FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAN/LBC/2014/0092**
Property	:	**Flat 3, 139 Hammersmith Grove London W6 ONJ**
Applicant	:	**Sybil Abrahams**
Representatives	:	**Ms L Mattsson (Barrister)**
Respondents	:	**Ms Soon Chin Tan**
Representative	:	**Ms H Gore - (Barrister)**
Type of Application	:	**Application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Professor Robert M Abbey (Solicitor)** **Mr Peter Roberts (Architect)**
Date and venue of Hearing	:	**19th January 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2nd February 2015**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants the application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002.

(2) The reasons for our decisions are set out below.

The background to the application

1. The Applicant seeks an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. The application concerns alleged breaches ("the alleged breaches") carried out to Flat 3, 139 Hammersmith Grove London W6 ONJ ("the property.").

2. S. 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows with sub-section (4) shown in bold:

> *(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)the tenant has admitted the breach, or*
> *(c)a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.*
> *(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 a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.***
> *(5)But a landlord may not make an application under subsection (4) in respect of a matter which—*
> *(a)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
> *(b)has been the subject of determination by a court, or*
> *(c)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

3. The property contains five flats. The Respondent is the tenant of flat 3 being the first floor flat. Flat 3 is held under a registered lease for a term of 125 years from 24 June 1983 ("the lease"). The Respondent was registered as proprietor of the leasehold title on 18 August 2014.

4. On or about 8 September 2014 the Respondent commenced building works to the property. On 17 October 2014 pursuant to a County Court ex parte application made by the Applicant an injunction was issued ordering that all works cease pending an inspection of the property by a surveyor acting for the Applicant. An inspection was carried out by a Mr Jason Read MRICS on 21 October 2014 and as a result the Applicant asserts the alleged breaches of the lease namely of seven clauses being clauses 2(8) repair, 2(9) works from a breach, 2(13) alterations, 2(14) erecting machinery/apparatus, 2(18) nuisance or annoyance, 2(19) floor coverings, 2(20) compliance with Planning Acts. The Respondent does not accept that the works amount to a breach of the lease terms.

5. The Tribunal needs to establish from the evidence presented to it whether or not, on the balance of probabilities, the Respondent has acted in such a way that she is in breach of a covenant or covenants listed above.

The hearing

6. The Tribunal had before it a bundle of documents prepared by the applicant in the form of two lever arch files containing copies of documentation and authorities regarding legal submissions. A smaller bundle was also submitted by the Respondent.

7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. First to give evidence on behalf of the Applicant was Ms Alicia Cieplowska of Flat 5 139 Hammersmith Grove, the tenant on the third floor. She has lived there for eleven years. In essence her evidence was that the building works to the property caused large amounts of dust throughout the common part of 139 Hammersmith Grove, the flat door being left open, that building materials, radiators and rubbish were left in the common parts and that carpets were not covered while the works were being carried out and that as a consequence the carpets were stained and damaged. She also asserted that building works were noisy starting at 8am in the morning and also occurred at the weekends.

9. Mr Read did not attend to give evidence but we did have the benefit of his report with supporting colour photographs. (It also appeared that the description of the work said to amount to the alleged breaches was

not disputed. The Respondent admitted that the works had been carried out and agreed the physical descriptions.)

10. The Respondent then gave evidence and sought to explain why the works were not a breach or breaches of the lease terms. Her view is that there is no evidence which proves on a balance of probabilities that the repair work being carried out under clause 2(8) of the lease constitutes a breach of the covenants set out above. Her express view was that she had carried out "light refurbishment works" only. She also said however, that she had not been to the property since 6 October 2014 but had seen pictures. No works had been carried out since 17 October 2014 being the time was the injunction was in place.

11. It was the Respondent's submission that this was a case of works in progress and so things could not look as they should. Furthermore there was insufficient evidence to show the alleged breaches had occurred. Additionally, as to the work carried out, none required any permission, as may be required under the terms of the lease, as the Respondent only effected work she was entitled to do that did not need any lessor's consent.

The issues

12. The only issue for the Tribunal to decide is whether or not a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. Having heard evidence and submissions from the Applicant and from the Respondent and having considered all of the documents provided, the Tribunal determines the issue as follows.

