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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 168(4) OF THE COMMONHOLD & LEASEHOLD REFORM ACT
2002**

Case Reference: LON/00BB/LBC/2012/0092

Premises: GFF 394B Sherrard Road London E12 6UQ

Applicant: Mrs Taj Begum

Representative: JH Hart & Company LLP

Respondent: Mrs Nadia Firaz

Representative:

Date of hearing: 13 September 2012

Appearance for Applicant: Mr Vvesh Bharakhda, solicitor of JH Hart & Co
Mr Ifran Khan (Applicant's son)

Appearance for Respondent(s): Did not attend & was not represented

Leasehold Valuation Tribunal: Ms E Samupfonda
Mrs J Davies

Date of decision: 20 September 2012

1. The Applicant is the freehold owner of the above named property and the lease commenced on 14 September 1988 for a term of 99 years. The Respondent is the lessee who purchased the leasehold interest on or about 25th May 2010.
2. The application to the Tribunal was received on 9th July 2012. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) as to whether there has been a breach of covenant.
3. On 12th July the Tribunal held an oral trial review and issued, of its own motion and without input from the parties, directions for the future conduct of the case. The Applicant complied with the directions but the Respondent has failed to do so.
4. The hearing of the case took place on 13 September 2012. Mr V Bharkhda solicitor of JH Hart and Co attended and represented the Applicant. The Applicant's son Mr I Khan was also in attendance. The Respondent did not attend and was not represented. The Tribunal was in receipt of a letter, together with its enclosures dated 22 August 2012 from DAC Beachcroft, the Respondent's solicitors in which they indicate that the Respondent "does not intend to attend the hearing as she is unable to provide sufficient evidence to establish the date of construction before the deadline filing her bundle of documents and she is unable to provide evidence that the Applicant has consented to the construction of the extension." The request to adjourn the hearing was refused.

The Lease

5. The lease contains a covenant at Clause 2(9) that, the lessee will "comply in all respects with the Town and Country Planning Acts 1971 and 1974 and the like enactments and extending legislation." Under Clause 3 of the Fourth Schedule this provides that the lessee will "not maim or injure any part of the building of which the demised premises forms part or any part of other premises referred to in Clause 3(4) (i) to (v) hereof and not to make any alteration thereto without the consent in writing of the lessor which consent shall not be unreasonably withheld."

The Applicant's Case

6. The Applicant's case is that according to the lease plan, the property is described as a one bedroom flat. Mr Khan said that sometime in 2010, he noticed an advert in the press showing the property for sale as two- bedroom flat. He then instructed Mr C Baker, a surveyor from Mcdowells surveyors to inspect the property and he produced a report dated 22nd December 2011, a copy of which has been provided to the Tribunal. The report concludes that "an extension has been placed on the rear of this particular property which has now formed a kitchen space at the very rear of the ground floor flat."

7. Mr Bharakhada submitted that the Respondent has breached clause 2(9) and 3 of the Fourth Schedule. He stated that the Applicant has made several requests to the Respondent that she provides evidence of planning permission and building control or certificate of lawfulness but she has failed to do so. He added that the alterations were carried out without the Applicant's knowledge or consent. He added that the Applicant would not withhold her consent if clause 2(9) were satisfied.

The Respondent's case

8. From the correspondence provided the Tribunal understood that the Respondent's case was that the lease was acquired on 29 April 2010 and the property was purchased as a two -bedroom ground floor flat with a small extension that houses the kitchen. The extension was in place at the time of purchase and the Respondent was unaware that the Applicant had not provided her consent to the extension. The Respondent has submitted a letter dated 9 August 2012 from John Poulton whom we were told by Mr Khan was the tenant of the first floor flat 394A. In his letter Mr Poulton stated that the extension has been there for over four and half years.

Law

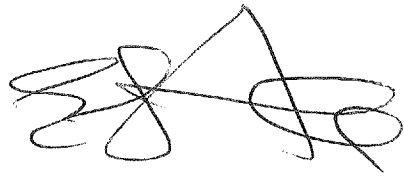
9. Section 168(4) of the Act states that "A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred."

Tribunal's decision

10. Our jurisdiction under section 168(4) of the Act is restricted to determining whether a breach of covenant or condition has occurred and does not extend to other issues such as whether the breach has been waived or whether circumstances exist which might make it unjust to forfeit the tenant's lease. The Applicant relies upon clause 2(9) and paragraph 3 of the Fourth Schedule to the lease. There is no evidence before the Tribunal that the Respondent has complied with the Town and Country Planning Acts 1971 and 1974 and the like enactments and extending legislation. It does not appear to be in dispute that the ground floor rear has been extended as described by the Applicant's surveyor. However the Respondent argues that this was carried out by the former lessee and that she was not aware that it had been carried out without the landlord's consent. Regrettably this argument is not a consideration for the Tribunal in determining whether or not a breach has occurred as the remainder of the term of the lease is vested in her.
11. Although the Tribunal has some sympathy with the Respondent in this case, it is bound by s168(4) . The Tribunal is in no doubt that a breach of the covenants contained in clause 2(9) and paragraph 3 of the Fourth Schedule to the lease has occurred.

Chairman

Evis Samupfonda

A handwritten signature in black ink, consisting of several overlapping loops and a central vertical stroke, positioned to the right of the name 'Evis Samupfonda'.

Dated

20 September 2012