FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LBC/2023/0071**
Property	**:**	**Lower Ground Floor Flat, 47 Harewood Avenue London NW1 6LE**
Applicant	**:**	**Legerite Limited**
Representative	**:**	**Alterman Solicitors Ltd**
Respondent	**:**	**Mr Sahir Saleem**
Type of application	**:**	**Determination of an alleged breach of covenant**
Tribunal members	**:**	**Tribunal Judge O'Brien** **Mr Waterhouse FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**16 April 2024**
Date of Decision	**:**	**30 April 2024**

DECISION

Decisions of the Tribunal

(1) The Respondent has breached clauses of his lease as detailed in paragraphs 21 to 24 below.

Background

1. The Applicant is the freeholder of 47 Harewood Avenue London NW1 6LE (the building). The Respondent is the leasehold owner of the lower ground floor flat

(the flat) in that building pursuant to a lease dated 27 October 2003. By an application dated 17 November 2024 the Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (CLRA 2002) that the Respondent has breached the terms of his lease. Its central contention is that the Respondent has carried out works of alteration to the flat without the consent of the freeholder and has failed to keep the flat in a good state of repair. The full list of allegations is set out below.

The Lease

2. The Applicant has been since 12 June 2000, the freehold owner 47 Harewood Avenue, London NW1 6LE. By a lease dated 27 October 2003 between the Applicant as Landlord and a Mr Stephen De Maria Oxlade, the premises which are the subject of this application, being the lower ground floor flat of 47 Harewood Avenue, was demised for a term of 99 years from 29 September 1994. Since 9 February 2006 the Respondent has been the registered owner of the lease.

3. Clause 6.1 of the lease obliges the tenant to pay the rent and service charge at the times and in the manner provided.

4. Clause 7.1 of the lease obliges the tenant to "*put and keep the premises at all times in good and substantial repair and condition*".

5. By Clause 8.1 of the lease tenant covenants "*not to alter or interfere with any part of the building in which is not comprised the premises*". Clause 8.1.2 obliges the tenant to make no alteration or addition to the premises unless permitted by that clause. Clause 8.2 states the landlord will not unreasonably withhold consent for the carrying out of an "*internal alteration*". Clause 8.3 defines internal alteration as "*any alteration to the interior or the internal arrangement of the premises which does not affect any structural or load bearing part of the building*".

6. Clause 10.5 of the lease provides that the tenant shall "*not do anything at or on the building that will or might either render void or voidable any insurance policy relating to the building or increase the premium payable for such insurance*".

7. Clause 11.6 of the lease provides that the tenant shall not "*underlet the whole of the premises ...without the prior written consent of the landlord (which will not be unreasonably withheld)*"

8. Finally Clause 12 of the lease provides:

> *12.1 in this clause legal obligations means any present or future statute statutory instrument or bylaw or any present or future regulation order notice direction code of practise or requirement of any authority insofar as it relates to the premises or to their occupation or use but irrespective of the person on whom such obligation is imposed*
>
> *12.2 if the tenant receives from an authority formal notice of a legal obligation it shall forthwith produce a copy to the landlord*

The lease includes a plan of the flat which bears the date August 2003.

The Application

9. By an application dated 17th November 2023 the Applicant seeks a declaration that the Respondent has breached the terms of his lease pursuant to s.168(4) of the CLRA 2002. The breaches alleged are;

   (i) The Respondent has failed to pay the rent and service charges due.

   (ii) The Respondent has failed to keep the premises in good and substantial repair and condition.

   (iii) The Respondent has made alterations to the property in breach of clause 8 of the lease. The Applicant relies on a schedule of dilapidations which is dated 25th October 2023. In particular that schedule lists the following alterations;

   (a) Removal of an L shaped wall between the kitchen and the living room;
   (b) Moving the boiler and re-siting the flue in the front exterior wall of the building;
   (c) Installing a new ceiling and new lighting;
   (d) Installing a new electrical system;
   (e) Installing a new poured screed floor;
   (f) Installing new uPVC windows in the place of the original wooden frames ;
   (g) Installing a new sidelight on the front external wall;
   (h) Installing a sprinkler system;
   (i) Installing a new bathroom.

   (iv) The Respondent has done something that will or might render the building insurance void or voidable or increase the premium payable.

   (v) The Respondent has underlet the whole; and

   (vi) The Respondent failed to provide copies of notices he has received in respect of the property, and carried out works namely the installation of replacement windows, without either planning permission or building regulation approval.

10. It is important to note that the Tribunal's role under the Act is to determine simply whether there has been a breach of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture or whether the landlord has an alternative remedy is irrelevant at this stage.

