



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

**Case reference** : **LON/00AP/LBC/2019/0080**

**Property** : **62 Lympne, Gloucester Road,  
Tottenham, London N17 6LU**

**Applicant** : **London Borough of Haringey**

**Representative** : **None**

**Respondent** : **Mr B Junger**

**Representative** : **None**

**Type of application** : **To determine whether a breach  
of covenant has occurred**

**Tribunal member** : **Judge Simon Brilliant**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **25 November 2019**

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**DECISION**

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**Order**

An order is made that the respondent is in breach of a covenant in his lease.

**Background**

1. The respondent is the assignee of a long lessee of 62 Lympne, Gloucester Road, London N17 6LU (“the flat”) under a lease dated 27 May 2002 made between (1) the applicant local authority applicant and (2) Mr and Mrs da Silva (“the lease”).

2. The lease had been granted to Mr and Mrs da Silva under the right to buy legislation. It was assigned to the respondent on 2 March 2015. The freehold reversion remains vested in the applicant.
3. The flat is on the third and fourth floors of Lympne, which is a post war block on an estate. The flat as built contained two bedrooms.
4. The following terms of the lease are of relevance.
5. Clause 4(13) contains a covenant by the respondent, amongst other things, not to make any alteration to the flat without the licence of the applicant first obtained in writing.
6. Clause 4(15) contains a covenant to use and occupy the flat solely and exclusively as a self-contained residential flat.
7. Clause 4(15) contains a covenant, amongst other things, at all times to comply with the planning legislation.
8. The applicant made an application to the tribunal, received on 26 September 2019, asking the tribunal to make an order that a breach of covenant in the lease has occurred. The tribunal has power to make such an order under s.168 Commonhold and Leasehold Act 2002. The relevant legislation is set out in the appendix.

### **The applicant's case**

9. The applicant puts its case in the following ways.

#### *Breach of clause 4(13)*

10. The respondent has carried out extensive alterations so that it is no longer a two bedroom flat. It has been converted into four studio flats. These works were carried out without the written or any consent of the applicant. The applicant requested the respondent to reinstate the flat into its original condition on 16 January 2019, but he has failed to do so. This request was made eight months before the application was made.

#### *Breach of clause 4(15)*

11. The flat is no longer being used and occupied solely and exclusively as a self-contained residential flat.

#### *Breach of clause 4(19)*

12. The respondent did not obtain the necessary planning permission for converting the flat.

### **Directions**

13. A directions hearing was held on 2 October 2019. The respondent appeared in person. The tribunal directed that the hearing should be determined on paper, unless either side requested an oral hearing. Neither party has made such a request.

14. Paragraph 6 of the directions required the respondent to send to the tribunal by 23 October 2019 the names of the sub-tenants or occupiers of the flat.
15. Paragraph 7 of the directions required the respondent to prepare a bundle of documents by 30 October 2017. The bundle was to include, amongst other things, (a) a full statement in response to the applicant's case, setting out in full the grounds for opposing the application; (b) any signed witness statements of fact and (c) any legal submissions.
16. The respondent has failed to comply with these directions. On 14 November 2019, the tribunal wrote to the respondent enquiring why he had not complied with these directions. There has been no response from the respondent.

### **The evidence**

17. In a letter dated 14 September 2016, the respondent wrote to the applicant indicating that only minor works had been carried out at the flat and that there were no unauthorised alterations. In a letter dated 24 January 2019, the respondent told the applicant that the flat had already been converted into four flats before he bought it, the work had been done to a poor standard, and he was simply repairing and making good these defects.
18. On 27 June 2019, the respondent emailed the applicant that one tenant had left already and this room was being stripped of sinks, counter and cupboards. He had given notice to the third tenant.
19. Mr Cox, a Lease Compliance and Home Sales Manager, made a witness statement in support of the applicant's case dated 14 October 2019. Much of Mr Cox's witness statement relates to the respondent's failure to allow access to the flat. But that is not one of the grounds upon which this application has been brought.

### **Findings**

#### *Breach of clause 4(13)*

20. Mr Cox asserts in paragraph 13 of his witness statement that the respondent carried out the major conversion works.
21. Despite there being an inconsistency between the two letters referred to in paragraph 17 above, I do not consider there is sufficient evidence to show that it was the respondent, rather than Mr and Mrs da Silva, who carried out the conversion work.

#### *Breach of clause 4(19)*

22. Mr Cox sets out clause 4(19) of the lease in paragraph 16 of his witness statement. However, I have seen no evidence that converting the flat into four studio flats is a breach of planning permission.

#### *Breach of clause 4(15)*

23. However, I am wholly satisfied that the respondent is in breach of clause 4(15) of the lease and I so determine.

Simon Brilliant

25 November 2019

## **Annex**

### **Appendix of relevant legislation**

#### **Commonhold and Leasehold Reform Act 2002**

The relevant parts of s.168 Commonhold and Leasehold Reform Act 2002 (“the Act”) provide as follows:-

- (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) .....
- (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.