



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

Case Reference : **CHI/21UD/LBC/2016/0029**

Property : **Flat 5, 28 Boscobel Road,
St. Leonards-on-Sea, East Sussex,
TN38 OLX**

Applicant : **St. Austins Croft Limited**

Representative : **Michael Blandy Solicitors**

Respondent : **Mr Simon Little**

Representative :

Type of Application : **Alleged breaches of covenant by
tenant**

tribunal Members : **Judge RTA Wilson
Roger Wilkey FRICS**

**Date of inspection
and determination** : **7th March 2017**

Date of decision : **10th March 2017**

DECISION

The Application

1. By an application dated 5th October 2016 the Applicant asked the tribunal to determine under S.168 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that the Respondent has breached the terms of his lease. The Applicant is the landlord and the Respondent is the tenant of Flat 5, 28 Boscobel Road held under a lease dated 6th March 1975 for a term of 99 years from 25th December 1967 made between the Applicant (1) and MD Eley (2). The lease term is now vested in the Respondent.

Summary of Decision

2. The tribunal finds that there has been a breach of the lease by the construction of a lined room in the loft space above the flat and the installation therein of an unauthorised electrical supply and switch board works and the installation of a water supply and sink and associated plumbing works.

Procedural Background

3. Directions were issued on the 4th November 2016 requiring amongst other things that the parties serve statements of case and their evidence and for the matter to be determined on the papers rather than by an oral hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 if neither party objected within 28 days. Neither party did object.

Evidence for the determination

4. In accordance with the tribunal’s directions the Applicant had prepared a determination bundle containing the Applicant’s statement of case and supporting documentation. The bundle included a copy of an unsigned but dated report from Alan Dickinson a surveyor and a witness statement from Ms Fox a director of the Applicant and the leaseholder of Flat 1 at the Property.
5. The directions of the tribunal requested a timetable of when the alleged breaches of covenant took place and a copy of the court order/conviction notice of the Respondent but neither of these documents were included in the bundle.
6. The determination bundle included a very poor and faded photocopy of the lease relating to Flat 5. The lease plan is not coloured, the lease pages are not all numbered and do not appear to follow sequentially and the top and bottoms of some of the lease pages are missing. To compound matters the Land Registry entries contained in the bundle which purport to relate to Flat 5 wrongly describe the flat as being situated on the third floor when it is clearly situated on the second floor. For these reasons the tribunal has not been able to establish the extent of the lease demise. Whilst the Applicant contends that the loft

space has been retained by the freeholder, the tribunal was not able to understand the basis of this claim as the photocopy lease in the bundle is silent as to the ownership of this area and the tribunal found the uncoloured and very faded copy plan to be of no assistance. Accordingly nothing in this decision is to be taken as a finding that the roof space belongs to the Applicant.

The Relevant lease terms

7. By clause 2(15) not at any time during the said term to make any alterations in or addition to the plan or elevation of the flat or in any of the party walls or the principal or bearing walls or fences or timbers thereof, nor to injure, cut or maim any of the walls, ceilings, floors or partitions of the flat thereof nor construct any gateway or opening in any of the fences bounding the Building nor shall the tenant do any deed or thing which would adversely affect the support, repair, maintenance, cleanliness or enjoyment of the flats in the building.
9. By Fourth Schedule at Paragraph 4 not to do or permit to be done on the demised premises any act or thing to the damage or annoyance of the landlord or the tenants of the landlord or the occupiers of any part of the building or any adjoining or neighbouring premises or the neighbourhood or any illegal or immoral act.

The Inspection

10. The members of the tribunal inspected the Property in the company of Suzanna Appleyard (Flat 4), Simon Little (Respondent – Flat 5), Adrian Little (Respondent's father), Bernard Fox (husband of Esther Fox – tenant of Flat 1) and Michael Blandy (solicitor for the Applicant Company).
11. The building comprises a substantial detached house, which was constructed in 1877 on ground, first and second floors. It was subsequently converted into six self-contained flats with two flats on each floor. The two ground floor flats each have their own entrance but access to the remaining four flats is by way of a communal hall and staircase at the side of the building. The Property forms part of an established residential area comprising mainly houses of similar age and style with some infilling residential development.
12. The main roof is pitched and covered with tiles. The main walls are of solid construction. The elevations are part brick, part rendered and painted and part tile hung. The Property is being reasonably well maintained but several outstanding maintenance issues were noted, including slipped, defective and missing tiles to the front elevation.
13. The tribunal inspected the interior of Flat 5, which is on the top floor (front) of the building. The flat was unoccupied and unfurnished. Internal condition was generally poor with severe damp stains to several surfaces.

14. A modern, folding wooden ladder has been fitted into the ceiling in the hall with appropriate trimming timbers around the opening. It is not known whether this ladder replaced an existing access but, later during the inspection, the tribunal noted that a hinged access door has been provided to allow access from Flat 6 (adjoining and also on the top floor of the building) to the rear section of the main roof space. This latter door was not opened but appeared to be old and may be original.
15. The above ladder gives access to the main roof space above Flat 5. Work has recently been carried out to form an area, which opens to a further room in the roof space at the front of the building. In addition, an opening has been formed in the rear wall of the area and it gives access to the roof space above the adjacent Flat 6.
16. The above rooms have mainly been formed with plasterboard over existing rafters and a timber framework. Some fibreglass insulation has been provided between the rafters. A distribution board and several adjacent socket outlets have been provided in the central area and there is a sink with a water supply in the front room.
17. The work has not been carried out in a manner which complies with Building Regulations and there is a risk of defects caused by dampness and wet rot in the longer term. The precise nature of remedial works required, and whether any strengthening of the roof frame is required, cannot be established without further investigation.
18. Further details of the work that has been carried out in the roof space are contained in the report from Alan Dickinson (Independent Expert Chartered Surveyor) which appears on pages 17 to 31 of the bundle.

