



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : **CHI/00ML/LBC/2020/0031**

**Property** : **Lower Ground Floor Flat,  
37 Goldstone Road,  
Hove,  
East Sussex BN3 3RN**

**Applicant  
Represented by** : **Abdullah Al Yousifi  
Michael Walker of counsel (Acumen  
Business Law)**

**Respondent** : **Shadi Yousef Al Baja (in person)**

**Date of Application** : **17<sup>th</sup> November 2020**

**Type of Application** : **For a determination that breaches have  
occurred in covenants and/or  
conditions in a lease between the parties  
(Section 168(4) Commonhold and  
Leasehold Reform Act 2002 (“the 2002  
Act”))**

**Tribunal** : **Bruce Edgington (lawyer chair)  
Bruce Bourne MRICS  
Jane Herrington**

**Date & place of hearing:** **29<sup>th</sup> April 2021 as a video/telephone  
hearing from Havant Justice Centre in  
view of Covid pandemic restrictions**

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**DECISION**

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1. The long lease of the property is dated 14<sup>th</sup> February 2017. The term is for 120 years commencing on 28<sup>th</sup> September 2015. This application alleges that the Respondent is in breach of a number of terms of the said lease, as follows:

(a) Clause 2.5 and Schedule 4, paragraph 1(e)

*“not do to (sic) or suffer to be done on the Premises anything which may be or become a nuisance or annoyance .... to the Landlord or the occupiers of any other flat in the building”.*

The allegation is that the Respondent has installed an internal partition wall separating the kitchen from the lounge and has let the property to

more than one sub-tenant, both without the consent of the Applicant which is a potential nuisance or annoyance.

Decision: No breach. The only evidence of ‘nuisance or annoyance’ in the general sense of these words, would appear to be to the landlord as the work was done without his consent. However, this would not appear to the Tribunal to be the sort of nuisance or annoyance anticipated by this clause. There is no evidence of potential nuisance or annoyance to anyone else over and above that which any house split into flats would risk.

(b) Clause 2.5 and Schedule 4, paragraph 9(t)

*“not without the previous written consent of the Landlord (such consent not to be unreasonably withheld or delayed) to .... erect or remove any internal partition for dividing rooms .... ”*

The allegation is, as before, is that the Respondent has installed an internal partition wall, separating the kitchen from the lounge. The remainder of the clause in the lease has been quoted but this refers specifically to structural alterations or cutting, altering or injuring walls or timbers, of which there is no evidence.

Decision: There has been a breach on the facts as alleged above.

(c) Clause 3.9

*“To obtain at the Tenant’s expense all licences approvals planning permissions and other things necessary for the carrying out or making of such alterations or additions to the Premises as the Landlord may permit and to comply at the Tenant’s expense with the bylaws and Regulations and other matters prescribed by any competent authority either generally or in respect of the specific works involved in such alterations or additions”.*

The allegation, as before, is that the Respondent has installed an internal partition wall, separating the kitchen from the lounge.

Decision: No Breach. Whilst the Respondent has not suggested that he approached the local authority with regard to the partition wall, it is for the Applicant to satisfy the Tribunal that Building Regulation approval was necessary and no such evidence or submission has been provided.

(d) Clauses 3.10 and 3.11

*“3.10 If at any time the Tenant is in breach of any of the Tenant’s covenants relating to the repair, maintenance or decoration of the Premises the Landlord may serve notice in writing on the Tenant specifying the breach and requiring the Tenant to remedy ft (sic).*

*3.11 To comply within 28 days (or sooner if the Tenant is proposing to assign or transfer or underlet the Premises or (if necessary) with any notice served under Clause 3.11 (sic)”*

The allegation is that following the installation of the internal partition wall, the Applicant served notice on the Respondent to remove it and

put the property back into its prior condition but this has not been done.

Decision: No breach. Notice was given to the Respondent to remove the partition wall and re-instate the property to its original condition. There is no separate allegation that any other repair, maintenance or decoration is needed. Thus compliance with the requirement to reinstate will include any repair or decoration work connected with the removal.

