



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

Case Reference : **CHI/00HB/LBC/2023/0011**

Property : **First & Second Floor Maisonette,
53 Ashley Hill, Bristol, BS7 9BE**

Applicant : **53 Ashley Hill Management
Company Limited**

Representative : **Mr Phillips**

Respondent : **Mr Walker**

Type of Application : **s.168 CLRA'02**

Tribunal Members : **Judge Dovar
Mr Turner Powell FRICS
Mr Jenkinson**

**Date and venue of
Hearing** : **5th September 2023,
Bristol Magistrates' Court**

Date of Decision : **13th September 2023**

DECISION

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Introduction

1. This is an application for the determination of various breaches of covenant under s.168 of the Commonhold and Leasehold Reform Act 2002.
2. The Applicant freehold company was represented by Mr Phillips, one of its directors and the owner occupier of one of the units in the building containing the Property. Ms Talbot, the other director, and another owner occupier was also present at the hearing. The Respondent, Mr Walker, represented himself. The Applicant had provided a bundle in accordance with the Tribunal's directions. The Respondent had not complied with the directions but prior to the hearing was given permission to file his response and evidence and the Applicant was given an opportunity to file further evidence in relation to that; which they did.
3. None of the parties considered a site view was needed and by the end of the hearing the Tribunal formed the view that none was necessary.

Section 168

4. Section 168 of the 2002 Act provides:

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. As was discussed at the hearing, this application is the first step in the process of residential forfeiture and even if a breach is determined by this Tribunal, there remain potential issues relating to the service of a s.146 notice, remediation, applications for retrospective consent or conditions for relief from forfeiture.

Lease Terms

6. The Respondent's lease is dated 31st May 2018 and he is the original lessee. It contains the following material provisions.

7. Various interpretations are given at clause 1, including:
 - a. Permitted Use: as a single private dwelling;
 - b. Property: Part of the first and second floor of the Building known as First & Second Floor Maisonette, 53 Ashley Hill Horfield Bristol BS7 9BE shown edged red on the Plan more particularly described in Schedule 1;
 - c. Retained Parts: all part of the Building other than ... the Flats ..., including: (a) the main structure of the Building including roof structures, the foundations, the external walls and internal load bearing walls, the structural timbers, the joists and the guttering; ... (e) the Service Media at the Building which do not exclusively serve either the Property or the Flats;
 - d. Service Media: all media for the supply or removal of ... water, sewage ...and all other services and utilities ... and equipment ancillary to those media.
8. Schedule 1, which describes the Property includes the internal plaster, internal, non-load bearing walls, but does not include the Retained Parts.
9. Schedule 4 sets out the Tenant Covenants and includes:
 - a. Paragraph 8, Alterations:

8.1 Not to make any external or structural alteration or addition to the Property or make any opening in any boundary of the Property or cut or maim any structural parts of the Building.

8.2 Not to make any internal, non-structural alteration or addition to the Property, or alteration to the plan, design or elevation of the Property, without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed.

8.3 Not to install, alter the route of, damage or remove any Service Media at the Property, without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed.

b. Paragraph 11, Compliance with Laws and Notices

To comply with all laws relating to the Property, its use by the Tenant and any works carried out at it.

The Breaches

Addition of Velux Window

10. The Respondent admitted he had inserted a Velux window in the roof. He contended that the Building's original roof had a window at the position where the Velux was now. He did accept though that when he did carry out that work, he had to take off roof tiles and open up.

11. This was a breach of clause 8.1 in that regardless of whether historically there had been a roof light in that position, when the lease was granted, it was not there, there were tiles. Mr Walker therefore made a structural alteration and cut into a structural part of the Building. It did not matter whether or not he had asked for consent (he had not though) as this paragraph is an absolute prohibition on making such alterations. It also does not matter whether it is an improvement or not; as Mr Walker considered this was, as with many of the works he had carried out.

