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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00BF/LBC/2014/0085**

Property : **5A Oxford Road (first and second floor flat), Wallington, Surrey SM6 8SJ.**

Applicant : **Latchguard Ltd**

Representative : **Robert Heald FRICS**

Respondent : **Jason Charles Cantoni**

Representative : **Faisel Sadiq of counsel**

Type of application : **For an order that a breach of covenant in the lease has occurred**

Tribunal members : **Simon Brilliant
Hugh Geddes**

Date and venue of hearing : **4 February 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **4 February 2015**

DECISION

Decision of the tribunal

- (1) The tribunal determines that the Respondent has committed breaches of covenant in the lease.
- (2) There has been no application for costs and there is no order for costs.

The application

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of a covenant or condition in the lease has occurred.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Robert Heald FRICS at the hearing and the Respondent was represented by Faisal Sadiq of counsel.
4. Immediately prior to the hearing Mr Sadiq handed in a skeleton argument and authorities. The start of the hearing was not delayed as Mr Heald had been served with them the evening before.

The background

5. The property which is the subject of this application is a split level conversion flat on the upper two floors of a Victorian house. There is a rear extension at first floor level but not a second floor level.
6. 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.
7. The Respondent holds a long lease of the property dated 5 May 1989 ("the lease") which prohibits the making of structural alterations by the Respondent without the previous consent in writing of the Applicant. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issue for determination as follows:

Did the Respondent's admitted:

- (1) replacement of the original wood sash windows in the property with new UPVC windows, or
- (2) installation of an ensuite bathroom in one of the second floor bedrooms,

amount to a structural alteration on the true construction of the lease?

9. It was common ground that no permission had been given by the Applicant for the carrying out of the works.
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The lease

11. The demise is in the fifth schedule of the lease:

ALL THAT the Flat or Maisonette being Numbered 5A Oxford Road Wallington and being the First and Second Floor Flat of the Building including the roof and also including the structure of the Flat and the floors of the Flat and the ceilings thereof and the joists under the floors of the Flat and the external walls of the Flat from the First Floor up to the commencement of the roof.

12. By clause 3(f) of the lease the Respondent covenanted:

Not to make any structural alterations ... to the demised premises ...without the previous consent in writing of the Lessor.

The works

13. Our findings of fact regarding the works carried out by the Respondent are as follows.
14. The Respondent replaced all the original wood sash windows in the property with new UPVC windows. This involved the removal of the original frames and glass. We were shown a photograph of the front of the property since the new windows were installed.
15. The front bedroom on the second floor has been sub-dived into two rooms. The front bedroom is separated from the rear bedroom by a spine wall across the property. A stud wall has been erected in the front

bedroom at 90 degrees to the spine wall, running from the spine wall to the front external wall of the front bedroom.

16. The stud wall contains a door leading into what is now an ensuite bathroom carved out of the front bedroom. The building of the stud wall required cutting into both the front external wall of the front bedroom and the spine wall.
17. A mechanical vent has been installed in the bathroom which goes through the ceiling into the roof space. Although there is no direct evidence as to where the vent goes thereafter, it is common ground that Building Regulation approval has been given. We therefore find, on the balance of probabilities, that the Respondent has cut not just through the ceiling of the bathroom but also through either the external wall of the roof space or the roof itself.
18. A soil and waste water pipe has been installed in the bathroom. This goes through the external wall of the second floor rear bedroom and across the external wall of the second floor rear bedroom to meet the pipe serving the bathroom on the first floor.

The submissions

19. Mr Heald says the works clearly amount to structural alterations within the meaning of clause 3(f) of the lease set out in paragraph 12 above.
20. Mr Sadiq in a very economical and attractive submission says that because the roof, floors, ceilings, joists and external walls are all expressly mentioned separately from the structure in the definition of the demise in schedule 5, the word "structure" in clause 3(f) cannot include the roof, floors, ceilings, joists and external walls.
21. Mr Sadiq was candidly hard pressed to say what meaning could be given to the word "structure" in clause 3(f) if the roof, floors, ceilings, joists and external walls were excluded.
22. Mr Sadiq also drew our attention to the repairing obligations of the Respondent in clauses 3(c) and 4(i) of the lease and the repairing obligations of the Applicant in clause 5(d) of the lease.
23. Mr Sadiq also submitted that the word "structure" in clause 3(f) cannot include windows not being an integral part of the fabric of the building without which the building is rendered unstable.

Discussion

24. We prefer the submission of Mr Heald.

25. Although a lease has to be read as a whole, we do not consider that the expression “structural alterations” in clause 3(f) should be coloured by the wording of schedule 5. The latter is not a general definition clause but a rather clumsy description of the demised premises. The expression “structural alterations” in clause 3(f) should be given its usual meaning and will include external walls, ceilings and the roof.
26. We therefore find that the installation of the mechanical vent (involving the cutting of the ceiling and the external walls or roof) and the installation of the soil and water pipe (involving the cutting of the external walls) amount to breaches of covenant.
27. We also find that the cutting of the front bedroom external wall in connection with the installation of the stud wall is a breach of covenant.
28. We do not find on the evidence before us that the spine wall was a structural wall, so it has not been proved that the cutting of that wall in connection with the installation of the stud wall is a breach of covenant.
29. We find that replacing the windows was a structural alteration within the meaning of clause 3(f), the windows being part of the envelope of the property.

Name: Simon Brilliant
Hugh Geddes

Date: 4 February 2015

Appendix of relevant legislation

Section 168(4) of the Commonhold and Leasehold Reform Act 2002:

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.