The Applicant's case

19. Relying upon the witness statement from Ms Fox a director of the Applicant and the report from Alan Dickinson MRICS the Applicant alleges that in breach of the lease the Respondent has injured the timbers in the ceiling of his flat so as to make an unauthorised access to the loft space to provide an environment for the production of cannabis. It is alleged that the Respondent has installed a new floor covering over the existing ceiling joists in the loft and formed a new partition and ashlar walls. In addition it is said that the Respondent has carried out unauthorised electrical works to form a connection to the communal supply. It is further alleged that the Respondent has connected an unauthorised water installation in the newly converted loft space and placed in the loft, cubes of peat-based growing medium on the floor for the purposes of cultivating cannabis.
20. It is alleged that these works have the effect of forming a new room in the roof space requiring Building Regulation approval, which has not been obtained. All of the above works are said to constitute breaches of

Building Regulations and of electrical regulations and also constitute a breach of the lease.

21. It is alleged that the above works are causing a detrimental effect to the building by causing high degrees of dampness in the loft, which causes a risk of wet rot decay.
22. It is further alleged that in breach of Paragraph 4 of the Fourth Schedule the above alterations and the use of the loft space for the cultivation of cannabis constituted an illegal act for which the Respondent was convicted at the Lewes Crown Court on 30th May 2014.
23. The Applicant seeks a declaration that there has been a breach of clause 2(15) of the lease and Paragraph 4 to the Fourth Schedule.

The Respondent's case

24. The Respondent did not respond to the application in any way. At the inspection on invitation of the tribunal he viewed the loft space but made no comment or observation on what he saw.

Discussion and Determination

25. In support of the application the Applicant relies primarily upon the report of Mr Dickinson the narrative of which bears out the works carried out in the roof space as described in paragraph 2 of this decision. The report includes photographs that show a loft ladder installed in the Respondent's flat, which provides access to the loft. The photographs show the electrical and plumbing works in the loft space referred to in the Applicant's statement. There is also pictorial evidence of damp and condensation in the loft space and evidence of old turf medium.
26. The tribunal was also able to verify the works carried out in the loft space from its inspection.
27. As previously stated the Applicant's documents do not enable the tribunal to determine the ownership of the loft area. Furthermore it was not clear from the tribunal's inspection whether the loft access and roof ladder complained of are new additions created by Mr Little without consent, as alleged by the Applicant, or if they were in place when the lease of Flat 5 was granted in 2002. The tribunal noted from its inspection that Flat 6, which is also on the second floor, also appears to enjoy access to the roof space (see item 14 above). Both of these flats were converted around the same time and it is possible that access to the loft space were original design features of both flats and therefore authorised.
28. For these reasons the tribunal is not satisfied that the installation of the loft ladder in the Respondent's flat, giving access to the roof space, does constitute a breach of clause 2(15) of the Respondent's lease.

29. Furthermore on the Applicant's own evidence (the witness statement of Esther Fox) none of the occupants of the building were aware that Mr Little was making use of the loft space so they have not established damage or annoyance as required by Paragraph 4 of the Fourth Schedule.
30. As previously indicated, on the evidence before it, the tribunal is not able to make a finding on the ownership of the loft space and therefore is unable to find that the alleged use of this space by the Respondent amounts to a breach of his lease.
31. The tribunal was able to see for itself the installation in the loft space of a complex and disorderly electrical supply with multiple sockets. It also saw the sink and the associated plumbing works and the construction of the lined roof in the loft space as identified in the report from Mr Dickinson. In its judgment the lining works and electrical and plumbing works do constitute a breach of clause 2(15) of the Respondent's lease. This is because paragraph 2.0 of Mr Dickinson's report, headed up 'Summary of Conclusions', states *that the works have had a detrimental effect in the harbouring of condensation against the underside of the roof covering. Reinstatement works are recommended at an estimated cost of £4,000 plus VAT.* In the opinion of the tribunal the causing of condensation can fairly be said to *adversely affect the support repair maintenance cleanliness or enjoyment of the flats in the building* and thus constitute a breach of clause 2 (15).
32. The tribunal is satisfied on the balance of probabilities that these works were carried out at the hand of the Respondent. Only the Respondent and the occupier of Flat 6 has access to this area and considering the factual matrix, it is more likely than not that these works were carried out by the Respondent as they are directly above his flat in an area exceedingly difficult for Flat 6 to access and a considerable distance away from Flat 6.
33. Although the Applicant has alleged that the Respondent was at one time using the loft space for the purposes of cultivating cannabis for which he received a custodial sentence, no reliable evidence of this has been adduced. In view of the lack of evidence about this claim the tribunal is unable to find that there has been a breach by the Respondent in this respect.
34. In conclusion the tribunal finds that there has been a breach of the lease by the Respondent in respect of the electrical, plumbing and lining works in the loft space, but not in any other respect.

Dated: 10th March 2017

Judge RTA Wilson (Chairman)

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.