



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

Case reference : **LON/00BK/LBC/2019/0056**

Property : **Flat 31, Lancaster Close,
13-15 St.Petersburgh Place,
London W2 4JZ**

Applicant : **Lancaster Close Limited**

Representative : **Ms Brooke Lyne of Counsel
and Guillaumes LLP**

Respondent : **Wafaa Mustapha El Samawi**

Representative : **Mr Stefan Roy of Counsel**

Type of application : **An application under section 168 (4) of
the Commonhold and Leasehold
Reform Act 2002 for an order that a
breach of covenant or condition in the
lease has occurred.**

Tribunal member : **Mr Neil Martindale FRICS**

**Date and venue of
hearing** : **21 October 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **1 November 2019**

DECISION

Decision

1. The Tribunal determines that the respondent is in breach of the first and third covenants listed by the applicant, but not of the second.

Application

2. This is an application by the freeholder, under section 168(4) of the Commonhold and Leasehold Reform Act 2002. It is for a determination that there has been one or more breaches of covenant by the respondent in respect of the tenant's lease. The application is made in, or in contemplation of proceedings under Section 146 and 147 of the Law of Property Act 1925.

Property

3. The Property is a two bedroom dwelling, Flat 32, on an upper floor of Lancaster Close at 13-15 St Petersburg Place London W2. The Building, of which this Property forms part, is an interwar purpose built mansion block laid out as flats, some 90 in number, over 10 floors. Subsequently the flats appear to have been sold and are now held on individual long leases.
4. The applicant states that they are the freeholder and landlord of the Building and that it is managed by Rendall and Rittner Ltd.. Similarly the lease was stated to be dated 19 February 1986 between Closeneed Ltd (landlord) and Ian James McDonald (leaseholder) for 999 years from 29 September 1985, at an initial ground rent of £60pax rising to £120pax. The lease was apparently assigned to the respondent on 20 May 2011.

Directions

5. Directions were issued by Tribunal Judge Dutton on 19 August 2019. Both parties generally complied but, the applicant failed to provide the Tribunal with a copy of the full lease and of the current HMLR registered titles for the leasehold and freehold. However the respondent did not query the content of the lease, the wording of the key three clauses, the identity of the parties or the nature of the interests; either before, or at the hearing.
6. The Tribunal required and was provided with a signed witness statement by the property manager Ms Emily Bullock, for the applicant, who attended, presented and was questioned on her evidence. The statements by the respondent were mainly in the form of copies of earlier written correspondence to the applicant. The respondent sought to present late evidence to the Tribunal as to the costs of proposed remedial works to the flat. The Tribunal declined to accept them as they had not been sent to the applicant before the hearing and were in any case far too late.

Inspection

7. The Tribunal inspected the Property (and by agreed invitation of the occupier of the flat directly below). The inspection took place before commencement of the hearing. The respondent, the agent and her assistant for the applicant, as well as counsel for each party all attended. The occupier of the flat below the Property was also present during the inspection of that flat.
8. The Tribunal entered the Property. It observed that there was no carpet to the hall, bedroom 1, bedroom 2, and living room: Instead there was new wood flooring throughout these areas. There were tiles laid to the kitchen and to the floor of the shower room and bathroom. The Tribunal heard the airborne sounds of the footsteps of the several people in attendance in the Property when their shoes impacted on the floor as they moved around in an ordinary manner. The Tribunal also heard the sound of some squeaks to the flooring as it appeared to shift slightly when some of the company moved around. The Tribunal observed that the Property appeared to be being used and occupied as a single residential household.
9. The Tribunal accompanied by the full company moved down a floor level and entered the flat underneath. It observed that there was also no carpet to the hall and living room, but that there was carpet to the two bedrooms. The neighbour described the noise nuisance she had encountered for months, coming from the Property. A member of the company returned to the Property and moved about. The Tribunal heard the sound of the impact of footsteps of that person moving around as well as the minor squeaking noise from the flooring above as it apparently shifted slightly on its 'floating' timbers.

Applicant's Case

10. The applicant alleges that the following tenant's covenants under the lease have been breached. It sets out the evidence in the form of the signed witness statement of Ms Emily Bullock, the Building manager. Ms Bullock identified and provided the wording of each of the three relevant clauses from the lease.
11. 1. Lease clause 3(6) *"Not to make any alterations in or additions to or cut maim or injure any of the walls or timbers or alter the internal arrangement of the demised premises or any part thereof without the previous consent in writing of the Lessor to the plans and specifications thereof or remove any of the Lessor's fixtures."*
12. 2. Lease Schedule 1(1) *"Not to use the demised premises nor permit the same to be used for any purpose whatsoever other than as a private residence in one occupation only nor for any purpose from which a nuisance annoyance or disturbance can arise to the owners lessees or occupiers of the other parts of the Building."*
13. 3. Lease Schedule 1(12) *"The Lessee will cover and keep covered the floors of the demised premises with carpet and an underlay other than the floors of the kitchen and bathroom which shall be properly and suitably covered."*

