FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AR/LBC/2019/0076**
Property	**:**	**36 Ferguson Court, Romford, Essex RM2 6RJ**
Applicant	**:**	**Ferguson Court Management Ltd**
Representative	**:**	**Littlestone Cowan**
Respondent	**:**	**Mr M Patel**
Representative	**:**	**Meadows & Moran**
Type of application	**:**	**To determine whether a breach of covenant has occurred**
Tribunal member	**:**	**Judge Simon Brilliant**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**25 November 2019**

DECISION

Order

An order is made that the respondent is not in breach of a covenant in his lease.

Background

1. The respondent is the assignee of a long lessee of 36 Ferguson Court, Romford, Essex RM2 6RJ ("the flat") under a lease dated 25 March 1996 made between Hedgemoor Ltd and Mr and Mrs England ("the lease").

2. The lease was assigned to the respondent on 26 September 2017 according to the official copy entries[1]. The freehold reversion was assigned to the applicant on 22 June 2012.

3. The flat is on the first floor of a small post war block.

4. The following term of the lease is of relevance.

5. Clause 4(9) contains a covenant by the respondent not to injure, cut or maim any of the walls, ceilings, floors or make any alterations in the flat without the licence of the applicant first obtained in writing. In my judgment, this clause covers work which involves non-structural as well as structural alterations.

6. The applicant made an application to the tribunal, received on 26 September 2019, asking the tribunal to make an order that a breach of covenant in the lease has occurred. The tribunal has power to make such an order under s.168 Commonhold and Leasehold Act 2002. The relevant legislation is set out in the appendix.

The applicant's case

7. The applicant's case is that the flat was originally built with two bedrooms, but has been converted into a three bedroom flat without the written or any consent of the applicant. This is, the applicant says, a breach by the respondent of clause 4(9).

Directions

8. A directions hearing was held on 25 September 2019. Both parties were represented. The tribunal directed that the hearing should be determined on paper, unless either side requested an oral hearing. Neither party has made such a request.

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[1] The official copy entries are at [28]. However, in their letter dated 30 April 2019, the respondent's solicitors say the flat was purchased in October 2014 [32]. A sublease of the flat granted by the respondent is dated 2016 [155].

9. The directions provided in the usual way for sequential service of witness statements and legal submissions. No permission to give expert evidence was made.

The evidence

10. The applicants initially relied upon the following witness statements:

    (a) Mr Collins, who is described as director and "owner" of the applicant. Mr Collins does not supply his address. He says that he has recently made enquiries of the planning office and they confirmed that each property (presumably in the block) was built as a two bedroom property. No evidence from the planning authority is forthcoming. However, he does produce a block plan which suggests that each flat only contains two bedrooms.

    (b) Ms Mahoney, whose employer, Vision Property & Estate Management UK Ltd, is the managing agent of the block. She confirms that to her knowledge the flat has been converted to a three bedroom flat. The applicant accepts this has happened, although the flat has now been converted back to a two bedroom flat[2].

11. Mr Patel made a witness statement dated 24 October 2019. He says he has not carried out any conversion works. As soon as his subtenant left, he converted the flat back to two bedrooms.

12. He also relies upon an email dated 9 November 2018 from Mr Money, an assistant manager at Beresfords, the estate agents acting for the respondent on his purchase of the flat. This states that when the flat was sold to the respondent it was then being used as a three bedroom flat with a reception room. There is a similar letter dated 30 May 2019 written by Mr Money.

13. Paragraph 8 of the directions provided that the applicant might send a brief reply to the applicant's case by 1 November 2019.

14. Ms Mahoney made an additional witness statement dated 30 October 2019 that no permission had been given to the respondent to convert the flat back to a two bedroom flat. This is of no relevance to the issue I have to decide, which concerns what is said to be an earlier conversion into a three bedroom flat.

15. The applicant also seeks to rely upon entirely fresh evidence of Mr Antino, a building surveyor, contained in a witness statement also dated 31 October 2019. No permission has been given for the calling of expert opinion evidence. Moreover, the evidence does not go to the issue I have to decide.

Findings

[2] See the respondent's solicitor's email dated 9 October 2019 [134].

16. I am satisfied on the balance of probabilities from examining the plans, albeit not very good ones, that the flat was originally one containing two bedrooms.

17. However, there is no evidence that the respondent carried out the alteration relied upon in the application. All the evidence points to the clear conclusion that the flat was in this configuration when the respondent purchased it.

18. Accordingly, I do not make a determination that the respondent has broken a covenant in the lease.

Simon Brilliant 25 November 2019

Annex

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

The relevant parts of s.168 Commonhold and Leasehold Reform Act 2002 ("the Act" 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—
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> (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 the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.