant for which forfeiture may be a remedy. To enable us to do

that it seems appropriate we should consider the intention of the parties to be ascertained from the lease as a whole.

16. It seems to us quite clear that the intention was that the Landlord should have little or no involvement with this property. We were told that the bottom floor was still owned by Mrs Willing and her husband and was let under a short term tenancy. The first floor was let under the terms of the lease which were, it seems, identical to the lease under which Mr Day holds the property. Each lease demises to the lessee a block of the building including the external walls so that in effect the property is divided into three. This has the effect of Mr Day being responsible for the roof and the roof trusses. He, however, is entitled to recover a contribution, presumably a third, both from the lessee on the first floor and from Mrs Willing. Accordingly we bear in mind that the intention of the Landlord on creating the lease (that being Mrs Willing and her husband) was to ensure that it was the leaseholders who carried the management and repair of their own part of property, with contributions, as appropriate, from the other two owners. They are also, as a matter of comment, required to insure their flat.
17. Despite this arrangement Mrs Willing appears to consider that she still has a great say in the manner in which the property is used and the management of same. There is no doubt that she has taken pride in the flats that have been created as a result of her and her husband's conversion works. However, it seems to us to be misconceived to consider that a leaseholder who owns the flat for a period of 99 years now extended by another 90 years would not wish to make changes to such items as bathrooms and kitchens during the term of the lease. To suggest that any such changes required consent of the Landlord seems to us to be inconsistent with the intention of the lease. Furthermore it seems to us that in granting the lease it included the fixtures in the property (see s 62 Law of Property Act 1925) and in effect therefore title to the kitchen units passed to the initial leaseholder, who has since sold on.
18. The terms of the lease which we are required to consider relates to making 'alterations' to the plan or elevation. In our view an alteration affects the form or structure of the building. It does not seem to us that the movement of the kitchen from one part of the flat to another affects the form or structure of the building. The plan cannot in our view be held to require a leaseholder of a flat to continue to use the rooms in the manner in which they were designated on the plan, which was only intended to be descriptive. Accordingly where on the plan it may refer to the room as being a 'child's bedroom or study' that does not in our view prevent the leaseholder from changing that use. The installation of a kitchen in that area without any structural changes to the walls cannot in our findings be an alteration of the plan. The suggestion that the movement of the doors to a cupboard so that the doors do not open into the room but instead into the lobby again cannot in our view be an alteration to the plan.
19. The same logic applies to the boiler. The boiler was housed in what was the old kitchen now one end of the living room. On advice from the gas board the

boiler was re-sited in a cupboard and vented through the external wall in a position close to where it had previously vented. The original vent hole has been made good and a new hole, we are told smaller in diameter, created. Again that does not seem to us to be an alteration which affects the form or structure of the building. We find the same with regard to the running of the pipes serving the kitchen. They were presumably external pipes serving the original kitchen and all that has happened is that those have been moved. From what we were told they run along the external flank wall of the property which is within the demise of Mr Day. Again we do not consider those to be an alteration which affects the form or structure of the building.

20. As to the question of waste it seems to us that it must cause damage to the reversion. We find that the replacement of a kitchen cannot be said to have caused damage to the reversion. In any event this does not seem a matter for which we have jurisdiction, nor for which a claim lies.
21. In those circumstances we find that there has been no breach of covenant or condition of the lease and dismiss Mrs Willing's claim.

Chairman: Andrew Dutton
A A Dutton

Date: 2nd May 2013

Appendix of relevant legislation

S168 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.

S169 Section 168: supplementary

- (1) An agreement by a tenant under a long lease of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,
 of any question which may be the subject of an application under section 168(4).
- (2) For the purposes of section 168 it is finally determined that a breach of a covenant or condition in a lease has occurred—
 - (a) if a decision that it has occurred is not appealed against or otherwise challenged, at the end of the period for bringing an appeal or other challenge, or
 - (b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3).
- (3) The time referred to in subsection (2)(b) is the time when the appeal or other challenge is disposed of—
 - (a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or
 - (b) by its being abandoned or otherwise ceasing to have effect.
- (4) In section 168 and this section "long lease of a dwelling" does not include—
 - (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
 - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
 - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (5) In section 168 and this section--

"arbitration agreement" and "arbitral tribunal" have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and "post-dispute arbitration agreement", in relation to any breach (or alleged breach), means an arbitration agreement made after the breach has occurred (or is alleged to have occurred),

"dwelling" has the same meaning as in the 1985 Act,
"landlord" and "tenant" have the same meaning as in Chapter 1 of this Part, and
"long lease" has the meaning given by sections 76 and 77 of this Act, except that a
shared ownership lease is a long lease whatever the tenant's total share.

(6) Section 146(7) of the Law of Property Act 1925 (c. 20) applies for the purposes of section 168
and this section.