(e) Clause 3.17

*“Not to divide the possession of the Premises by an assignment or under letting or parting with possession of part only of the premises.”*

It is alleged that the Respondent has let the flat to more than one person and that because the new separated lounge has a lock on the door, it must be 2 separate households.

Decision: There has been a breach. The Respondent gave evidence to the Tribunal that he had let the property out as individual rooms to different people.

(f) Clause 3.18

*“Not to assign transfer underlet share or part with possession of the whole of the Premises without the Landlord’s consent in writing first obtained such consent not to be unreasonably withheld or delayed.”*

The Respondent accepts that he has sublet the property without written consent but says that this was with the Landlord’s agent’s verbal permission.

Decision: There has been a breach. The covenant in the deed states that consent must be in writing which cannot be over-ridden by any verbal consent. The circumstances leading to the breach are matters for the county court to consider when determining whether relief from forfeiture should be granted.

(g) Clause 3.20

*“To pay all reasonable and properly incurred costs and expenses (including legal costs and surveyors fees and such value added tax or similar tax as may from time to time by law be required to be added (sic) thereto) incurred by the Landlord in or in contemplation of any proceedings under section 146 of the Law of Property Act 1925 in respect of the Premises notwithstanding forfeiture is avoided otherwise than by relief granted by the court ....”*

The allegation is that this application is brought as a prelude to the service of a section 146 Notice and that costs are contractually payable. Part of the clause has not been quoted because that relates to work done in respect of a schedule of dilapidations which has not arisen.

Decision: No breach. It is clear that there have been other breaches, that the service of a section 146 Notice is contemplated and that

professional costs appear to have been incurred. However, as they have not been quantified and found to have been reasonably and properly incurred, and the necessary information in this regard was not presented to the Tribunal, they are not yet assessed and it cannot therefore be said that there is a current breach. Further, such costs incurred in proceedings before this Tribunal are administration charges which do not become payable until a statutory demand is made (Schedule 11, Part 1, paragraph 4 of the **Commonhold and Leasehold Reform Act 2002**).

## **Reasons**

### **Introduction**

2. The Applicant has applied to the Tribunal for a determination that the Respondent is in breach of the terms of a long lease so that he can serve a forfeiture notice pursuant to section 146 of the **Law of Property Act 1925** (“the 1925 Act”).
3. The bundle of documents filed with the Tribunal for the purpose of the hearing has numbered pages and any numbers quoted will be from that bundle.
4. The Tribunal has issued several directions orders, the last one being made by Judge Dobson on the 11<sup>th</sup> March 2021 requiring both parties to file evidence. It timetabled the case to this hearing.
5. It should be said at the outset that a great deal of evidence has been filed in the bundle for the Tribunal. This sets out the somewhat complex relationship between the various individuals involved in the case. There are serious allegations of fraud made but the main dispute really turns on one central issue i.e. did the Respondent cause an internal partition wall between the lounge and the kitchen to be erected before or after the date of the lease?
6. The Respondent says that the work was done before the date of the lease with the consent of the landlord Applicant’s agent, Essam Barakat. It may be helpful to set out the basic relationship between the witnesses and what they say in their statements. They all have statements of truth.
7. The Applicant, Dr. Abdullah Al Yousifi, has prepared 2 statements, one of which is a statement of case (page 56) and the other being a reply to the Respondent at page 64. He is a Kuwaiti national and lives there. He owns the freehold of the building in which the property is situated but leaves the management to his agents. Essam Balakat was appointed in September 2015 to manage the development of the building into 3 flats.
8. Rachid Louarradi has also prepared 2 statements at pages 68 and 77. He has been a self employed carpenter for 7 years. He has known the Respondent since he was 10 years old and they have been friends for the last 7 years. In 2016 this witness and the Respondent set up a property rental business called Blue Sea Rise Ltd. Mr. Louarradi dealt with maintenance of the properties and the Respondent dealt with everything else.