14. Ms Bullock made clear that this application was a pre-cursor to and in contemplation by the landlord seeking forfeiture of the lease. The various alleged breaches were first brought to the attention of the landlord by another leaseholder and/or their sub-tenant, occupying the flat directly below the Property in around September 2018. It was understood that the wood flooring had been installed during that month by the respondent. At that stage the Property had been sub-let to four students but, late in March 2019 they left. The owner, the respondent, then moved back in. There was however reported to be no reduction in the nuisance arising from the use of the Property even with this change of occupation.
15. Nuisance to the neighbouring flat directly below the Property was reported as arising from the creaking of the newly installed wood floor (on top of the structural load bearing concrete floor) and from noise of shoes impacting on its hard upper surface, both sounds being created as the occupiers moved around the Property. The former possibly from incorrect specification and/or installation of the addition of a new wood floor, the latter from the absence of carpet and underlay.
16. In the application form the applicant also alleged that nuisance to neighbours and the Building had arisen from the *“The Respondent has been carrying out refurbishment work outside of sociable hours to the annoyance, nuisance and complaint of neighbours.”* However apart from this early reference to late working and a short email contained in the appendix to the bundle, no additional evidence was offered.
17. The applicant sought recovery from the respondent of its costs incurred in the enforcement of these terms of the lease, under clause 3(7).

Respondents Case

18. The respondent did not present a witness or formal witness statement but, did provide copies of earlier correspondence between the parties that had been generated for over the year prior to the hearing date.
19. Through her counsel the respondent briefly set out an account of tragic family circumstances which had resulted in the death of a family member. The sad turn of events had been almost overwhelming for the family to cope with and the move of the respondent back to residency in the Property in 2019, was related. The issue of the alleged breaches was something that the respondent had simply not been able to deal with in the time and stress levels encountered from the tragedy and the move. The respondent neither admitted, nor denied the breaches.
20. The respondent sought additional time to accumulate funds to pay for and to organise the works which might be needed for repairs to the wood floor and the possibility of carpeting to address the alleged breaches. It was noted that a year had passed since the first report.

21. Counsel for the respondent sought to place responsibility for the nuisance noise alleged from the wood floor on structural timbers forming part of the demise and the building, the responsibility for the maintenance of which lay, in the lease with the landlord. However counsel could offer no expert evidence to support this contention, nor was it something set out in earlier correspondence which had been provided in the bundle as the respondent's evidence.

Law

22. The relevant parts of s.168 of the Commonhold and Leasehold Reform Act 2002, provide as follows:-

(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)

(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.

Decision and Reasoning

23. The Tribunal determines that the respondent is in breach of lease clause 3(6) 'alterations and additions'; is not in breach of Schedule 1(1) 'nuisance use'; is in breach of Schedule 1(12) 'carpeting'.

24. **Clause 3(6) 'alterations and additions':** The Tribunal observed a very new looking polished wooden floor during its inspection. At the hearing and in the written evidence, it had been presented with clear and uncontested evidence

that a new floor had been added sometime in 2018 but, that the respondent had not sought the consent of the landlord applicant prior to the works.

25. Although the Tribunal had sympathy for the sad loss of the respondent and the very real and considerable pressures arising, the lease was clear that all such alterations required prior consent. The wood floor was no exception. It was in this routine manner that proposed specifications of works for alterations and additions could be checked and if necessary improved on with the advice and at the insistence of the landlord so as to minimise possible nuisance to other residents and the landlord arising and preventing damage to the building.
26. Such the evidence of the agent, the landlord's licences issued for similar works elsewhere in the building already provided for carpeting of such new flooring if the landlord later received any noise complaints from neighbours. No prior consent had been sought and obtained by the respondent from the applicant for the addition or alteration. There was a breach.
27. **Schedule 1(1) 'nuisance use':** The Tribunal observed for itself and heard evidence from both parties that the flat was being used as a single private residence. There was no claim, even when the four students lived there that there had been any unauthorised or unusual occupation or use by the respondent. There was no claim by the applicant that the respondent had later been obviously or deliberately noisy in their use and occupation of the Property. The Tribunal concluded that noise nuisance could not arise from the incidental use of the Property in the manner permitted by the lease. There was no breach.
28. **Schedule 1(12) 'carpeting':** The Tribunal observed for itself and heard and received the evidence as to the continuing absence of carpet in all parts of the Property where the lease stipulated carpet and underlay had to be laid. There was a breach.
29. The Tribunal makes no determination as to the landlord's costs in this matter arising under the lease. The landlord may wish to raise the issue of these costs directly with the tenant and if they are not agreed, may make a further application to the Tribunal for a determination as to what administrative costs were reasonable and payable by the tenant.
30. All costs incurred in any subsequent referral on to the county court, by the applicant, are a matter for that court, only.

Name: N Martindale FRICS **Date:** 1 November 2019

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.