



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

**Case reference** : **LON/00AW/LBC/2017/0062**

**Property** : **Flat 9, 9 Wilbraham Place, London  
SW1X 9AE**

**Applicant** : **9 Wilbraham Place Freehold  
Limited**

**Representative** : **Teacher Stern LLP**

**Respondent** : **Dr Earle Franklin Teitler**

**Representative** : **Druces LLP  
Ms Amanda Gourlay of counsel**

**Type of application** : **S 168 Commonhold and Leasehold  
reform Act 2002 - determination of  
an alleged breach of covenant**

**Tribunal member** : **Judge Pittaway**

**Date of decision** : **7 March 2018**

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**DECISION**

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## **Decisions of the tribunal**

1. The tribunal determines that there has been a breach of the covenant contained in clause 3(10) (b) of the Lease dated 28 August 2008 made between 9 Wilbraham Place Freehold Limited (1) and Putney Finance Inc. (the “**2008 Lease**”) by Putney Finance Inc assigning the lease to Mr Teitler without having first obtained the Landlord’s prior written consent.
2. The tribunal makes no order for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules (the “**Rules**”).

## **The application and background**

1. The tribunal has received an application under S 168(4) Commonhold and Leasehold Reform Act (the “**Act**”) for a determination that there has been a breach of covenant or condition of the 2008 Lease in that the original tenant of the 2008 Lease, Putney Finance Inc, assigned the same to Mr Teitler without obtaining the previous written consent of 9 Wilbraham Place Freehold Limited (“the **Landlord**”).
2. The application included grounds of application in support of the applicant’s submission that a breach of covenant had occurred.
3. Directions were issued by the tribunal on 3 July 2017, which were subsequently varied on 14 July 2017 and 11 January 2018. These contemplated that the matter would be determined on the basis of written representations unless either party requested a hearing. Neither party did.
4. The respondent provided a bundle in response to the grounds of application, which included a statement of case by Druces LLP on behalf of Mr Teitler, a witness statement by Mr Teitler and submissions by Ms Gourlay of counsel on behalf of Mr Teitler. In her submissions Ms Gourlay applied under the Rules for Mr Teitler’s costs in responding to the application.
5. Teacher Stern LLP, on behalf of the applicant, provided a reply to the respondent’s statement of case.

## **Reasons for the tribunal's decision**

6. In reaching its decision the tribunal has had regard to the papers before it referred to above.
7. The assignment by Putney Finance Inc of the Lease to Mr Teitler without the previous written consent of 9 Wilbraham Place Freehold Limited is a breach of clause 2 (10) (b) of the Lease which states

*“Not at any time assign the whole of the Demised Premises without the Lessor’s prior consent in writing such consent (subject to clause (d) below) not to be unreasonably withheld or delayed.”*

Clause (d) is not relevant here as it relates to an assignment to a company or corporate body, or individual ordinarily resident outside England and Wales.

8. The tribunal note that there was a “technical” breach of covenant conceded by Mr Taitler and Ms Gourlay in their submissions. The tribunal is not in a position to make a distinction between “technical” and other breaches of covenant. Section 168(4) requires it to determine whether a breach of covenant has occurred if a landlord makes an application to it for such a determination and there has been a breach of covenant here. The tribunal also note the statement in the letter from Druces LLP to Teacher Stern LLP of 24 January 2018 in which they stated that Putney Finance Inc did not apply for consent to the transfer of the 2008 Lease.
9. It is not for this tribunal to determine whether the landlord would or would not be entitled to withhold consent to the transfer of the 2008 Lease to Mr Teitler. Under Section 168 of the Act its jurisdiction is limited to determining whether there has been a breach of the relevant alienation provision in the 2008 Lease.
10. In relation to Ms Gourlay’s application for costs under Rule 13 given that there is a breach of covenant the tribunal do not consider that the applicant acted unreasonably in bringing the proceedings and therefore do not make an order for costs. However the tribunal finds it difficult to see how an application for forfeiture under S 146(1) Law of Property Act 1925 will be successful against Mr Teitler, and this may be relevant to costs if such an application were to be made by the applicant against Mr Teitler.

**Name:** Judge Pittaway

**Date:** 7 March 2018

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).