New Plumbing

12. The Applicant alleged that Mr Walker had made openings into the external brick work in order to accommodate new plumbing. In particular, this was caused by Mr Walker's movement of the kitchen from the rear of the Property to the front (of which more later). This was said to be a breach of the absolute covenant at paragraph 8.1 of Schedule 4, not to cut any structural parts of the Building. The external wall being a structural part. Mr Walker insisted that he had only used existing holes.
13. There were five openings in dispute, all on the flank wall of the Property around and above the entrance door and below the bathroom window.
14. The Tribunal was not impressed with the submissions given by Mr Walker on this issue. He seemed too ready to make a positive and clear assertions of fact in his favour, when it was clear that was not

accurate. This was most apparent with regard to the pipework at the far rear end of the flank wall. He had asserted with confidence that the opening used for this pipework could be seen in one photograph taken before installation, as a curled hook. However, when compared to a later photograph, taken after the installation, it was clear from its much lower position, that this was not the same position, but was indeed a new hole and pipe.

15. Therefore the first breach that we determine is that of the hole used to accommodate the white pipe seen on page 111 of the bundle, being the furthest to the right of the entrance door.
16. The next contentious opening is the pipe running below the bathroom window on page 112 of the bundle. There was no evidence that the hole for this pipe was not already in situ by the date of the lease and it appears that it might well have been in order to service the bathroom. Therefore this breach is not made out.
17. The next is the hole facilitating the pipe entering the hopper to the right of the downpipe (there were five pipes feeding into this hopper). It appears to the Tribunal this is also a new hole to facilitate the move of the kitchen from the rear to the front. Further the picture at p83 of the bundle shows a hole level with the top of the hopper, whereas a picture taken later, at p114, shows the hole in a higher position with the pipework bending down, indicating that a new hole has been formed or the original hole has been enlarged. Therefore we determine that there is a breach of paragraph 8.1. in creating this hole.

18. The final two holes, on the left hand side of the hopper, also facilitated the new kitchen. Mr Walker again contended there were already holes and pipes there. He said, when he repaired them, some of the old plaster came away and so the hole needed repairing. He also said that originally the kitchen pipework had been routed through the flat to this hole. The Tribunal could not see why the kitchen would have been routed in that manner, it seemed far more likely that these were new holes made to facilitate the kitchen move and the Tribunal determines that the creation of both of these holes in the wall were a breach of paragraph 8.1.

Removal of Partitions

19. The next allegation of breach was the removal of internal partitions. By comparing the lease plan with a later plan provided for letting, it was clear that:

- a. In moving the kitchen from the rear to the front, the room that had been the kitchen had its door moved and a partition added;
- b. The adjacent room at the rear had also had its door moved and a partition removed;
- c. The bathroom had an additional partition added so that it was made smaller and the hallway larger and the door moved back.

20. All of these were internal non-structural alterations. Mr Walker accepted that he had done them. He said that this was the original lay

out of the Property. He did accept though that that was not the layout at the time he had taken the lease.

21. As these alterations fall within paragraph 8.2, he was only permitted to do this with the consent of the Applicant. He accepted he had not asked for consent, principally because he considered given his relations with Mr Phillips, it would be refused. Whilst there are clearly difficulties in that relationship, in the absence of an application for consent, all of these alterations were a breach of paragraph 8.2.

Change of use of rooms

22. The next allegation was that there was a breach due to the change in use of the rooms; being the move of the kitchen to the front room so that the kitchen was combined with a living room. That freed up the rear room to become a bedroom. The Property had therefore gone from 3 bedrooms to 4.
23. Whilst the Tribunal had some sympathy with the notion that the rooms should not be altered so as to preserve the stacking of wet rooms above wet rooms, there was nothing in the lease which prohibited this change. Whilst the lease plan did indicate the use of each room, there was no correlative covenant. On that basis, there was no breach arising from the change of use of rooms or from the increase from 3 to 4 bedrooms.