9. Mr. Louarradi has also worked for Essam Balakat for the last 8 years including the development of the building in which the property is situated which was completed in June 2016. On the instructions of the Respondent, Mr. Louarradi erected the stud wall which is the subject of this dispute with his brother Ismail. He says that he was paid £700 in cash of which he gave £250 to his brother. His second statement was prepared when he had seen the documentation.
10. He says that copy invoices and e-mails provided by the Respondent are false. The invoice produced by the Respondent for £550 is wrong. For example, the address on it was not his address at the time. He says that the Respondent used to prepare invoices for him in their business together and he must have prepared this one. As to the e-mails alleged by the Respondent to have been sent, he said that he lost his mobile telephone at that time and did not have his password. The Respondent had this and used it to create e-mails. He considered that he installed the partition wall over the weekend of the 25<sup>th</sup> and 26<sup>th</sup> February (pages 78/79).
11. Gareth Elliott is a property manager and his business, Pepper Fox Management Ltd. has been doing that work for 18 years. He was appointed by Essam Barakat to manage the property in September 2015 but he was not involved in negotiations between the Respondent and Essam Barakat as to the new lease in 2017.
12. Essam Barakat has been a property developer and manager for 34 years. He is a close friend of the Applicant and confirms that he acted as the Applicant's agent throughout. He also knew the Respondent well and appointed his company, SP Lets, to deal with the daily management of all his residential property portfolio. That work is now undertaken by Mr. Elliott of Pepper Fox Management Ltd. Mr. Barakat's nephew, Saad, owned the building in which the property is situated and Mr. Barakat acted as his nephew's agent when the Applicant bought the freehold.
13. The main evidential dispute is between Mr. Barakat and the Respondent. Mr. Barakat says that he did have a conversation with the Respondent about the erection of a stud wall in the flat but that was in anticipation of the Respondent buying the freehold which was his aim. Mr. Barakat simply told the Respondent, so he says, that as and when he, the Respondent, was the freehold owner of the building, he could do what he wanted. He did not give the Respondent permission to proceed with the work and he did not give consent to letting the property to anyone and, in particular, he did not give permission for more than 1 tenant to be in different rooms at the flat at the same time.
14. Shadi Yousef Al Baja, the Respondent, has made 2 statements on pages 87 and 103. He says that Mr. Barakat was acting for the Applicant at all times and gave specific authority for the stud wall to be erected before the lease was completed and knew everything about the letting of the flat. At page 92 he agrees that the flat was let to assured shorthold tenants and that if this was in breach of any term in the lease, such breach was waived as Mr. Barakat had full knowledge of this.

## **The Law**

15. Section 168 of the 2002 Act introduced a requirement that before a landlord of a long lease could start the forfeiture process and serve a notice under Section 146 of the 1925 Act, he or she must first make “...an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred”.
16. On 1<sup>st</sup> July 2013, the Leasehold Valuation Tribunal was subsumed into this Tribunal which took over that jurisdiction.
17. In the case of **Forest House Estates Ltd. v Al-Harthi** [2013] UKUT 0479, LRX/148/2012, Peter McCrea FRICS considered the matters which should be determined by this Tribunal in fulfilling its duty under this legislation. He said, at paragraph 30,;-

