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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LBC/2013/0054**
Property	:	**52a Walsingham Road, London E5 8NF**
Applicant	:	**Zaid Stivar Simon Hussein**
Representative	:	**In person**
Respondent	:	**Nalene Hussein**
Representative	:	**Craigen Wilders & Sorrell, solicitors**
Type of application	:	**Determination of whether there has been a breach of a covenant in the tenant's lease**
Tribunal	:	**Margaret Wilson** **Stephen Mason FRICS**
Date of decision	:	**14 October 2013**

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DECISION

Introduction

1. This is an application by a freeholder ("the landlord") under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that the respondent tenant is in breach of covenants in the lease of her flat. In particular the landlord asserts that the tenant has carried out unauthorised alterations, some of which have gone beyond the demise of her flat, and has thereby rendered the insurance for the flat void or voidable.

2. The determination is made on the basis of the papers alone in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, neither party having asked for an oral hearing.

3. Pre-determination directions were made on 18 July 2013 and the parties have complied with them.

The dispute

4. 52 Walsingham Road is an Edwardian house which has been divided into two flats. Flat A is on the ground floor and is held by the respondent ("the tenant") on a lease for a term of 999 years from 28 May 2004. The tenant is the landlord's step-mother.

5. By clause 2(10) of the lease the tenant covenants *not to make or suffer to be made any additions or alterations to the buildings on the demised premises and not to erect or suffer to be erected on the demised premises any other buildings or erections without the consent in writing of the lessor and in particular not to carry out any works which may require the licence or approval of the local or town planning authorities without having first obtained all requisite town planning and byelaw consents.*

6. By clause 2(13) of the lease the tenant covenants *not to do or suffer to be done upon the demised premises anything which may be or grow to be an annoyance or damage to the lessor or the lessees or tenants of the lessor or the neighbourhood or tend to depreciate the adjoining or neighbouring property as residential property or whereby to the lessees' knowledge any insurance for the time being effected on the demised premises may be rendered void or voidable.*

7. The extent of the demise is shown on a plan attached to the lease. It is clear that the demise does not include the chimney breast in the kitchen.

8. It appears from a statement from Rozanali Hussein, the landlord's father, submitted on behalf of the tenant, that he bought the house at auction and

registered the freehold title in the name of his son because he intended to live abroad. The Official Copy of the Register of Title shows that the landlord was registered as the freehold owner on 21 March 1991. A 999 year lease of Flat A dated 18 October 2005 was granted to Rozanali Hussein. On 7 July 2006 the flat was transferred to Nalene Hussein, the landlord's step-mother, and Adam Nasar Hussein. According to Rozanali Hussein's statement he arranged in March 2006 to replace the windows in Flat A and to remove the chimney breast in the kitchen. He says that he obtained the appropriate Building Regulations approval but did not seek or obtain the consent of his son, the landlord. None of those facts appear to be disputed.

9. It is also not in dispute that the tenant has changed the layout of the flat in that the bathroom and lavatory have been relocated, a doorway has been created from what was the bathroom window into the garden and a window has been created in the kitchen. It is not disputed that the landlord's consent was neither sought nor obtained.

10. The tenant says, through her solicitors, that the removal of the chimney breast took place more than six years ago and that the claim in respect of it is statute-barred. She says that all the works have received Building Regulations consent and planning approval. She says that she had difficulty in contacting the landlord to seek his consent. She says that the removal of the bath is neither an alteration nor an addition. In relation to insurance, she says that she has insured the flat and does not accept that any of the works were capable of avoiding an insurance policy or that they did so. While she denies that there have been any breaches of covenant, she says that any compensation should take the form of an increased price for the freehold which she wishes to buy, and she says that she believes that the landlord's motive in making the application was to to obstruct the sale of the flat.

11. The landlord disputes that he has tried to obstruct the sale of the flat and denies that he has been difficult to contact and asserts that the tenant has throughout been aware of his email address. He says that he has tried to insure the flat but has failed to do so because the lease plan does not accurately reflect the demise.

Decision

12. The tribunal's jurisdiction under section 168(4) of the Act is very limited. It is confined to determining whether *a breach of a covenant or condition in the lease has occurred.* It does not extend to awarding compensation or to deciding whether the tenant has acted reasonably (see, for example, *Swanston Grange (Luton) Management Limited v Langley-Essen* (LRX/12/2007) and *GHM (Trustees) Limited v Barbara Glass and David Glass* (LRX/153/2007)). We are therefore not concerned in this decision with the reasonableness of the tenant's actions, but simply with whether there have been breaches of the covenants in the lease. It is clear that there have been such breaches. The removal of the chimney breast, the re-location of the bathroom and the alteration of the kitchen window into a door all clearly fall within the words

additions or alterations to the buildings on the demised premises which require that landlord's written consent, which was neither sought nor obtained. The Limitation Act does not apply to applications under section 168(4) which are declaratory in nature, and, even if there was a limitation period it would in our view be 12 years and not six. We are therefore satisfied that there have been breaches of clause 2(10) of the lease. We are not satisfied on the evidence available to us that there has been a breach of clause 2(13) because it is not clear that *any insurance for the time being effected on the demised premises* was rendered void or voidable, but, rather, it appears that the tenant has insured the flat throughout. While it may be that the discrepancies between the lease plan and the current layout of the flat might render the insurance policy voidable, that it has done so is not in our view established on the evidence.

13. It is unfortunate that this dispute has reached the tribunal. It seems to us that it should be capable of resolution by mediation or negotiation and that such courses of action would be greatly preferable to further litigation.

Judge: Margaret Wilson