



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

**Case Reference** : CHI/43UD/LBC/2021/0010

**Property** : 27 Rookwood Court and Garage 15  
Guildford, Surrey  
GU2 4EJ

**Applicant** : ROOKWOOD COURT (RESIDENTS  
ASSOCIATION) LIMITED

**Representative** : TWM Solicitors

**Respondent** : PAMPAS HOLDING LIMITED

**Representative** : Ellis Jones Solicitors

**Type of Application** : Breach of Covenant  
Section 168(4) of the Commonhold and  
Leasehold Reform Act 2002

**Tribunal Member(s)** : Judge Tildesley OBE

**Date of Hearing** : Determination on Papers

**Date of Decision** : 2 September 2021

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**DECISION**

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## **Background**

1. The Applicant landlord, Rockwood Court Residents Association Limited, sought a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that Pampas Holdings the Respondent leaseholder of Flat 27 Rockwood Court, Guildford, was in breach of various covenants contained in the lease, namely Clauses 4(5), 4(9)(a), 4(10), and 4(11).
2. The Respondent’s lease of the Flat is dated 22 March 1983 and originally between George Kemp Stroud and Company Limited (1) and Eileen Violet Black (2) (“the Lease”).
3. On 1 July 2021 the Tribunal directed that the Application be determined on the papers without an oral hearing. The parties were required to exchange their statements of case, and the Applicant was directed to provide a hearing bundle.

## **The Facts**

4. The Applicant decided not to pursue the alleged breaches of Clauses 4(9)(a), 4(10), and 4(11) and relied entirely on the alleged breach of Clause 4(5) of the Lease.
5. The Applicant adduced in evidence the statement of Kenneth Peter Ford, an employee of Clark Gammon Estates the Applicant’s managing agent dated 21 July 2021.
6. Mr Ford stated that the Respondent confirmed on 2 February 2018 that works had taken place in the Flat without the Applicant’s consent. Mr Ford said that the works involved relocating the kitchen and erecting an internal wall to create an additional bedroom.
7. According to Mr Ford, the alterations have significantly modified the layout of the Flat. The alterations have moved the kitchen to the foot of the lounge and created an additional bedroom in the space where the kitchen initially stood. Mr Ford said this had turned the flat from a two bedroom property into a three bedroom property with the kitchen now directly over the lounge of the flat below.
8. The Respondent in its statement of case admitted that it had altered the internal planning of the flat by moving the kitchen into the foot of the lounge and that it did not have the written consent from the Applicant to carry out the works. The Respondent admitted that by 2 February 2018 it had breached Clause (4)(5) of the Lease.

## **Decision**

9. The purpose of bringing proceedings under section 168(4) is to enable a landlord under a long lease of a dwelling to serve a section 146 notice to

forfeit the lease for breaches of covenant by the tenant other than non-payment of rent. If proceedings are brought the Tribunal is required to determine whether the tenant has committed an actionable breach of covenant.

10. The term actionable breach was considered by Judge Huskinson in *Swanston Grange (Luton) Management Limited v Eileen Langley Essen* LRX 12/2007. Essentially the Tribunal's jurisdiction under section 168(4) is limited to a finding of fact on whether a breach has occurred. Judge Huskinson added that the Tribunal can decide whether the landlord was estopped from asserting the facts on which the breach of covenant is based. Judge Huskinson, however, went on to say the Tribunal's jurisdiction did not extend to determining whether the breach had been remedied. This was a question for the court in an action for forfeiture.
11. Clause 4(5) of the Lease provides that

“Not to alter the internal planning or the height elevation or appearance of the flat nor at any time make any alterations or additions thereto nor cut maim or remove any of the party or other walls or partitions or the principal or bearing timbers or iron and steel or other supports thereof nor carry out any development thereto nor change the user thereof (within the meaning of any legislation for the time being relating to Town and Country Planning) without the previous written licence of the lessor (such licence not to be unreasonably withheld in the case of any alteration which do not involve alterations of the structure and other parts or things affecting any of the services and other things referred to in the Fifth Schedule) Provided that such plans and specifications of any such alterations or works as the surveyor shall deem necessary shall be first submitted to the surveyor for his approval and the Lessee shall pay a reasonable fee to the surveyor for approving the plans and specifications and approving the work and shall also pay the proper legal costs of the Lessor in connection with any such licence”.
12. The Tribunal finds on the facts and the Respondent's admission that the Respondent has carried out works which altered the internal planning of the flat for which he did not have the consent of the Applicant.
13. The Tribunal is satisfied that the Respondent had by 2 February 2018 breached clause (4)(5) of the lease.
14. The Respondent opposed any application on behalf of the Applicant in relation to costs or Tribunal fees on the grounds that the Applicant waived the right to forfeit the Lease by demanding and accepting payment of service charge, for three more years, subsequent to becoming aware of the breach of clause 4(5). The Applicant denied that it had waived its right to forfeit the lease by demanding and accepting payment of the service charge. The Applicant applied for the Respondent to reimburse the application fee of £100.

15. The question of whether the Applicant has waived its right to forfeit the lease is not a matter for the Tribunal. The Tribunal has found in favour of the Applicant, and therefore makes an order that the Respondent reimburse the Applicant with the £100 application fee within 14 days from the date of this decision.

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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. The application should be send by email to [rpsouthern@gov.uk](mailto:rpsouthern@gov.uk)

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).