



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

Case Reference : **CHI/OOML/LBC/2022/0019**

Property : **Flat 5 Framnaes 185 New Church Road
Brighton East Sussex BN3 4DA**

Applicant : **FRAMNAES FREEHOLD LIMITED
(Landlord)**

Representative : **Dean Wilson LLP**

Respondents : **MARK JOHN BATTLE-WELCH (1)
EMMA KEALEY BATTLE-WELCH (2)
(Tenants)**

Representative : **Rix & Kay**

Type of Application : **Breach of covenant**

Tribunal Members : **Judge F J Silverman MA LLM**

**Date and venue of
Hearing** : **Paper remote
03 February 2023**

Date of Decision : **03 February 2023**

DECISION

This has been a remote consideration on the papers which has been consented to by the parties. The form of remote hearing was P:REMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in an electronic bundle the contents of which are referred to below. The orders made in these proceedings are described below.

Decision of the Tribunal

The Tribunal determines that the Respondent Tenants are in breach of covenant under the terms of their lease.

Reasons

1 The Applicant landlord sought a declaration from the Tribunal that the Respondent tenants were and remained in breach of the covenants of their lease. Directions were issued by the Tribunal on 18 October 2022.

2 The hearing took place as a paper consideration to which the parties had previously consented. In accordance with current Practice Directions the Tribunal did not make a physical inspection of the property. The issues in the case were capable of resolution without a physical inspection of the property. Photographs of the property were supplied to the Tribunal.

3 The Applicant landlord is the freeholder of the building known as Framnaes 185 New Church Road Road Brighton East Sussex BN3 4DA (the building) which is comprised of self-contained flats. A top floor Flat (no 5) (the property) is occupied by the Respondents.

4 The Respondents are the tenants of the property.

5 The lease under which the Respondents hold the property is dated 27 April 2017 (the lease) (page 20) and was made between the Applicant (1) and M A Pinkney and D Sussman (2). The current lease is a renewal of a lease dated 02 December 1972 and made between R Green Brighton Ltd (1) and J A Green(2) and contains the same covenants.

6 By clause 3 (1) (c) of the lease the tenants/Respondents covenant 'not without the previous written consent of the lessor make or allow to be made any structural alteration in the plan, elevation, or appearance of the demised premises nor to make any addition or alteration thereto, nor cut, maim, alter or injure any of the walls or timbers thereof nor erect or remove any internal partition'.

7 The Applicant said that they had asked for access on 9 March 2022 but had not been able to gain entry to the property on that date. However, access was gained on 23 March 2022 when a chartered surveyor inspected the property on behalf of the Applicants (page 40) and found that a number of substantial alterations had been made to it including :

- Removal of a structural internal wall
- Alterations to the bathroom
- Movement of the kitchen from a separate room at the rear of the flat to an area in the main living room thus creating a single cooking/living space and at the same time creating a second bedroom from the now vacated former kitchen area
- The erection of a timber partition and removal of the living room door
- Creation of an access to the loft above the flat. The loft area is not included in the demise but remains part of the structure and exterior in the Applicant's ownership
- Replacement of the floor covering in the living room with vinyl tiles. The lease requires close carpet to be laid on the floors except for the kitchen and bathroom areas (Schedule 3 para 1).

8 Photographs showing these alterations were provided to the Tribunal and have not been disputed by the Respondents (pages 12-15).

9 Although the Respondents appear to have obtained building regulation consent for some of these alterations the Applicant maintains that at no point have the Respondents made any attempt to seek consent for the works as they are required to do under the lease.

10 The Applicant expresses concern that some of the alterations which have been made to the property may have increased the fire risk and that it is likely, particularly in relation to structural issues, that consent would have been refused for some of the alterations in their present form.

11 In paragraph 4 of their response the Respondents admit that works have been carried out to the property as described above (page 36 and 57 et seq) but dispute that they are in breach of the requirement to close carpet the property saying that the vinyl tiles which have been laid in the main living area are soft tread and sound proofed by an underlay. Since the lease requirement is for close carpeting and the replacement flooring is admitted not to be close carpeting there can no argument to defend the breach of this covenant.

12 Similarly, and as noted in the previous paragraph, the Respondents have admitted carrying out the alterations as alleged by the Applicant and have even supplied their own photographs of them. They have not produced any evidence to show that they had made an attempt to approach the Applicant for consent to the works nor is there any concession from them that a breach of the lease has been committed.

13 Given the facts as stated above the Tribunal has little choice but to find that the Respondents are in breach of the terms of their lease by carrying out unauthorised alterations to the property including laying a hard surface flooring in the living room and creating an unauthorised access into the loft space owned by the Applicant.

14 The Law

Commonhold and Leasehold Reform Act 2002 s 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 a leasehold valuation 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.

Name: Judge F J Silverman

Date: 03 February 2023

Note:

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.