



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

**Case Reference** : **BIR/00FY/LBC/2020/0006P**

**Property** : **32 Pasteur House, Ockbrook Drive  
Nottingham NG3 6AX**

**Applicant** : **City Heights RTM Company Limited**

**Respondent** : **Hernan Dario Ferraro Cordoba**

**Type of Application** : **Application under S168(4) Commonhold  
And Leasehold Reform Act 2002 for a  
Determination that a breach of covenant  
In a lease has occurred**

**Tribunal** : **Tribunal Judge P. J. Ellis.  
Tribunal Member Mr I Humphries FRICS**

**Date of Hearing** : **11 December 2020**

**Date of Decision** : **4 January 2021**

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**DECISION**

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- 1. The Respondent has breached certain clauses in the lease of 8 March 2005 between himself and David Wilson Homes and Holding and Management (Solitaire) Limited in that he has:**
  - a. carried out works to the Property without obtaining all licences permissions and consents in breach of Clause 8 Schedule 3**
  - b. altered the internal planning, height elevation or appearance of the Property without any formal licence of the Applicant in breach of clause 9 Schedule 3**
  - c. underlet the whole or any part of the Property without the permission of the Applicant in breach of Clause 10(a) & (b) Schedule 3**
  - d. used the Property other than as a private dwelling occupied by only one family in breach of Clause 26 (b) of Schedule 3**
- 2. The Respondent has not, on the evidence, done or permitted to be done any act matter or thing in or upon the Property which may render any increased or extra premium to be payable for insurance of Pasteur house or which may make void or voidable any policy for such insurance.**

### **Introduction and Background**

1. This is an application pursuant to section 168(4), Commonhold and Leasehold Reform Act 2002 (the Act) by City Heights RTM Company Limited (the Applicant) for an order that a breach of covenant or condition in the lease of 32 Pasteur House Ockbrook Drive Nottingham (the Property) has occurred. The Respondent to the application is Hernan Dario Ferraro Cordoba.
2. The application was issued on 14 August 2020. Directions were issued on 21 August 2020 by which the Tribunal directed that the matter be heard without an internal inspection of the Property. As the parties agreed they would be content with a paper determination this Tribunal has made its decision on the basis of written submissions by the parties and without an inspection.

3. The breaches of covenant or condition alleged by the Applicant are that the Respondent has:
  - a. carried out works to the Property without obtaining all licences permissions and consents,
  - b. altered the internal appearance of the Property
  - c. sublet without permission
  - d. permitted or suffered acts or matters which may cause an increase in the premium for insurance,
  - e. used the Property other than as a private dwelling

In the application the Applicant made a further allegation that the Respondent had failed to comply with Regulations set out in the seventh schedule to the lease. The allegation was withdrawn by the Applicant in its Statement of Case because the Regulations are missing from the Land Registry copy of the Lease.

4. The Respondent denied all other allegations and submitted the Applicant was always aware of changes to the internal layout of the Flat and raised no objection to them or the sub-letting.

### **The Property**

5. This description of the Property is taken from the Applicant's statement of case and the lease. The Property is on the third floor of a Block comprising 31 Flats over five floors in three separate divisions of the building. The Block itself is part of an Estate constructed on land and buildings formerly occupied by a hospital. The Flat Block of the subject Property was newly constructed at the date of the lease.
6. According to the description of the Property provided by the applicant it consists of an entrance hallway, a master bathroom, a lounge/kitchen and two bedrooms, one with en-suite bathroom.

### **The Lease**

7. The Property was occupied pursuant to a lease made 8 March 2005 between David Wilson Homes Ltd., Holding and Management (Solitaire) Limited and

the Respondent. The recitals to the lease provide that Holding and Management (Solitaire) Limited, described as “the Company”, would purchase the freehold interest in the Estate within six months of the grant of the last lease of a Flat in the Estate. According to its submission the Applicant acquired the right to manage Pasteur House and the other five Flat Blocks on the Estate on 31 December 2010.

