

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



S.168 (4) Commonhold & Leasehold Reform Act 2002

DECISION

Case Number: **CHI/21UG/LBC/2007/0015**

Applicants: **Mr Wayne Partridge & Mrs Lisa Partridge**

Respondent: **Carol Steed**

Represented by: **Rix & Kay Solicitors**

Property: **2 Calverley Court
Collington Avenue
Bexhill-on-Sea
East Sussex TN39 3QA**

Date of Application: **4 June 2007**

Hearing: **Documents Only**

Tribunal: **Mr B H R Simms FRICS MCI Arb (Chairman)
Ms Helen Clarke (Legal Member)**

Date of Decision: **10 September 2007**

Summary of Decision

The Tribunal determines that a breach of covenant in the lease has occurred namely that alterations in the elevation of the flat and to the timbers thereof have been undertaken without the previous licence in writing of the Landlord contrary to clause 4 (h) of the lease.

BACKGROUND

1. This is an application pursuant to S.168 (4) of the Commonhold and Leasehold Reform Act 2002 (The Act) for a determination that a breach of covenant or condition in the lease has occurred.
2. Provisional Directions were issued on 11 June 2007 following which the applicants made a request for a pre-trial review hearing and further Directions for the conduct of that hearing were issued on 25 June 2007.
3. A pre-trial review hearing was held at Hornsby Park Sports Complex, Bohemia Road, Hastings on 25 July 2007. Further Directions for the conduct of the case were issued dated 27 July 2007.
4. Following the issue of the Directions the parties provided such additional information and photographs that they felt might assist in the Tribunal's deliberations.
5. By way of the Directions dated 27 July 2007 the Tribunal gave notice to the parties under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004 that it intended to proceed to determine the matter on the basis of written representation and without an oral hearing. An opportunity was given for either party to object to this procedure but no such objection was received. The case has therefore been decided on the basis of documents only.

ISSUE

6. S.168 (4) of the Commonhold & Leasehold Reform Act 2002 provides that a landlord may make an application to a Leasehold Valuation Tribunal for a determination that a breach of covenant or condition in the lease has occurred.
7. The Applicant alleges that Clause 4(h) of the lease has been breached in that the Respondent has replaced timber sash windows with UPVC windows without seeking or obtaining permission from the freeholder as required by Clause 4(h). It is alleged that the works alter the elevation of the building and therefore an application to the landlord is required prior to the alterations being undertaken.
8. Clause 4(h) of the lease of the property states:

"Not without the previous licence in writing of the Landlord to make any alteration in or addition to the plan or elevation of the said flat or in any of the walls or timbers thereof and to maintain and repair any such authorised addition at her own expense and at all times to keep indemnified the Landlord and the owners and occupiers of the other flats in the said building from and against all costs charges and expenses in connection with such addition"

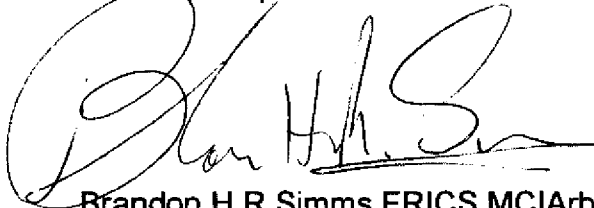
CONSIDERATION

9. It is common ground that no licence in writing has been issued by the landlord. The Respondent by her solicitors say that there has been no breach of covenant. The windows have been replaced but this work did not make any alteration in or addition to the plan or to the elevation or to the walls or to the timbers of the property and accordingly the landlord's consent is not required. They go on to say that the tenants' obligation to repair overrides any obligation for consent for alterations. If the Respondent had not replaced the windows which in her opinion were beyond effective maintenance she would have been in breach of clause 4(c) of the lease.
10. The Respondent has provided a great deal of information regarding the replacement windows and in fact it would appear that further amendments are being proposed following consultation with the landlord. The Tribunal is not concerned about the proposed works and has no jurisdiction to consider whether or not the proposals are acceptable to the landlord.
11. It is also common ground that prior to the works to the windows being undertaken no application had been made to the landlord for a licence to make any alterations.
12. The Tribunal therefore has to consider whether in its opinion the works would constitute an alteration in or addition to the plan or elevation of the flat or in any of the walls or timbers thereof.
13. Timbers are not defined in clause 4(h). The windows are made of timber and these have been replaced with plastic which in the Tribunal's view constitutes an alteration to timbers.
14. The Applicant has provided photographs showing the replacement windows together with photographs showing the windows prior to them being replaced. Our interpretation of the word "elevation" in clause 4(h) is its usual meaning being the appearance of the exterior vertical faces of the building. When viewing the photographs of the current elevation of the building it is clear that the replacement windows do not have the same pattern or proportions as those shown in the photographs of the pre-existing windows. Without doubt there has been an alteration to the elevation of the flat.
15. The works that were proposed, and which have now been completed, are such which, by at least two of the requirements of clause 4(h), would need the landlord's licence in writing before the work is commenced. As there has been no licence in writing granted the Respondent tenant is in breach of the covenant at clause 4(h) of the lease.

DECISION

16. The Tribunal determines that a breach of covenant in the lease has occurred namely that alterations in the elevation of the flat and to the timbers thereof have been undertaken without the previous licence in writing of the Landlord contrary to clause 4 (h) of the lease.

Dated 10 September 2007

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', written over a horizontal line.

Brandon H R Simms FRICS MCI Arb
(Chairman)