13. The Tribunal preferred the evidence of the Applicant as it appeared to show to the Tribunal that there had been several breaches of covenant and these are set out below. Clause numbers mentioned below are all clauses from the lease of the property.

14. Clause 2(13) requires the tenant not without written licence from the landlord to carry out any "*....structural alteration or structural addition whatsoever in or to the flat either externally or internally or to make any alteration or aperture in the plan external construction height walls timbers elevations or architectural appearance thereof....*". The Tribunal was shown details of how the Respondent had relocated the kitchen to the rear of the property, cut through an outside wall to enable a new boiler flue to be installed for the new relocated boiler and had moved a partition wall (called partition C on the plans supplied) to the old kitchen at the front. The Tribunal decided that these works had been carried out and they were all works that would fall within the ambit of clause 2(13). The Respondent had not requested permission from the landlord to permit these works to be effected. The

Tribunal was therefore satisfied that the works were all carried out in contravention of clause 2(13).

15. Clause (14) requires the tenant not without written licence from the landlord to erect or fix to the flat any machinery or mechanical or scientific apparatus. The Tribunal was shown details of how the Respondent had installed a new boiler that had been located in a different position in the property to that of the previous boiler. The Tribunal decided that this amounted to works that would fall within the ambit of clause 2(14). The Respondent had not requested permission from the landlord to permit these works to be effected. The Tribunal was therefore satisfied that the works were carried out in contravention of clause 2(14).

16. Clause 2(18) requires the tenant *"not to do or permit to be done upon or in connection with the flat or the building anything which shall be or tend to be a nuisance annoyance or cause of damage to the landlord or his respective tenants or any of them ...."*. In this regard the Tribunal had the benefit of the evidence of Ms Cieplowska of Flat 5 139 Hammersmith Grove, the tenant on the third floor. Her evidence was given forcefully, and showed that she, as a tenant in the building had experienced large amounts of dust throughout the common parts of 139 Hammersmith Grove. She also gave details of how building materials, radiators and rubbish were left in the common parts and we were able to see colour photographs showing this. She also explained that carpets in the common parts were not covered and that as a consequence they were now stained and damaged. She also asserted that building works were noisy, (banging and hammering), starting at 8am in the morning and that they also occurred at the weekends. The Tribunal took particular note of this evidence as Ms Cieplowska was prepared to attend at the Tribunal hearing to give oral evidence and to make it clear what had occurred. In the light of the above the Tribunal was therefore satisfied that what had taken place as a result of the building works instigated by the Respondent and set out above were in contravention of clause 2(18).

17. Clause 2(19) requires the tenant *"to keep the flat including the passages thereof substantially covered with carpets except that in the kitchen and bathroom all over cork or rubber covering or other suitable material for avoiding the transmission of noise may be used instead of carpets."* The Respondent did say that she was in the process of installing the flooring and we saw photographs of stored engineered timber flooring boards. We were also able to see partially laid timber flooring on a rubber matting underlayer in the flat. The Respondent did also say at the hearing that she had intended to install wooden flooring with rugs but now intended to lay carpeting in the property. From the evidence before the Tribunal it decided that at the time the works were halted by the injunction that the Respondent had intended to lay a wooden floor covering. Accordingly the Tribunal was therefore satisfied that what had taken place as a result of the flooring

works started by the Respondent and set out above were in contravention of clause 2(19).

18. Clause 2(20) requires the tenant to comply with *"the provisions and requirements of the Town and Country Planning Acts 1947-1977 or to any statutory modifications or re-enactments thereof...."*. The Landlord asserted that due to alleged breaches of Building Regulations that the Respondent must be in breach of this covenant. The Tribunal was not persuaded by this argument. They noted that the clause referred to the Town and Country Planning Acts and made no mention of Building Regulations or of the statutes that give effect to these regulations. In the circumstance the Tribunal did not find a breach had occurred of this covenant.

19. In the light of the breaches found to have occurred and set out in paragraphs 14 to 17 above, the Application must succeed.

Name: Prof. Robert M. Abbey **Date:** 02.02.15