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

Case Reference : LON/00AY/LBC/2018/0084

Property : 19B Plato Road, Brixton, London
SW2 5UP

Applicant : Townplot Ltd

Respondent : Charles William Cowdrey

Representative : Anthony Gold Solicitors

Type of Application : Breach of covenant

Tribunal : Judge Nicol

Date of Decision : 14th January 2019

DECISION

The Tribunal determines that the Respondent has breached clauses 4(11), (18) and (25) of his lease of the subject property by the conversion, without consent, of an area to a shower room/WC, payment of the wrong fee for registration of his re-mortgage and having yet to remedy these issues.

The Tribunal's reasons

1. The Applicant is the Respondent's landlord at the subject property. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent has breached the following clauses of his lease:-

4 LESSEE'S COVENANTS

The Lessee HEREBY COVENANTS with the Lessor as follows:-

4(11) TO REMEDY BREACH AND IF NECESSARY LESSOR TO DO SAME

Duly and immediately to remedy repair and make good all breaches and defects of which notice in writing shall be given by the Lessor to the Lessee and which the Lessee shall be liable to remedy repair or make good under the covenants contained in these presents and in case the Lessee shall make default in so doing within three calendar months after the date of any such notice it shall be lawful (but not obligatory) for the Lessor without prejudice to the right of re-entry hereinafter contained to enter upon the premises and to remedy repair and make good the same at the cost of the Lessee which cost together with the Lessor's trade and professional expenses (including Surveyor's and other professional fees) thereby incurred and the Lessor's time costs at the Lessor's Inspection Rate shall be paid by the Lessee to the Lessor on demand.

4(18) RESTRICTIONS ON ALTERATIONS

The Lessee (or any person acting on their behalf) MUST not make any alterations to the structure of or services to the Premises without first obtaining the consent (such consent not to be unreasonably withheld or delayed) of the Lessor in writing. Structural alterations shall include any alteration to any wall or part of the interior or exterior of the Premises. Any change in internal layout or use which in any way cuts into or maims a part of the structure, whether visible or not, shall require consent. Alterations to services shall include any installation of or removal of or changes to any such items as may supply or discharge water gas or electricity to the Premises or the Building. The Lessor may place reasonable requirements upon the grant of consent and may charge for the grant of consent. The Lessor shall not be obligated to grant retrospective consent. The Lessor may, but shall in no way be obligated to, require reinstatement of property or services or removal of installations if changes or installations have been made without prior written consent. The Lessor shall in no way be obligated to grant consent to the Lessee for the installation of pipes or cables through the common parts of the Building. The Lessee shall pay any costs incurred by the Lessor as a consequence of the Lessor obtaining advice in relation to any alteration or installation or proposed alteration or installation on a full indemnity basis and shall pay this sum on demand.

4(25) REGISTER DEVOLUTION

Upon every assignment, transfer or charge or other instrument effecting or evidencing any transaction or devolution of the demised premises or any term estate or interest therein to give notice in duplicate to the Lessor (or the Lessor's solicitors) for registration within 28 days from the date thereof and PAY a

reasonable fee of not less than seventy five pounds (£75) plus VAT (if applicable) for each such registration.

2. It is important to note that the Tribunal's role under the Act is to determine simply whether there have been breaches of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture is irrelevant at this stage.
3. On 18th January 2018 the Applicant's surveyor, Mr Andrew Cohen, informed them that the Respondent had made an internal alteration, namely converting an area on the second floor into an additional shower room/WC, evidenced by photos of the same.
4. The Applicant immediately wrote to the Respondent asserting that he was in breach of clause 4(18) of his lease and requiring full reinstatement.
5. On 23rd January 2018 the Respondent emailed the Applicant in response:

When I completed the conversion of the shower room, I was not aware that the conversion was in breach of the lease. In hindsight, and having reread the lease, I can see your argument. I understand that I should have applied for consent.
6. The Respondent also sought retrospective consent and waiver of the Applicant's charges while they sorted out the matter. By email dated 29th January 2018, the Applicant refused to waive their charges but invited proposals on a without prejudice basis. No proposals have been forthcoming.
7. By letter dated 3rd April 2018 TCS Total Conveyancing Services, on behalf of the Respondent, purported to notify the Applicant that the property had been re-mortgaged to Santander on 25th January 2018. They enclosed a cheque for £60 in respect of the Applicant's charge, despite the express terms of clause 4(25) of the lease.
8. The Applicant contacted TCS and Santander and then served a Notice of Breach on the Respondent by letter dated 9th April 2018. Santander wrote to the Respondent telling him he was in breach. Both asked the Respondent to remedy the breach. He has yet to pay the correct fee in accordance with clause 4(25).
9. On 26th October 2018 the Tribunal received the current application and, on 1st November 2018, standard directions were issued for determination on the papers, without a hearing. The Respondent failed to comply and the Tribunal queried this by letter dated 20th December 2018. By email dated 21st December 2018 the Respondent's solicitors replied,

The Applicant freeholder in this matter is seeking a declaration that the leaseholder is in breach of lease in respect [of] two issues:-

- (1) the non-payment of a £75 plus VAT notice of charge fee which the Respondent's former solicitor ought to have arranged payment of when he re-mortgaged
- (2) unauthorised alterations to a linen cupboard.

The Respondent leaseholder admitted to the [Applicant] that he carried out the alterations without consent – this is in fact referenced in the originating application. Unfortunately, the Respondent did not realise at the time that he needed landlord's consent and have without success sought retrospective consent.

This firm has made it clear to the Applicant that the Respondent will reinstate the cupboard and will pay the £90.

The Respondent leaseholder has no evidence to file under the directions, he will pay the £75 plus VAT notice fee and will reinstate the linen cupboard.

The Applicant should withdraw these proceedings in the light of this position and not waste the tribunal resources.

10. On the basis of this material, the Respondent is in clear and admitted breach of 4(11), (18) and (25) of his lease. The Applicant is not obliged to refrain from action on the basis of unsupported promises as to future action, particularly when the Respondent has had at least 9 months to pay £90 or even £30, being the balance of the requisite fee. In the circumstances, the Applicant is entitled not to regard it as a waste of anyone's time to obtain the Tribunal's decision under section 168(4) of the Act.

Name: NK Nicol

Date: 14th January 2019