*“The question of whether a breach had been remedied by the time of the LVT’s inspection was not an issue for determination by the LVT. Questions relating to remedy, damages for breach and forfeiture are matters for the court. The LVT was entitled to record the fact that the breach had been remedied by the time of its inspection, but that finding was peripheral to its main task under section 168(4) of the 2002 Act. The LVT should have made an explicit determination that there had been a breach of covenant, notwithstanding that the breach had subsequently been remedied at the time of the LVT’s inspection”*
18. That decision is binding on this Tribunal and means, in effect, that the law as it stands is that the only task of this Tribunal in an application under sub-section 168(4) of the 2002 Act (which is all this application is) is to say whether there has been a breach, even if there was no longer a breach at the date of the Tribunal’s determination. The reason for that is that this Tribunal is not determining whether to forfeit the lease or grant relief against forfeiture. That is a matter for the court.
19. In his very helpful skeleton argument, counsel for the Applicant also refers to the cases of **Teign Housing v Lane** [2018] EWHC 40(QB) and **Swanston Grange (Luton) Management Ltd. v Langley-Essen** [2007] WLUK 275 being, respectively, a High Court decision and a Lands Tribunal decision which is earlier than the **Forest House Estates Ltd.** decision above.
20. **Teign Housing** was a possession case and the county court judge had held that whilst the installation of CCTV cameras without written permission breached the terms of the tenancy agreement, the tenant had provided evidence that he reasonably believed that permission had been given by the landlord and there was therefore no breach. A combination of paragraphs 42 and 43 in the High Court judgment establishes that the lower court should not have determined that no breach had actually occurred. No written permission had actually been given. Whether this affected the making of a possession order was a different matter

21. This case is slightly different to those circumstances because in this case we are talking about covenants in a deed and it is this Tribunal's view that a change in the terms of a deed can only be made by another deed, which means that a verbal agreement or even a written agreement by e-mail cannot prevent a determination that a breach had occurred if the deed has been transgressed. It could well affect the court's decision as to whether relief from forfeiture should be given but that is not this Tribunal's concern.
22. **Swanston Grange** held that if a covenant had been suspended because of waiver or *estoppel*, a breach will not have occurred.

### **The Inspection**

23. The members of the Tribunal did not consider it necessary to inspect the property in order to determine the issues raised. This was mentioned in one of the directions orders and the parties were asked whether they had any particular need for such an inspection. None did.
24. The Tribunal members could see from the photographs that the building in which the property is situated is on the corner of Goldstone Street and Goldstone Road in Hove. The entrance to this flat is just below ground level in Goldstone Road and the other 2 flat entrances are in Goldstone Street. There are some photographs of the inside of the property showing, in particular, the lounge and the kitchen with the new wall between them which has a door with a security lock enabling anyone with the appropriate security code to get into the lounge.
25. The lease plan shows no partition wall.

### **The Hearing**

26. Those who attended the hearing were Mr. Michael Walker, counsel for the Applicant, together with the witnesses called by him namely Rachid Louarradi, Gareth Elliott and Essam Barakat. Mr. Al Baja attended and he had no additional witnesses. However, he had provided his own skeleton argument which was, in effect, a summary of his evidence to which he had added some points.
27. Everyone is commended for their patience in that the Tribunal Judge's broadband failed some way into the hearing and he had to join the remainder of the hearing by conference call. One of the wing members also had technical problems.
28. The Tribunal case officer introduced the attendees and then assisted everyone by giving technical advice as to how the hearing would proceed. The Tribunal Judge then introduced himself and the Tribunal members. He then explained that he would ask some questions which arose from the papers and then invite each side to put their case. The Tribunal wing members would be invited to put any questions they had at the appropriate time. That was how the hearing proceeded.
29. As a preliminary issue, the Tribunal had to deal with an application by the Respondent to introduce further written evidence consisting of copy e-mails, invoices and water bills. He also tried to rely upon further

documents at the hearing namely demands for ground rent and service charges for the property together with evidence of payments. This application was initially opposed by the Applicant but when the Tribunal Judge said that the documents would be looked at by the Tribunal but not much weight would be placed on them, counsel accepted that this was a fair way of handling the matter. That was therefore the decision of the Tribunal. In fact, after the hearing was over, the Respondent tried to submit more documents but these could not be accepted or considered by the Tribunal.

