FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/LBC/2021/0055** **P: PAPERREMOTE**
Property	**:**	**Flat 1, 25 Alexandra Grove, London N4 2LQ**
Applicant	**:**	**Mr Douglas Palin**
Representative	**:**	**In person**
Respondents	**:**	**Mr Daslav Brkic (1)** **Mrs Paola Salmoria(2)**
Representative	**:**	**In person**
Type of Application	**:**	**Section 168(4) of the Commonhold and Leasehold Reform Act 2002 – Determination of an alleged breach of covenant**
Tribunal member(s)	**:**	**Judge Donegan**
Date of Paper Determination	**:**	**14 December 2021**
Date of Decision	**:**	**14 December 2021**

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in two bundles, the contents of which I have noted.

Decision of the Tribunal

The Tribunal determines that a breach of clause 4(5) of the original lease of Flat 1, 25 Alexandra Grove, London N4 2LQ has occurred.

The background and application

1. The applicant is the freeholder of 25 Alexandra Grove ('the Building'), which contains five leasehold units. He lives in Flat 2 on the first floor. The respondents are the leaseholders of Flat 1, which is on the ground floor of the Building. They do not reside in this flat but visit from time to time.

2. The applicant seeks a seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 that there have been breaches of covenants or conditions in the respondents' lease.

3. The application was submitted on 16 August 2021 and directions were issued on 30 September 2021. In the application form, the Applicant alleged two breaches of the lease:

   (a) Unauthorised alterations to the Flat in breach of clause 3(5); and

   (b) A failure to keep floors in the Flat covered with carpet and underlay in breach of regulation 15 of the fourth schedule.

4. The directions provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 14 December 2021.

5. The relevant legal provisions are set out in the Appendix to this decision.

6. The specific provisions of the lease are referred to below, where appropriate.

The lease

7. The original lease was granted by Chamajin Limited ('Lessors') to Ms Lorraine Keggie ('Tenant') for a term of 99 years from 24 June 1984. The term was extended to 189 years in a supplemental lease dated 10 September 2014, made between the applicant (1) and Richard James Bulmer and Carla Elizabeth Bulmer (2). The supplemental lease did not alter any of the covenants that are the subject of these proceedings.

8. The Tenant's covenants are at clauses 3 and 4 of the original lease and include the following obligations:

3(5) Not at any time during the said term to make any alterations in or additions to the Demised Premises or any part thereof or to cut maim alter or injure any of the walls or timbers thereof or to alter the Landlords' fixtures therein without first having made a written application (accompanied by all relevant plans and specifications) in respect thereof to the Lessors and secondly having received the written consent or the Lessors thereto

4(5) Observe and perform the regulations in the Fourth Schedule hereto PROVIDED that the Lessors reserve the right to modify or waive such regulations in their absolute discretion

9. Regulation 15 in the fourth schedule to the original lease obliges the Tenant to:

At all times to cover and keep covered with carpet and underlay the floors of the Demised Premises other than those of the kitchen and bathroom and at all times suitably and properly to cover and keep covered the floors of the kitchen and bathroom in the Demised Premises

The parties' submissions and evidence

10. The applicant relies on a 97-page bundle of documents, which includes a witness statement dated 15 October 2021. The statement raises several grievances, many of which are irrelevant to this application. The same is true of the first respondents' statement (see paragraph 13 below). There is clearly some animosity between the parties, who were involved in previous Tribunal proceedings, and this may have clouded their approach. However, the issues in this case are straightforward and arise from changes to the flooring within the Flat.

11. It is common ground that the respondents refurbished the Flat during the first half of 2015. This included the removal of carpets and underlay in the hallway and living room and the installation of hardwood flooring, laid on top of the original parquet flooring. The respondents did not consult the applicant before undertaking this work and did not obtain his consent for the new flooring. He contends this is a breach of the alterations covenant at clause 3(5), as well as regulation 15 in the fourth schedule. He also complains of noise nuisance from the Flat but there is no suggestion the respondents have breached other lease covenants.

12. The parties corresponded about various matters, including the flooring, between 2015 and 2017. They also involved their respective solicitors

and discussed a possible retrospective licence for alterations. Unfortunately, these negotiations foundered over the level of the applicant's legal fees. The hardwood flooring remains in the hallway and living room, but loose rugs have been laid on top.

13. The respondents rely on a 87-page bundle, which includes a witness statement from the first respondent dated 01 November 2021. They make various criticisms of the applicant and question his motivation for pursuing these proceedings. Their actual grounds for defending the proceedings are summarised below:

    (a) The change of flooring is purely decorative,

    (b) They sought retrospective consent for the new flooring in 2017,

    (c) They have laid rugs on the hardwood flooring and the applicant has inspected these rugs,

    (d) The applicant has waived any breach of covenant, by his acquiescence since 2017,

    (e) The application is time-barred by virtue of the Limitation Act 1980 and

    (f) They have offered to lay underlay and carpets on the new flooring.

The Tribunal's decision

14. The Tribunal determines that:

    (a) No breach of clause 3(5) of the original lease has occurred, and

    (b) A breach of clause 4(5) of the original lease has occurred.

Reasons for the tribunal's decision

15. Clause 3(5) is a qualified covenant against alterations and additions. This must be restricted to changes to the fabric of the Flat, otherwise the Tenant would require the Lessors' prior written consent for every conceivable change, including redecoration and hanging of pictures. The removal of carpets and underlay and laying hardwood flooring on top of the original parquet flooring is not an alteration or addition within this clause. Further, there was no evidence that any of the walls or timbers have been cut, maimed, altered, or injured and no suggestion of any alteration to Landlords' fixtures.

16. The respondents have not observed/performed the carpeting obligation at regulation 15 in the fourth schedule. They removed the carpets and underlay in the hallway and living room and replaced them with hardwood flooring in early 2015. This breached the covenant to observe and perform the regulations (clause 4(5)).

17. The hardwood flooring remains. The rugs have not remedied the breach, as they only cover part of the flooring. The respondents have offered to lay carpets and underlay but have not taken this step and the breach is continuing.

18. The applicant's claim is not time-barred under the Limitation Act 1980. The time limit for an action founded on simple contract is 6 years (section 5) but there is a longer limit of 12 years for actions on a specialty (section 8). The original lease and supplemental lease are both specialties, being documents under seal. However, this point is academic as the applicant simply seeks a determination of breach and is not pursuing an 'action' to enforce the lease

19. Regulation 15 is absolute and requires the respondent to carpet and underlay all floors apart from the kitchen and bathroom. This was breached when the hardwood flooring was laid, and applicant was not obliged to give retrospective consent. Further, the applicant's lack of action (if any) between 2017 and 2021 did not waive this breach. Arguably, he may have waived any right to forfeit the lease. However, the Tribunal make no finding on this point as it has not been addressed in the parties' statements.

The next steps

20. The application has been partially successful. One breach of the lease has been made out. The other has not. The respondents should remedy the carpeting breach by laying carpet and underlay in their hallway and living room, as soon as possible. If the breach continues then they risk further action, which could include the service of a notice under section 146 of the Law of Property Act 1925 and possible forfeiture/possession proceedings.

21. The parties are encouraged to settle their differences. They own adjacent flats and should focus on improving neighbourly relations. To this end, the parties should consider mediation or other forms of alternative dispute resolution before embarking on further litigation.

Name: Tribunal Judge Donegan **Date:** 14 December 2021

Rights of appeal

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

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

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 168 No forfeiture notice before determination of breach

(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 the appropriate 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.

(6) For the purposes of subsection (4), "appropriate tribunal" means –

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to a dwelling in Wales, a leasehold valuation tribunal.