8. There is no dispute regarding the entitlement of the Applicant to bring these proceedings.
9. The lease provides insofar as relevant to this case
  - a. at paragraph 1.11: *“the Regulations means the Regulations at present in force in respect of the Block and the Estate which are set out in the Seventh Schedule or those for the time being in force pursuant to such Schedule and Clause 6.4”*
  - b. At Clause 3: *“The Lessee hereby covenants with the Company as follows:  
3.1 To observe and perform the obligations set out in the Third Schedule”*
  - c. At Schedule Three clause 8: *“...to obtain all licences permissions and consents and execute and do all works and things and bear and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Lessee to the Flat.....”*
  - d. At Schedule Three clause 9: *“Not to alter the internal planning or the height elevation or appearance of the Flat nor at any time make alterations or additions thereto nor cut maim or remove any of the party or other walls or partitions or the principal or load bearing timbers.... without the previous formal licence of the Company Provided that such plans and specifications of any such alterations or works as the Company shall deem necessary shall be first submitted to the Company for its approval....”*

- e. At Schedule Three clause 10:
  - (a) *Not to underlet or part with or share possession of any part of the Property (as distinct from the whole) in any way whatsoever*
  - (b) .....
  - (c) *Not to underlet the Property as a whole (but not separately) without the consent of the Company*
  - (d) *Not to assign underlet or part with possession of the Property as a whole without first procuring that the assignee or underlessee enters into a separate deed of covenant with the Company to observe and perform the covenants and conditions herein contained...*
- f. At Schedule Three clause 18: *“Not to do or permit or suffer any act matter or thing in or upon the Flat which may render any increased or extra premium to be payable for the insurance of the Block or which may make void or voidable any policy for such insurance”*
- g. At Schedule Three clause 26: *“Not without the Company’s consent to use or occupy the Flat (a) otherwise than as a private dwelling occupied by only one family and (b) ... not to carry on in the Flat or any part thereof any business as defined by section 23(2) of the Landlord and Tenant Act 1954”*

**The Statutory Framework**

10. S168 Commonhold and Leasehold 2002 provides:

*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).....*

*(c).....*

*(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.*

## **The Parties Submissions**

11. The Applicant's complaint is that the Respondent has acted in breach of the covenants in the lease by:
  - a. Altering the interior of the Property by the erection of partitions to create additional bedrooms,
  - b. Subletting to occupiers without permission
  - c. Creating an unlicensed HMO
  - d. Allowing occupiers to use the Property in an unsafe way by using cooking equipment other than the existing kitchen
  - e. Causing or permitting anti-social behaviour at or near the Property
  - f. Not using the Property as a private residence.
  
12. The Applicant adduced witness statements from two people, Mr Neal Healey the Applicant's Property Manager and Brenda Sayers a resident of Pasteur House. Her Flat is duplex aligned alongside and below the Property.
  
13. Brenda Sayers' evidence is that from or about 2018 the occupiers of the Property caused interruption to her own enjoyment of her Flat by reason of their anti-social behaviour and also by the Respondent himself. Her evidence also refers to other occupiers of the Flat than the Respondent who is known to Mrs Sayers as "Dario".
  
14. This witness describes how she and her children were disturbed by the sound of banging and putting up walls at all hours of the day and night. On one occasion in 2018 Mrs Sayers and her partner assisted the Respondent with moving a fridge/freezer into the Property. On entering the Flat, she observed

that the Respondent had made the lounge area into three additional rooms after the erection of walls. She described the construction as “*very poor*” and to her mind they constituted a fire risk.

