



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

Case reference : **LON/00BK/LBC/2023/0023**

Property : **Flat 20, Cumberland Court, Great
Cumberland Place, London W1H 7DP**

Applicant : **Cumberland Court Investments Limited**

**Applicant's
Representative** : **Paul Simon of Taylor Rose MW Solicitors**

Respondent : **The Estate of Yong Wah Loong
(Deceased)**

Interested Party : **The Estate of Eric Young (Deceased)**

Type of application : **Application for a determination that a
breach of covenant or condition in the
lease has occurred
Section 168 of the Commonhold and
Leasehold Reform Act 2002**

Tribunal : **Judge Timothy Cowen
Mr Oliver Dowty MSc MRICS**

Date of Hearing: : **16 July 2024**

Date of Decision : **25 July 2024**

SUBSTANTIVE DECISION

In this determination, “the Lease” means a lease of the Property dated 6 October 1980 registered at HM Land Registry under title number NGL384537

DETERMINATION

The Tribunal determines that breaches of the following clauses of the Lease have occurred (as further detailed in the decision below):

- (a) Clause 3.11 – the covenant to comply with regulations in the Fourth Schedule**
- (b) Clause 3.12 – the covenant against alterations**
- (c) Paragraph 21 of the Fourth Schedule – the covenant to procure that the windows are cleaned at least once a month and to provide suitable window coverings**
- (d) Paragraph 22 of the Fourth Schedule – the covenant to cover the floors with carpet or other approved material**
- (e) Paragraph 30 of the Fourth Schedule – the covenant not to instal, interfere with or alter any installation for the supply of water, gas or electricity.**

REASONS FOR DETERMINATION

Background

1. This is the Applicant's application under section 168 of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of covenant in the Lease has occurred.
2. The Property is a 1 bedroom flat in a purpose built block of 65 flats. The Lease is for a term of 99 years less 10 days from 25 March 1977. The Lease was granted on 6 October 1980 by Corvan (Properties) Limited to L H Heilbut.
3. The Applicant is the current owner of the lessor's interest under the Flat 20 Lease having purchased a superior lease in 2017 registered under title number NGL305962 at HM Land Registry. The Applicant's superior lease is registered as being subject to the Lease of Flat 20 (among others) in the Schedule of notice of leases in the register.
4. The register at HM Land Registry currently shows the registered proprietor of the Flat 20 Lease as Yong Wah Loong ("YWL").

July 2023 hearing and subsequent directions

5. It first came before us on 21 July 2023 when we visited the site and we heard submissions from Mr Paul Simon, the Applicant's solicitor and from Mr Simon Strelitz, counsel who had been instructed by Eric Young, the brother of YWL.

6. The main focus of that hearing was that YWL had died on 6 March 2020. That fact was not known either to the Applicant nor to the Tribunal until shortly before the hearing.
 7. Mr Eric Young claimed in correspondence and through his Counsel at the hearing to be the “beneficial owner” of the Property, but there was no evidence to support that claim.
 8. We substituted the Estate of YWL as the Respondent and we added Mr Eric Young as an Interested Party.
 9. We set out the background to this matter in more detail in our decision dated 17 November 2023. As a result of that decision, we gave directions to the Applicant to serve these proceedings on a number of people who may have had or may have claimed to have an interest in the Estate of YWL, the registered leaseholder.
 10. We also gave directions that any person who wanted to be added to these proceedings or who otherwise wanted to be heard should make an application. The deadline for any such application has long passed and no-one had applied to be added or heard. No-one has come forward as representing the Respondent.
 11. The Public Trustee has responded to state that it claims no interest in the Property and does not intend to play any part in the proceedings.
 12. The other significant thing which has happened since the last hearing is that Mr Eric Young has died. His former solicitors are aware of these proceedings, but they indicated that they do not represent his estate. No-one has come forward seeking to represent the estate of Mr Eric Young.
 13. The matter came before us for a further face to face hearing on 16 July 2024. The Applicant was again represented by Mr Simon. No-one else attended.
 14. The Applicant had complied with our further directions made on 3 April 2024, which required the Applicant to file evidence relating to its efforts to serve the proceedings on possible interested parties and to compile a bundle for today’s hearing.
- Proceeding without the Respondent and the Interested Party**
15. We considered the written evidence filed by the Applicant and we heard oral submissions from Mr Simon. As a result, we are satisfied that every reasonable effort has been made to trace and inform the family members who may have wanted to arrange for the administration of the Estate of YWL or who may have wanted to claim some interest in the Property.