Service Media

24. The next allegation is that Service Media has been re-routed, being the drainage from what was the kitchen at the rear of the Property to now being routed to the hopper at the side (i.e. which also caused the opening in the external wall as discussed above). Mr Walker stated that there was no internal rerouting as the pipes were as before internally.
25. The Tribunal has already considered and determined that new pipes have been routed and that was the cause of openings in the flank wall of the building. The Tribunal considers that this was necessitated by the move of the kitchen to the front room and so those service pipes have been altered in breach of paragraph 8.3 which prohibits altering the route of any Service Media without consent. Mr Walker did not contend that he had asked for consent.
26. He accepted he had removed an external pipe at the rear though, which he said had become redundant. In our view, this was a breach of paragraph 8.3 which prohibits the removal of any Service Media without consent. Mr Walker did not contend that he had asked for consent before removing it.
27. The final allegation relating to Service Media was the fire alarm system. Mr Walker admitted that he had disconnected his Property from a partly communal system. He also accepted he had not asked for consent in doing so. It follows this is also a breach of paragraph 8.3.

Compliance with Laws: Planning Use

28. The final two allegations of breach relied on paragraph 11 of Schedule 4, which seek to ensure that all laws relating to the Property are complied with.
29. The first was an allegation of use which was outside the permitted planning use. The Applicant contended that the planning use was C3, being use as a residential dwelling by people living together as a family or single household. The current use was as a house in multiple occupation, which was use class C4.
30. Mr Walker accepted the current use was C4, but contended that it had been so for a sufficient time so that he was entitled to a certificate of lawful development (10 years under s.171B (3) of the Town and Country Planning Act 1990). He had been in correspondence with the local planning authority who required him to obtain evidence of the period of use as C4. He said he had used it as such since he acquired the Property in 2018 and he had been advised to obtain the council tax records prior to that to establish the use before then. However, he had not been able to do so given data protection issues.
31. Mr Walker therefore had no evidence as to what the prior use of the Property was. It is notable that his lease provides as the Permitted User, use as a single private dwelling; i.e. C3 use. It would be odd for that to have been included if the Property was sold as an HMO and the Tribunal takes that as an indication of what the Property was used for prior to his purchase and what it was intended to be used as after that. In light of that, the Tribunal considers that this breach is made out as

use as an HMO is a breach of paragraph 11.1 in that such use is in breach of planning law.

Compliance with Law: Building Control

32. The final allegation of breach concerned the failure by the Mr Walker to obtain building control approval for the works he has carried out. However, he had produced a regularisation certificate for some of the work carried out. In relation to other works carried out, the Applicant was not able to properly identify either the work complained of, or the particular law that it was said to contravene. In light of that this breach is not made out.

Conclusion

33. A number of breaches of covenant have been established being:
- a. Breach of paragraph 8.1 of Schedule 4 in inserted a Velux into the roof and thereby removing tiles and opening up the roof;
 - b. Breach of paragraph 8.1 of Schedule 4 in making four external holes above and around the front door, three of which to the left of the door feed into the hopper to the left of that door and one of which, to the right of the door, facilitates a pipe running diagonally downwards to the right;
 - c. Breach of paragraph 8.2 of Schedule 4 in making internal non-structural alterations without consent, being the changing of the doors to the two rooms at the rear and the bathroom and

altering the partition walls between those two rear rooms and the bathroom wall;

- d. Breach of paragraph 8.3 of Schedule 4 in altering the internal pipe work servicing what was the kitchen and what is now the kitchen; removing pipework at the rear; and removing the fire alarm;
- e. Breach of paragraph 11.1 of Schedule 4 in using the Property as a house in multiple occupation (C4) rather than a residential single dwelling (C3).

34. The Applicant has applied for a reimbursement of Tribunal Fees (£300) as well as other costs totalling £45 which it says it is entitled to under the terms of the lease. Whilst the Tribunal is able to order the reimbursement of fees, it is not, in this application, able to make any award of legal costs.

35. In light of the determination of various breaches, the Tribunal will make the order for re-imbusement and the Respondent shall pay the Applicant £300 within 56 days of receiving this decision. However, as he has not had an opportunity to make submissions on reimbursement, he is given permission to make any objections within 21 days of receipt in which case his obligation to pay will be suspended until further determination of the Tribunal.

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.