15. Other matters observed were up to six people who were unknown to each other living in the Property. There was an aroma of what she presumed was cannabis being used. The occupiers were frequently drunk and abusive of one another and her or other residents of Pasteur House. She had heard the Respondent arrive at the Property shouting and demanding money from the occupiers.
16. Mr Healey is employed by Mapperley Property Management Limited which is the managing agent for the Applicant. He has worked as the Property Manager since 31 December 2010.
17. He states that in 2018 he was told by other residents in Pasteur House that the leasehold owner of number 32, the Respondent, had carried into the Flat a large amount of wood and at night there was the sound of hammering and banging. He asked the Respondent about the noise and was met with a barrage of abuse including claims that what was happening was none of Mr Healey’s business and that he, the Respondent, was entitled to undertake works at his Property.
18. Mr Healey also states the Respondent has not, to date, applied to the Applicant for consent for building alterations or to sublet.
19. He then describes his observation during 2019 of a large number of unknown people entering and leaving Pasteur House and going to number 32. Mr Healey describes speaking to some of these people who told him that three rooms had been constructed in the lounge/kitchen area creating five bedrooms in total, all were rented out for cash.
20. From March 2019 Mr Healey received complaints from other residents of Pasteur House regarding the noise and behaviour of the occupiers of the

Property. He was suspicious that there was a potential for sexual exploitation and drug abuse as he observed a number of young-looking girls entering the Block.

21. He then describes three occasions when he has visited the Property. On two occasions his visits were as a result of fire alarms sounding and smoke escaping from the Property. On entering he observed the cause was residents cooking in bedrooms using camping gas stoves.
22. In June 2020, the third occasion, he attended the Property following reports from other residents of the sounds of violence and domestic abuse. He describes an incident of violence between a male and female. He recognised the male as resident of the Flat. The matter was sufficiently serious for intervention by the police officers who restrained and arrested the male. Mr Healey then observed eight other people living in the Property some of whom appeared to be under the influence of drink or drugs. Mr Healey also describes other incidents of abusive and anti-social behaviour of the residents of the Property on various occasions on unspecified dates other than one in April 2020. He further describes an incident in June 2020 when the Respondent himself was abusive and threatening to Mr Healey who called the police because of the seriousness of the Respondent's conduct towards him.
23. Both witnesses describe disorderly conduct by the residents of the Property by loitering in the common parts particularly the entrance hall of Pasteur House drinking and apparently using and dealing drugs. Visitors to the site in cars were seen to drive up to the residents and exchange items from the car which Mrs Sayers took to be the purchase of drugs.
24. In addition to witness statements the Applicant adduced documentary evidence in the form of correspondence from Nottingham City Council (the Authority). By Notice of an Emergency Prohibition order of 14 November 2018 the Authority gave notice that it was satisfied a category 1 hazard existed at the Property. The hazard identified was fire and explained as "*The deficiency gave rise to the hazard because the shared kitchen did not have a*



*heat detector to provide warning to the occupier of the inner bedroom in the event of fire. There is no means of escape from the inner bedroom without passing through the kitchen.....Fire would spread rapidly from the kitchen to the inner bedroom as the door to the bedroom is hollow and the partition wall is not fire resistant”. Remedial action was prescribed as necessary for revocation of the Notice:*

- a. Create a fire resisting partition between the kitchen and the inner bedroom*
- b. Create a 30 minute fire resisting partition between the inner bedroom and the existing hallway to allow safe means of escape without having to pass through the kitchen*

25. On 18 January, 2019 Nottingham City Council served a further prohibition order. The order referred to category 1 and category 2 hazards at the Property in particular to a central inner room off the kitchen. Remedial work was required by 22 February, 2019. The category one hazard was fire. The notice stated *“the central inner room has been created via a partition which is not fire resisting. The only means of escape is through the kitchen which is a high risk of fire room, meaning there is no protected means of escape. The door to the room is missing. There is no fire detection in the kitchen, therefore an occupant using this room would have no early warning if a fire started in the kitchen and therefore their only means of escape would be blocked.”* Remedial action which the authority considered necessary involved removal both of the poorly erected stud wall partitions and leaving the existing walls in a sound condition.