16. We have decided to proceed in the absence of the Estate of YWL because reasonable steps have been taken to notify anyone who may have an interest in applying for administration of the estate and no-one has done so. We are also satisfied that it would be in the interests of justice to proceed in the absence of the Respondent, in particular because no purpose would be served by delaying this matter any further.
17. We have further decided to proceed in the absence of the Estate of the Interested Party, because we are satisfied that his former solicitors are aware of these proceedings. We are also satisfied that it would be in the interests of justice to proceed in the absence of the Interested Party, partly because no evidence or submissions have ever come before us to indicate that Eric Young or his Estate would have had any interest in the Property.
18. Those decisions to proceed in the absence of the Respondent and the Interested Party were made after we gave consideration to the criteria in rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 together with the rules and principles which we set out in our 17 November 2023 reasons.

The substantive section 168 application

19. We invited Mr Simon to present his case on the substantive issue, namely whether breaches of covenant (as alleged) had occurred.
20. We have considered the written evidence of the Applicant and the submissions of Mr Simon and we have reached the following conclusions.

Painting

21. Clause 3.04.1 of the Lease requires the lessee:

“In 1984 and in every seventh year thereafter and in the last year of the Term to prepare and paint in a proper and workmanlike manner all inside surfaces of the Premises usually painted with at least two coats of paint and to strip and repaper all such surfaces usually papered and to restore all other inside surfaces to their proper condition and appearance”
22. It was said that the condition of the Property indicated that this covenant had not been complied with. By our calculation, a covenant to paint every seventh year would require that the Property be most recently painted in 2019. Since YWL died in March 2020, it is possible that he could have painted the Property in 2019.
23. The paint job inside the Property was not noticeably old or peeling on our inspection. The photographs in the bundle do not show any obvious defects or wear in the painting of the interior surfaces. It is possible that the Property was not painted in 2019 (which was 4 years before our

inspection). But it is equally possible that it was. We are therefore not satisfied that the Applicant has proved a breach of that covenant.

Repair

24. Clause 3.05 of the Lease requires the lessee:

“To repair and keep in repair the inside of the Premises including the plaster on and the windows in the walls enclosing the Premises and the floors and ceilings of the Premises and the entrance door leading to Premises”

25. The only evidence offered for a breach of this covenant was photographs 4, 7, 8, 9 and 25 attached to the Applicant’s Schedule of Breaches. There was no narrative to specify the items of alleged disrepair. We could not see any obvious items of specific disrepair on those photographs. Other than the fact that the Property was generally shabby, we did not see any obvious items of disrepair when we visited the site.

26. We are therefore not satisfied that the Applicant has proved a breach of that covenant.

Alterations

27. Clause 3.12 of the Lease requires the lessee:

“Not to injure or remove or permit or suffer to be cut injured or removed any part of the Building or the Premises”.

28. At the hearing on 16 July 2024, Mr Simon produced a floor plan of the building in which the Property is situated. The plan was not in the bundle, but we permitted him to rely upon it because it would have been available to anyone who had resisted the application. In addition, because no-one was resisting the application, there was no-one who would have been prejudiced by its late production. It was a plan which had been submitted to the Tribunal in case number LON/00BK/LBC/2023/0022 which concerned Flat 19, Cumberland Court and in which the Applicant and Eric Young were parties, before the death of Eric Young.

29. The plan showed that:

29.1. There was originally a short piece of wall between the entrance lobby and the living room; and

29.2. The room next to the fire escape, which is currently fitted out as a bedroom, was originally the kitchen of the Property and originally contained, amongst other things, a sink for the supply of water. This was in keeping with all of the other flats in the building.

