



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

Case Reference : LON/00AT/LBC/2016/0095

Property : 28 Prebend Mansions, Chiswick
High Road, London W4 2LU

Applicant : Prebend Mansions Limited

Representative : Mr David Moore (Rodgers &
Burton Solicitors)

Respondents : Mr Kevin Percival and Mr Peter
Fleming

Representative : Mr Peter Fleming

Type of Application : Section 168(4) of the Commonhold
and Leasehold Reform Act 2002

Tribunal Members : Mr Jeremy Donegan – Tribunal
Judge
Mrs Alison Flynn MRICS – Valuer
Member

**Date and venue of
Hearing** : 15 December 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 14 January 2017

DECISION

Decisions of the tribunal

- (A) The tribunal determines that a breach of the lease of 28 Prebend Mansions, Chiswick, High Road, London W4 2LU ('the Flat') has occurred. Details of the breach are to be found at paragraph 19 of this decision.
- (B) The tribunal determines that the Respondents shall pay the Applicant £300 within 28 days of this decision, in reimbursement of the tribunal fees paid by the Applicant.

The background and the application

1. The Applicant is the freeholder of Prebend Mansions ('the Building'), which is a substantial, purpose-built block of flats on Chiswick High Road. The Respondents are the joint leaseholders of the Flat.
2. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') that there have been breaches of covenants or conditions in the Respondent's lease.
3. The application was received by the tribunal on 25 October 2016 and directions were issued on 28 October 2016. In the application form, the Applicant alleged two breaches of the lease:
 - (a) Unauthorised alterations to the Flat in breach of clause 3(5); and
 - (b) A failure to keep floors in the Flat covered with carpet and underlay in breach of regulation 15 of the fourth schedule.
4. The application was heard on 15 December 2016. By the time of the hearing the Applicant had abandoned its complaint arising from the alterations to the Flat, as historic correspondence had come to light indicating an informal agreement to the alterations.
5. This means the only issue to be determined by the tribunal is whether a breach of regulation 15 had occurred.
6. The relevant legal provisions are set out in the Appendix to this decision.
7. The specific provisions of the lease are referred to below, where appropriate.

The lease

8. The lease was granted on 29 May 1993 for a term of 999 years from 25 March 1992, by the Applicant ('Lessors') to Paul John Victor Giacopazzi and Mark Emilio Umberto Giacopazzi ('Tenant').

9. Clause 4(5) of the lease requires the Tenant to:

"Observe and perform the regulations in the Fourth Schedule hereto PROVIDED THAT the Lessors reserve the right to modify or waive such regulations in their absolute discretion"

10. Regulation 15 in the fourth schedule obliges the Tenant to:

"At all times to cover and keep covered with carpet and underlay the floors of the Demised Premises other than those of the kitchen and bathroom and at all times suitably and properly cover the floors of the kitchen and bathroom in the Demised Premises"

The inspection

11. The tribunal inspected the Flat on the morning of the hearing, in the presence of Mr Fleming. He explained that he and Mr Percival had purchased the Flat in 2001. Initially they both lived there but Mr Percival has since moved out.

12. The inspection revealed there is no carpet in the living room, hallway or kitchen/dining room. There is a large rug in the living room.

The hearing

13. The Applicant was represented by Mr Moore, who was accompanied three members of the Applicant company, Mr Hartl, Mr Miller and Ms Sarafian. Mr Fleming appeared in person. Mr Percival did not attend.

14. The tribunal were supplied with a bundle of documents containing copies of the application, lease, a report from EBW Consultancy, two witness statements, relevant correspondence, photographs and a helpful skeleton argument from Mr Moore.

15. Mr Moore submitted that the failure to lay carpet or adequate rugs in the living room, hallway and dining area in the kitchen/dining room were breaches of the lease. Mr Fleming admitted the breach in relation to the hallway but disputed the alleged breaches for the sitting room and kitchen/dining room. He contended that the rug in the sitting room was adequate and pointed out that the obligation to carpet and underlay the floors specifically excludes the kitchen.

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16. Given Mr Fleming's partial admission, the tribunal granted a short adjournment to give the parties an opportunity to discuss settlement terms. On resuming the hearing, Mr Moore advised that the following settlement terms had been agreed: and
- (a) There is a determination that the failure to carpet the hallway floor is a breach of the lease;
 - (b) No determination is made in relation to the absence of carpet in the living room and kitchen/dining room.
17. Mr Fleming confirmed his agreement to these terms and also agreed to reimburse the tribunal fees paid by Applicant.
18. Having inspected the Flat the tribunal is satisfied that a breach of the lease has occurred and makes the decision set out below. The decision applies to both Respondents, even though Mr Percival has vacated the Flat and did not participate in these proceedings.

The tribunal's decision

19. The Respondents' failure to cover the hallway floor with carpet and underlay is a breach of regulation 15 in the fourth schedule to the lease.
20. No determination is made in relation to the failure to carpet the living room and kitchen/dining room.
21. The tribunal orders the Respondents to refund the fees paid by the Applicant, in the sum of £300¹. The Respondents are jointly and severally liable for these fees.

The next steps

22. The tribunal has determined that a breach of the lease has occurred. The Respondents should remedy the breach, as soon as possible, if they are to avoid further action by the Applicant. That action could include service of a Notice under section 146 of the Law of Property Act 1925 and possible forfeiture/possession proceedings. Given the risk of further action and the potential consequences, the Respondents are urged to seek independent legal advice upon this decision.

Name: Tribunal Judge
Donegan

Date: 14 January 2017

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

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 the appropriate 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.
- (6) For the purposes of subsection (4), “appropriate tribunal” means –
 - (a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
 - (b) in relation to a dwelling in Wales, a leasehold valuation tribunal.