The Inspection

11. Further to the Tribunal's directions issued on 12 December 2023, the Tribunal inspected the flat on the morning of 16 April 2024 and heard the application at a hybrid hearing that afternoon. The attendees at the inspection were:

- The Applicant's witness, Mr Philip Mizon, employee of the Marcus Cooper Group.
- Mr Nicholas, solicitor for the Applicant, of Altermans Solicitors Ltd.

The Respondent did not attend the viewing.

12. The flat is a one bedroomed basement flat in a converted house which appeared to be early Victorian. It is entered via metal stairs from street level. It consists of a living room with galley kitchen, a shower room and a bedroom to the rear. The window of the bedroom looks out onto a patio area which does not form part of the demise. To the front of the flat there is a small shower room.

13. It was evident that the flat was partway through a substantial refurbishment. There were no radiators, and no kitchen units present. The floor consisted of poured screed and the skirting boards had been pulled away from the walls in places. There were recessed lights installed in the ceiling, which appeared to be plaster board attached in places to a new suspended metal frame. There was a decommissioned boiler located in a cupboard in the living room. The boiler flue was located on the front exterior wall. The shower room has been partially refurbished and there was no shower tray installed. In the bedroom we observed a manhole cover in the floor. There are two windows in the flat; one in the bedroom and one in the bathroom. Both appeared to be new uPCV windows. The front door, which opens directly into the front room, also appeared to be a new uPVC door. It has a large sidelight which was the only source of daylight into the living room.

14. It is common ground between the parties that in or about October 2021 the flat was seriously damaged by an ingress of foul water / sewage emanating from the manhole in the bedroom. This resulted in the local authority, Westminster City Council, issuing a prohibition order pursuant to the Housing Act 2004 in February 2022 prohibiting the use of the flat as sleeping accommodation until specified remedial works were carried out to put it into a habitable condition. Westminster City Council later revoked that order by a further notice dated 29 November 2022.

The Hearing

15. At the start of the hearing we informed the Applicant that we could not consider the allegations of breach relating to the obligation to pay rent or service charges as these are outside the ambit of an application under s168(4) CLRA 2002.

16. The Tribunal had a hearing bundle prepared by the Applicant. In addition to the application and the lease, the bundle contains a witness statement of its witness Mr Mizon, and a number of documents disclosed by the Respondent pursuant to the Tribunal's directions. In addition, we were provided with a skeleton argument prepared on behalf of the Applicant which essentially mirrors the legal submissions included in the bundle.

17. We heard oral evidence from Mr Mizon and submissions from the Respondent, who attended the hearing via video link. Prior to the hearing the Respondent informed the Tribunal by email that he had surrendered possession of the flat to his mortgage company with a view to sale, and he confirmed that this was still the case at the start of the hearing. Mr Nicholas informed the Tribunal that his firm was aware of this and had informed the mortgagee of the current proceedings in accordance with the directions, and had been in correspondence with its appointed legal representatives. In particular his firm had made the mortgagee aware of the right to be joined as a party to these proceedings. Mr Nichols stated that his firm had not heard further from either the mortgagee or its legal representatives.

18. In the course of his oral evidence Mr Mizon clarified that, contrary to paragraph 2 of his witness statement, his employer is not the managing agent in respect of the building and he is not responsible for its date to day management. He explained that the Applicant forms part of a group of companies owned by or connected to his employer, the Marcus Cooper Group. The managing agent for 47 Harewood Avenue at the relevant time was HML Ltd (HML).In or about the middle of 2023 a new company, Wilmots, was appointed managing agent for the building. He confirmed that he had not asked HML directly whether the Respondent had informed them of or sought permission for the works which are the primary focus of this application. He had assumed that the Respondent had not sought permission in respect of the works because HML had not informed the Applicant of any such request.

19. Mr Saleem accepted that he had sublet the flat and not sought the Applicant's permission. He indicated he had not been aware that he was obliged to. He denied that he had removed any internal wall and stated that that the wall that was alleged to be missing was not present when he purchased the flat. He denied that he had re-sited the boiler and asserted that the boiler was always in its current position since he purchased the flat. He accepted that there was a new ceiling and new lighting but was unclear as to how they had been installed. He accepted that he had renewed the electrics and installed new windows and a new sidelight beside the front door but denied that he had removed the original wooden windows, as the flat had replacement double glazed windows at the time of his purchase. He was unsure whether the floor had been replaced as part of the repair works following the flood. He accepted that he had installed a new sprinkler system.