30. The 3 witnesses for the Applicant gave their evidence, as did the Respondent. They were each cross-examined at some length. The hearing was a fairly careful balancing exercise as there was very clear bad feeling between Mr. Louarradi and Mr. Barakat on the one hand and the Respondent on the other hand. As the Respondent was unrepresented, some of the questions he asked were inappropriate and full of anger. Having said that, it was necessary for the Tribunal Judge to actually interfere in order to move matters on in a relatively small number of occasions.
31. Mr. Louarradi confirmed most of his statements. He said that he was not certain about when the work to the stud wall was carried out, stating that it was a long time since it was undertaken. His written statement had said that it was almost 2 weeks after the 14<sup>th</sup> February 2017. He was quite clear that he was paid £700 in cash for the work and that the invoice and some e-mails produced by the Respondent were false. He did not pay for or collect any materials for the work. They were left for him at the property. Mr. Al Baja asked Mr. Louarradi if the fact that he both worked for Mr. Barakat and lived in one of his properties meant that he had a conflict of interest. Mr. Louarradi denied that this would affect the evidence he gave. Mr. Al Baja asked the Tribunal to note this alleged conflict.
32. Mr. Barakat confirmed his statements. Many allegations were put to him, all of which he denied. It was suggested to him that since he and the Respondent had parted company and he had been involved in 7 sets of litigation against the Respondent since then, he was biased. He denied this and made the point that the other litigation involved other clients who were legally represented. He maintained his clear statements that he had not given permission to the Respondent to either undertake the creation of the stud wall or give permission for tenants to occupy the property or rooms therein. The Respondent had been given a key to the premises before the lease began for inspection purposes only.
33. Mr. Al Baja agreed that he was legally represented when the lease was created but he had not read it in any detail before the current accusations were made. He had certainly not gone through it with his solicitor. He had also been legally represented within these proceedings until the last few days. On the 14<sup>th</sup> February 2017, he did not know that written permission had to be obtained for any alteration to the building or any sub-letting. He described Mr. Barakat as being his 'mentor' at the time and yet he did not suggest that he asked Mr. Barakat to look at the stud wall in order to ensure that the work had been done properly and to the landlord's liking or satisfaction.



34. The materials for the work had been paid for by Mr. Louarradi with the Respondent's credit card when he, Mr. Louarradi, collected such materials. This contradicted his written statement which said that he had actually paid for the materials and no-one else was named as having collected them. The documents provided i.e. the invoice and copy payment slip made no mention of either the property or the person who collected them.
35. He did not know that he could not divide the possession of the flat i.e. let it to two or more individuals as rooms. He then admitted that he had let it as rooms and emphasised the point by saying that he 'took the flat on as it could be let out as rooms'.

### **Discussion**

36. This Tribunal does not have to consider the background to this case unless it provides evidence as to whether there has been a breach of the terms of the lease. As is set out in the **Forest House Estates Ltd.** case above, all the Tribunal has to determine is whether there has been a breach. Any reason, mitigation or rectification is a matter for the court in determining whether there should be forfeiture and/or relief against forfeiture.
37. Counsel for the Applicant also mentions the possibility that the Respondent is arguing that the relevant covenants were suspended by reason of a waiver or *estoppel* because consent to the breaches amounted to such a suspension. The Respondent did emphasise that demands for ground rent and service charges since the alleged breaches had been made and paid. This, of itself, does not amount to waiver or *estoppel*. There has to be some positive statement, action or inaction by or on behalf of the landlord to amount to those legal principles. Until forfeiture, if it should occur, there is no reason why ground rent and service charges should not be demanded and paid.
38. To say that there are conflicts of interest in this case is an understatement. The Tribunal was very concerned about the ill feeling between the main witnesses as to fact and, in particular, that Mr. Barakat has been involved in so much litigation with the Respondent since their professional relationship came to an end.
39. The Tribunal members were also concerned about:
- The suggestion made by the Respondent that before the lease had been signed, he spent, on his own admission, hundreds of pounds of his own money on building a stud wall to enable him to let the property as rooms when he had no lease or other interest in the property. Would any reasonable, sensible professional landlord do such a thing at a time when the freeholder could have simply refused to complete the lease? The Tribunal asked whether there was a contract for the lease. No-one knew and the Tribunal infers that there was none. The Respondent was asked how many properties he and his companies owned. He initially refused to answer and then said that he owned 7 properties. He did not say how many, if any, his companies own.