26. The category two hazards were crowding and lighting. The partition wall across the kitchen-living room had removed the living room from the Property and created two inner rooms off the kitchen, both below 6.51 metre square in size. The second category two hazard related to the lighting: *“The inner room has no form of permanent artificial lighting. The room is of a small size, 6.04 metre square. An inadequate amount of natural light can enter the room due to the position of the windows cut out of the poor partition. The*

*makeshift window is above head level of someone standing as (sic) do not provide an open space view.”*

27. The Notice of January 2019 varied the Emergency Prohibition Order of 14 November 2018. The local housing authority now required “*removal both of the poorly erected stud wall partitions in the kitchen and leave the existing walls in sound condition*”.
28. The Applicant also adduced evidence of an email from the Respondent to Mr Healey of 25 June 2020 which stated:  
*Many thanks for your response and also for not taking any legal action. My sincere apologies for any vexatious causing because of me or any of my previous misbehaviour tenants (sic). It’s just a couple of rooms made of three plastic boards without to touch the structure of the building, not three rooms. One partition as a storage and the other one as a study room, specially for this pandemic.” (sic)*
29. By his statement of case the Respondent refuted the allegations of the applicant seriatim. The Headings for each relevant paragraph of the third Schedule are used in this decision.
30. **To obtain consent for works:** the Respondent denies carrying out any work at the Property which required any licence. He asserts Mr. Healey was aware of any work such which he characterised as painting and maintenance because of the previous close friendship with him. He contends he has recently updated his “exceptional selective licence” provided by Nottingham City Council and refers to correspondence with the Council. He intends to move back to the Property. He moved out because his father had passed away from covid. His mother needed his help to cope with the difficult situation.
31. The letter from Nottingham City Council referred to by the Respondent is dated 7 October 2021 *sic* and grants a Temporary Exemption Notice pursuant to section 86 of the Housing Act 2004 because the Respondent has provided evidence of his intention to remove the Property from the licensing

requirements namely his intention to sell the Property. He provided marketing information in support of the application. The notice specifies that this application was for a second temporary exemption.

32. **Not to alter:** The Respondent asserts no structural alterations have been made nor has the appearance of a Flat been changed. He admits to repainting the reception and contends that Mr. Healey visited his Flat to deliver a letter, he invited him in and saw the Flat was in perfect condition. He also describes Mr. Healey as being totally aware of the previous decoration in the sitting room.

33. **Assignment and subletting:** The Respondent states that he has not sublet the Property and asserts he agrees with and respects all of the covenants.

34. **Not to avoid insurance:** The Respondent asserts of Mr. Healey was aware of the tenants and he was happy with how he was managing the Property and its condition. He admits that his neighbour was bothered by the previous tenant who has now left and the problem is resolved.

35. **To occupy as a private residence:** The Respondent contends Mr. Healey had given verbal and e-mail consent that no action would be taken with regards to his previous tenant. The present tenants, he states, were due to move out on 30 November. He will be returning to the Property. He has an “*exceptional selective licence*” which he asserts enables him to rent the Flat out so there is no breach of this clause of the lease.

36. He completes his submission with a statement of truth.

37. The Respondent produced a copy of a letter of 21 October 2020 from the environmental health office of Nottingham City Council. He also produced two photographs of the interior of the Property. The environmental health officer stated that he had reviewed the footage that he had seen and was satisfied the category one fire hazard had been removed by reason of the Respondent’s removal of the stud wall partitions. The council intended to

revoke the prohibition notices. The Respondent did not produce copies of any of the emails from Mr. Healey which he refers to in his statement of case.