20. Mr Saleem's position was that most of the alterations were works which were required by Westminster City Council as a condition of removing the prohibition notice after the foul water flood from the manhole cover. He stated that he had informed the Applicant's managing agent, HML , of his intention to carry out those works and send them a copy of both the

prohibition notice and the schedule of works attached to it. A copy of the prohibition notice and the schedule of works is included in the bundle. In the course of the hearing the Respondent, with the consent of the Applicant showed us emails dated 3 April 2022 and 22 April 2022 sent by the Respondent to HML which indicated that the agent had been provided with a copy of Westminster's schedule of works and been informed of the Respondent's intention to comply with the notice. He was adamant that he had served a copy of the prohibition notice on the managing agent but did not think he had served a copy of the notice which revoked it.

Determinations of Breach

21. In breach of clause 7.1 of the Lease, the Respondent failed to maintain the flat in good and substantial repair and condition. The refurbishment works have not been completed. There are no kitchen units or radiators and the shower room installation is not complete. The boiler is decommissioned. The skirting boards are not adequately fixed to the walls.

22. In breach of Clause 8.1 of the lease the Respondent has completely replaced the ceiling with plasterboard attached to a metal frame which is presumably attached to the walls of the flat and to the joists of the floor above. In addition he has replaced the lighting with recessed lighting installed into the ceiling.

23. In breach of Clause 11.6 of the lease the Respondent has sublet the premises without the landlord's prior consent.

24. In breach of clause 12.2 of the lease the Respondent failed to serve the Applicant with a copy of the notice of revocation served on him by Westminster City Council dated 29 November 2022.

Further Determinations

25. The Tribunal is not satisfied that the Respondent removed the 'L' shaped wall as asserted by the Applicant. We accept the Respondent's evidence that the wall was not present when he purchased the flat in 2006. The evidence for the presence of the wall is the plan attached to the lease dated August 2003 which shows a small 'L' shaped wall between the kitchen and the living area. The Tribunal considered that the Respondent gave his evidence in a candid manner and readily accepted other breaches, such as subletting without consent. Similarly we do not accept that the Respondent re-sited the boiler and flue and accept his evidence that the boiler is not new and was in the position that we found it today as at the date he purchased it. It is difficult to see where else the boiler could be installed in this flat in its current configuration. The plan attached to the lease does not show the position of the boiler. Consequently if these alterations were made it is likely that they predate the assignment of the term to the Respondent. An assignee of a lease is not liable for breaches of covenant which predate the assignment by virtue of s.23 of the Leasehold Covenants Act 1995.

26. We are not satisfied that the works set out at paragraph 9(iii) (d) to (h) above were alterations done without consent. The Respondent had implied consent. We consider that those were necessary to complete the schedule of works prepared by Westminster City Council. That schedule of works included the following;

(j) Making good the damage caused by the flood including plastering the water damaged plaster throughout the flat and installing a damp proof course;
(k) Replacing the bedroom window;
(l) Installing a mechanical ventilation cooker hood in the kitchen;
(m) Installing ventilation in the bathroom;
(n) Replacing the existing sidelight beside the front door;
(o) Installing a new fire detection and fire suppression system.

27. The email correspondence shows that the Applicant's agent was supplied with a copy of that schedule and was informed that the Respondent intended to carry out those works which he considered to be his responsibility. In addition there was extensive correspondence regarding works which the Respondent considered were the freeholder's responsibility such as replacing the manhole cover in the bedroom with a modern inspection chamber. Clause 8.1 of the lease does not require the tenant to obtain *written* consent as a precondition to carrying out the works. Nor does it require the tenant to supply a detailed schedule of works unless required to do so by the freeholder. In our view it is clear from the email correspondence passing between the Respondent and the Applicant's then agent that they had been sent a copy of the schedule of works and were aware that the Respondent intended to carry out the works that were required by that schedule. In the absence of any objection, in these circumstances objectively the agent would have been reasonably understood to have consented on behalf of their client.

28. The applicant has not satisfied the tribunal that the replacement of the windows, front door and side light amounted to a breach of planning regulations or a breach of Clause 12 of the lease.The Applicant has not supplied us with any evidence of what regulations or local planning policy govern alterations to the exterior of this specific building. While we might be prepared to accept that the replacement of original wooden windows with uPVC windows in a conservation area is likely to be a breach, we have no material before us to support the contention that replacing the existing double glazing with new double glazing would contravene planning regulations or building control regulations.

29. The Applicant has not satisfied the Tribunal that the Respondent has breached Clause 10.5 of the lease. We have no evidence as to what effect, if any the works had or may have had on the buildings insurance that was in place at the material time.

Name : Judge Niamh O'Brien Date 30 April 2024

Rights of appeal

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.

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.

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.

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.

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.

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