- The Respondent stated that he had let the property on the 14<sup>th</sup> February 2017 which proved that the work had been done before then. However he had not produced any evidence of this e.g. copy tenancy agreements or statements from sub-tenants. He had produced several such agreements for the remainder of the house in which the property is situated. He simply blamed this on his solicitors who were not there to deal with such a complaint.
- The Respondent said in his written statement that photographs of the property at pages 298 and 299 were taken by him or a 3<sup>rd</sup> party. In his oral evidence he then said that they were taken by him on the 14<sup>th</sup> February 2017 and that such date was on pages 298 and 299. He said that once they are dated, such date cannot be changed. The 2 photographs are said to have been taken at the same time but they are different. In one there is a microwave oven but not in the other, and the bag in the waste bin is in a different position. On page 298, the tool bar contains an option “edit or create” which is a common software option enabling a photograph and/or writing to be changed. The words alongside the picture show where the picture was taken and the date. If the Respondent had taken the picture on page 298, he would have inserted the word “kitchen” and the date. The tool bar option would have enabled him to change those and it must be assumed that the same software was used for both photographs. This, in effect, confirms the evidence given on behalf of the Applicant that the dates could have been just inserted by the Respondent at any time and on any date.
- In his skeleton argument, the Respondent says *“There is no breach. The layout of the flat remains the same. There have been no alterations to any of the structural walls of the flat, or the building. It has been a separate kitchen & living room since I bought it on 14.02.17. Essam Barakat is being unreasonable. If this was a breach why has the applicant not offered a fee to pay, which is the most common practise”*. The Tribunal is unaware of such a ‘common practice’ and wonders what is meant by such a remark. Some might suggest one particular conclusion i.e. this is evidence that the Respondent is used to dealing with his breaches of lease terms after the event.
- The main problem with the Respondent’s stance is that he was represented by solicitors in February 2017 and he knew or ought to have known (a) that written permission was required to alter the property (b) that written permission was required to sub-let the property and (c) that he could not divide the property to let as rooms. He was spending some £250,000 on the lease but he says that he did not bother to take advice about and/or properly consider the lease and its terms, particularly as to alterations and subletting which were obviously important to him. The fact that he put a locked door in the partition wall only emphasises his determination to ignore the lease. Despite what he said in evidence, he knew from the draft lease that the freeholder was not Mr. Barakat. If he had just raised these matters in writing through solicitors as part of the usual enquiries raised on such a purchase, the problems in this case would not have arisen. He chose not to.

- Mr. Barakat was said by the Respondent to have been his mentor at the time and he, the Respondent, depended on him to give advice and support. However there has never been any suggestion that Mr. Barakat was actually asked to look at the stud wall before tenants arrived just to make sure that everything was in order. If, as suggested by the Respondent, the wall was built with Mr. Barakat's full knowledge and approval prior to the lease being completed, the Tribunal finds it highly likely that Mr. Barakat would have been much more involved. The Respondent knew or should have known that he had no right or power to undertake these works before the lease was completed.

**Conclusions**

40. As far as the alleged breaches are concerned, the Tribunal has considered all of the evidence and submissions made by the parties and its conclusions, on the balance of probabilities, are set out in the decisions above. It has to say that when there is conflicting evidence between the Applicant and the Respondent not referred to specifically above, the evidence of the Applicant's witnesses is preferred.
41. The Tribunal is conscious of the fact that each and every allegation of the parties and witnesses against each other has not been specifically set out and commented on. What the Tribunal has done is look at the factual evidence itself together with the legal submissions and it has then determined the issues raised in the application.



.....  
**Judge Edgington**  
**4<sup>th</sup> May 2021**

**ANNEX - RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.