- 29.3. The area immediately inside the front door of the Property was originally a lobby area which did not contain any kitchen apparatus.
30. At our visit to the Property and in photographs contained in the bundle, we were able to see that:
- 30.1. The short piece of wall was absent and had therefore been removed.
- 30.2. All of the kitchen apparatus had been removed from the room next to the fire escape, including the sink, in order to convert it into a bedroom.
- 30.3. Kitchen apparatus (including a sink) had been installed in the lobby area and pipes had been altered and/or installed to provide for that.
31. The covenant against alterations is an absolute covenant. In other words, there is no qualification allowing for alterations to be done with consent. Nevertheless there was no allegation or evidence that the Applicant or its predecessor(s) in title had consented to these alterations.
32. We have therefore decided, and we determine, that a breach of clause 3.05 has occurred.

Nuisance

33. The Applicant at the hearing orally withdrew its allegation of a breach of the covenant against nuisance (paragraph 5 of the Fourth Schedule).

Window cleaning

34. Paragraph 21 of the Fourth Schedule to the Lease requires the lessee:
- “To procure that the windows of the Premises are cleaned at least once a month and are provided at all times with suitable curtains or blinds”

and clause 3.11 of the Lease required the lessee to comply with the regulations in the Fourth Schedule.

35. We are satisfied that the windows of the Premises have not been cleaned every month, because:
- 35.1. YWL died in March 2020 and there is no evidence that anyone has been taking care of the Property since then; and
- 35.2. It was apparent from our inspection in July 2023 that the windows had not been cleaned regularly, because they were visibly dirty.

36. We also noticed (as is shown on photographs) that some of the windows do not have curtains or blinds.
37. We are therefore satisfied, and we determine, that a breach of the covenant/regulation relating to windows has occurred.

Floor coverings

38. Paragraph 22 of the Fourth Schedule to the Lease requires the lessee:
“To cover all the floors of the Premises with carpet and under-felt or other approved material”

and clause 3.11 of the Lease required the lessee to comply with the regulations in the Fourth Schedule.

39. We saw on our site visit and it was clear from photographs that the floor in the Property is covered with a hard laminate and not with carpet. There is no evidence that the Applicant (or its predecessor(s) in title) have ever approved that laminate as an approved material.
40. We are therefore satisfied that the lessee has failed to cover the floors of the Property with carpet or other approved material and we determine that a breach of paragraph 22 of the Fourth Schedule has occurred.

Kitchen, bathroom and heating installations

41. Paragraph 30 of the Fourth Schedule to the Lease requires the lessee:
“Not to instal in the Premises any installation such as is mentioned in the preceding regulation or interfere or alter any such installation”

and clause 3.11 of the Lease required the lessee to comply with the regulations in the Fourth Schedule.

42. The preceding regulation (paragraph 29A) refers to installations “for the supply of water gas or electricity and for sanitation (including every basin sink and sanitary convenience) and for space heating or heating water”.
43. As a result of the evidence set out above in relation to alterations, it was clear that:
 - 43.1. The sink and other kitchen apparatus, which was in the room next to the fire escape, has been interfered with by being removed.
 - 43.2. A sink and other kitchen apparatus has been installed in the lobby area.
44. In addition, we saw in our site visit and we saw in photographs that:

- 44.1. A new water boiler has been installed in the bathroom. Previously the Property was supplied by a communal boiler in common with other flats in the building.
 - 44.2. A new sink, new bath and new toilet have been installed in the bathroom and the old ones have been interfered with by being removed.
45. This regulation relating to installations is expressed in absolute terms. In other words, there is no qualification allowing for anything which would be a breach to be done with consent. Nevertheless there was no allegation or evidence that the Applicant or its predecessor(s) in title had consented to any of these changes.
46. We therefore are satisfied and we determine that breaches of paragraph 30 of the Fourth Schedule and thereby of clause 3.11 have occurred.
47. As a result of all the above, we have made the determination set out in the order above.

Name: Judge T Cowen

Date: 25 July 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).