### **Decision**

38. The Applicant seeks a determination further to s168(4) Commonhold and Leasehold Reform Act 2002 that a breach of the lease between the Respondent and David Wilson Homes and Holding and Management (Solitaire) Limited has occurred. The Applicant alleges breaches of several covenants of the lease by the Respondent.
39. The relevant covenants are set out above at paragraph 9. The first allegation is that the Respondent has failed to obtain consent for works to the Flat. The Tribunal is satisfied that there was work carried out inside the Flat to add additional bedrooms. The new rooms were seen not only by Mr Healey but also by Mrs Sayers and the environmental health officials of the local housing authority. It served prohibition notices regarding the unsuitability of the work and category 1 & 2 risks arising from the effects of the alterations and poor workmanship. The Respondent does not deny there were works carried out. He acknowledges the works in his email of 20 June 2020. His contention is that they did not affect the structure of the Flat. The Tribunal is satisfied the terms of Clause 8 Schedule 3 are plain. They require permission for any works carried out to the Flat. That the works did not alter the main walls of the Flat is irrelevant.
40. The Respondent offers confusing explanations for the work. He refers to painting and decoration, but the walls seen by the witnesses involve work beyond painting and decorating. He suggests one of the new rooms was for storage “*specially for this pandemic*” which had not started at the time of the work.
41. The Respondent’s second proposition is that Mr Healey gave his permission for the work. Mr Healey denies giving permission. The Respondent has referred to emails but has not produced any evidence that such permission was given other than his bare assertion of Mr Healey’s consent.

42. In any event the works did not meet regulatory requirements in their standard of construction, fire safety, space and lighting standards. The Tribunal is satisfied the Respondent has acted in breach of this covenant.
43. Clause 9 Schedule 3 prohibits alterations to the internal planning or the height elevation or appearance of the Flat without the licence of the landlord. The Tribunal prefers the evidence of Mr Healey that no such permission had been given by the landlord. The evidence of Mrs Sayers is that the work of alteration was carried out during unsociable hours, at night causing a disturbance. Mr Healey describes abusive behaviour from the Respondent who insisted what he was doing was none of his business. Had permission for works been given as alleged by the Respondent there would be no reason for such aggressive behaviour.
44. For the reasons already given the Tribunal is satisfied the internal planning of the Flat was altered. The relevant clause imposes an obligation on the lessee to obtain a formal licence before making alterations. The Respondent has referred to emails giving permission but not produced them nor has he described seeking and obtaining formal permission to make alterations. The Tribunal is satisfied the work was undertaken without permission.
45. Clause 10 Schedule 3 is the covenant against assignment or subletting without consent and clause 26 provides that the Flat must not be used or occupied otherwise than as a private dwelling occupied by only one family.
46. In his statement of case the Respondent claims he has not sublet the Property and that he has agreed with and respected all covenants. This proposition is inconsistent with other evidence. The Respondent has not denied that the Property was let. His email of 20 June 2020 refers to “vexatious behaviour” of a tenant. In answer to the allegation that the Property must be occupied by a single family he maintains that the “*exceptional selective licence*” entitles him to “*rent the Flat out*”.

47. The Tribunal has not seen all correspondence with the local housing authority but from the documents produced the Tribunal is satisfied there is an investigation underway regarding the absence of an HMO licence for this Property. Such an investigation is consistent with the evidence of Mr Healey and Mrs Sayers who both describe seeing multiple unconnected occupants attending the Property. As the Respondent appears to be pursuing a course of action relevant to obtaining an HMO the Tribunal is satisfied the Property was let to more than one household.

48. Mrs Sayers refers to a Chinese family living in the Flat before the alterations were carried out. Mr Healey has not given any evidence relating to another family. His proposition is that no consent was given for any subletting. The Tribunal is satisfied that no consent to subletting was given at any time and that the use permitted by the Respondent was a breach of clause 10 and after 2018 the use was a breach of clause 26.

49. Clause 18 Schedule 3 is the clause prohibiting anything which may render any insurance void. The Applicant has not produced any evidence of what insurance is in place in respect of the Property nor recited any terms. The best evidence produced by the Applicant is that Mr Healey has been told the Respondent's current use of the Property makes the insurance policy voidable. A decision whether to refuse cover is delayed pending the outcome of proceedings. The existing policy does not cover a HMO. The Tribunal is not satisfied with the evidence given in connection with the allegation and determines on the evidence that there is no breach of this covenant.

### **Appeal**

50. If either of the parties is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Tribunal Judge Peter Ellis