FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HH/LBC/2021/0016
Property	**:**	Knebworth Court, 44 Petitor Road, St Marychurch, Torquay, TQ1 4QF
Applicant	**:**	Knebworth Court Management Limited
Representative	**:**	Stephen Hawkins
Respondent	**:**	(1) Michael John Rose (2) Deborah Maureen Rose
Representative	**:**	Jonathan Ward, counsel (instructed by Boyce Hatton Solicitors)
Type of Application	**:**	s.168/s.27A
Tribunal Members	**:**	Judge Dovar Ms Coupe FRICS
Date and venue of Hearing	**:**	29th April 2022, Remote
Date of Decision	**:**	26th May 2022

DECISION

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1. There are two applications before the Tribunal. The first is for a determination of breach of various covenants in the Respondent's lease. The second is for a determination of the payability of service charges. The Applicant freehold management company was represented by Mr Hawkins and the Respondents were represented by counsel, Mr Ward.

2. On 20th May 2021, a claim for £1,600 was issued against the Respondents in the County Court for outstanding service charges and was transferred on 5th August 2021 to the Tribunal. Separately, an application under s.168 of the Commonhold and Leasehold Reform Act 2002 was made on 27th May 2021, alleging 4 separate breaches of covenant. On 30th November 2021, directions were given for the matters to be heard together. A County Court Order will be sent out at the same time as this determination dealing with matters that are solely within jurisdiction of the County Court.

3. The Property contains four apartments. The Respondents own a long lease of Flat 1, which is on the ground floor and has some outside space. The Applicant is a leaseholder run management company which owns the freehold to the Property.

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4. At the outset of the hearing the Applicant sought permission to withdraw the first allegation of breach, being in relation to car parking. The Respondents consented as did the Tribunal.

5. The remaining allegations were:

a. The installation of a letter box and solar lights on the external common parts;

b. Hanging clothes in the external part of their demise; and

c. Opening a patio gate onto the common parts from their demise, which had been welded shut by their predecessors.

Letter Box, intercom and Solar Lights

6. The Respondents had placed a letter box outside the main door to the Property. They did so to ensure they got their post. They had also put up some solar powered lights to assist the residents when they came home. They installed an intercom by the main door to the Property so that they know when people attended and let them in.

7. The Applicant contended that these were all in breach of clause 2 (6) of their lease which prohibited them from making 'any structural alterations or structural additions to the demised premises'. However, the installations were not within the demised premises, they were installed on common parts. Therefore, this clause did not assist the Applicants.

8. Alternatively, the Applicant contended they breached clause 2 (7) in that they interfered with 'the external decorations or painting of the building'. The solar lights were installed on brickwork and so did not so interfere. Whilst the intercom and letter box were installed over a painted area, the Tribunal considered that any interference was so slight as to be de minimis. In any event, there was an exception to the

prohibition, being 'except as may be unavoidable'. The Respondent explained (and this was not challenged) that the main door is kept locked and so it is sometimes difficult for genuine visitors to gain access. Indeed, there have been instances when visitors have been unable to access the Property. There have also been issues with emergency services. The intercom is therefore necessary so that proper, alternative, access can be given to visitors, including, importantly to emergency services. The Tribunal considers that if the breach were not so slight, then it would be unavoidable given the manner in which the door is locked. A similar issue arises with post.

9. For those reasons, no determination is made of a breach on this ground. The Respondents also sought to justify this action on the basis that it was done by Mr Rose as a director of the Applicant company, but the Tribunal did not consider that he had authority to do so, and he was aware of that.

Clothing

10. The Respondents hang their clothes out to dry on a patio area that is within their demise. The Applicant contends this is a breach of clause 4 (10) states that the tenant is '*Not to hang or expose or permit to be hung or exposed any clothes or other articles outside of the demised premises …'*. The issue here is the proper construction of 'outside of the demised premises'. Does it mean outside of the area demised to the tenant or the outside area of the demised premises. The Tribunal considers that the natural reading of the words is the former. There are

other references to 'outside the demised premises' which are clearly a references to an area outside of the demise; i.e. clause 4 (6) prohibits the playing of instruments 'in the demised premises … so as to be audible outside the demised premises'. Clearly that does not mean that the instrument could not be played if it could be heard in their patio but no further. Likewise, clause 4 (11) prohibits keeping pets 'in the demises premises' if they cause a nuisance. On the Applicant's construction a pet could therefore be kept on the patio regardless of whether it caused a nuisance or not.

11. Accordingly, this breach is not made out.

Patio Gate

12. The Applicant stated that a previous owner of Flat 1 had installed a gate to their patio so they could more easily access the common parts. That had caused consternation with the Applicant and it had been agreed to weld up the gate. Reliance was placed on clause 2(6) and (7) again. The Tribunal did not consider that unwelding a gate was a structural alteration that came within clause 2 (6). As for clause 2 (7), the Applicant was not able to say why they had relied on this clause, they candidly said they had been told by their advisors to put it in. It was not clear to the Tribunal how this was relevant.

13. Accordingly, this breach is not made out.

Service Charges

14. The Applicant claimed two years' service charges demanded in advance. Each in the sum of £800. In fact, at the hearing they sought to add in another year, but the Tribunal did not allow that as it had not formed part of their original County Court claim. In any event, the same issues arose in respect of each and it is hoped that the parties will consider this determination when they approach the latest demand.

15. For the first invoice, for the year end 2019, the Applicant accepted that contrary to s.21B of the Landlord and Tenant Act 1985, no summary of tenant's rights and obligations accompanied that demand, with the result that it was not payable.

16. In any event, in respect of both invoices, they had failed to follow the provisions of the lease for service charges. By clause 4 (17) that only allowed £75 per annum in advance of expenditure. Therefore, the charges actually made were not in compliance with the lease terms and it follows they are not payable.

Conclusion

17. Each claim of breach is dismissed and no service charges are payable.

18. At the end of the hearing the Applicant stated that it did not intend to put any of the costs of these applications though the service charge. In any event, given the wholesale failure of both applications, the Tribunal makes an order under s.20C of the Landlord and Tenant Act 1985, prohibiting the same.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.