

905



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

Case Reference : **LON/OOAJ/LBC/2018/0059**

Property : **Flat 3, 74 Grange Road, London W5 3PJ**

Applicant : **Ellecap Limited**

Representative : **Mr J Jessup**

Respondent : **Mr Felix Totov-Voskhodov**

Representative :

Type of Application : **Application for and Order that a breach of covenant or condition of the lease has occurred by virtue of Section 168(4) of the Commonhold Leasehold Reform Act 2002)**

Tribunal Members : **Mrs E Flint FRICS
Mr J Francis QPM**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR on 24th October 2018**

Date of Decision : **31 October 2018**

DECISION

© CROWN COPYRIGHT 2018

DECISION

The Tribunal determines pursuant to Section 168 (4) of the Commonhold Leasehold Reform Act 2002 (the Act) that there has been a breach of covenant or condition of the lease.

BACKGROUND

1. By an application dated 14 August 2018, the Applicant, Ellecap Limited, sought a determination from the Tribunal that the Respondent Felix Titov-Voskhodov had breached the covenant in his lease as contained at Clause 17 of Schedule 5 of the lease which is concerned with floor coverings.
2. Directions in this matter were issued on 24 August 2018 and have by and large been complied with by the Applicant however the Respondent has not replied to any correspondence from either the applicant or the Tribunal.
3. The lease is dated 16 January 2015 for a term of 115 years from 25 March 2014. The Property is demised as the first floor flat by reference to plans annexed to the lease and is known as Flat 3, 74 Grange Road, London W5 3PJ (the Property). The lease term which is said to have been breached is to be found at Clause 17 of The Regulations in the 5th Schedule which says as follows:

“Not to live in the property unless all floors (other than in the kitchen and bathroom) are covered in good quality carpeting and underlay or other covering of at least the same effectiveness in sound deadening and insulation.”
4. Prior to the hearing we were provided with a small bundle of documents which contained the application, copies of Land Registry entries, the lease, floor plans, and the Applicant’s statement of case with accompanying documentation.
5. At the hearing, Mr Jessup confirmed that there had been no contact with the Respondent in relation to this application or outstanding service charges and Ground Rent. The Mortgagee had settled the outstanding amounts following County Court orders. The bundle for this application had been delivered to the Property by hand. He understood that the Respondent lives out of the country and no forwarding address has been provided. Therefore, the Respondent has created a situation where he cannot be contacted. The Property is let by managing agents to sub tenants.
6. Mr Leigh Butcher, a Director of the Applicant Company, explained that he lived in the flat below, his bedroom is below the living room of the Property. He produced photographs of the interior of the Property showing that there was no carpet on the floors in the living room and two bedrooms. He said that he had visited the Property again on 15 September and that the floors remained without carpet. He referred to an extract from a report, “The Development and Production of a guide for noise control from Laminate and Wooden Flooring” in which it was concluded that even with an underlay installed under laminate or wood flooring the degree of noise insulation was less than for carpets or carpets plus underlay. He believed that the Respondent had never lived in the Property but did not know his whereabouts. He

understood that the subtenants paid their rent to managing agents, he did not know the identity of the agents.

THE LAW

7. Section 168 provides that a landlord may not serve a notice under Section 146(1) of the Law of Property Act 1925 in respect of a breach unless the circumstances set out in sub-section 2 of Section 168 are satisfied. That is either that there has been a determination of an application under sub-section 4 or the tenant has admitted the breach. Sub-section 4 enables a landlord under a long lease of a dwelling to make an application to a Leasehold Valuation Tribunal for a determination as a breach of covenant or condition of the lease has occurred. Our role is merely to determine whether or not there has been a breach. Any relief from forfeiture is a matter for the County Court.

FINDINGS

8. On the evidence produced the Tribunal finds that there has been a breach of covenant and on the evidence the breach is continuing.

COSTS

9. Mr Jessup said that he wished to make an application for costs under Rule 13 (1) (b) on the grounds that the Respondent had acted unreasonably in not responding to these proceedings. The Respondent had created the situation due to a lack of a forwarding address, if the Applicant had been able to contact him this hearing may not have been necessary. The lease provided that the landlord was entitled to his legal costs on an indemnity basis. Mr Ozimic, the Applicant's solicitor, handed in a schedule of costs totalling £3,708. Mr Jessup said that there was no need to consider the actual amounts on the schedule as they were reasonable. It was important that the matter was dealt with properly.
10. The Tribunal finds that it was unnecessary to have both counsel and a Grade A fee earner at the hearing when it was obvious that the Respondent would not be in attendance or represented. The actual breach did not involve complex legal argument, the decision was based on the evidence of factual matters.
11. There is no covenant in the lease which requires the lessee to give the Lessor a forwarding address.
12. The Tribunal declines to make the order requested. The Respondent is unaware of the application and the Tribunal determines that the grounds in S13(1)(b) have not been satisfied.

ADDENDUM

13. It may be that the Respondent is unaware of these proceedings as the only address for service is that of the subject property. Once he becomes aware of the decision of the Tribunal he may apply for it to be set aside if he disputes the findings of fact.

Chairman Evelyn Flint

31 October 2018

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

- (i) an agricultural land and drainage case,
- (ii) a residential property case, or
- (iii) a leasehold case; or
- (c) in a land registration case.

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.