

**IN THE LEASEHOLD VALUATION TRIBUNAL  
RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

APPLICATION PURUSANT TO COMMONHOLD AND LEASEHOLD REFORM ACT  
2002 SECTION 168(4)

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LON/00AG/LBC/2006/0055

**Premises:** Flat 3, 47 Arkwright Road, London NW3 6BJ

**Applicant:** 47 Arkwright Road Management Limited

**Represented by:** Mr. Lewis, counsel.  
Instructed by Southgate & Co., solicitors

**Respondent:** Mr. David Donker

**Represented by:** Mr. Shawdon, solicitor of Abrahams Dresden.

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1. This is an application made pursuant to section 168(4) Commonhold and Leasehold Reform Act 2002. The Applicant is the Freehold owner 47 Arkwright Road Management limited and Mr. David Donker is the Respondent long lessee pursuant to an assignment on 6<sup>th</sup> September 2005 of a lease dated 26<sup>th</sup> July 1991. The subject premises concern Flat 3, a flat on the first floor of this converted property situate at 47 Arkwright Road, London NW3 6BJ
2. It is alleged by the Applicant that the Respondent has since the commencement of his tenancy breached certain covenants in his lease and as such seek a determination to that effect by the Tribunal. Specifically, it is said that in breach of the terms of the lease Mr. Donker:
  - (i) Undertook works of renovation including alterations to the bathroom and removed fixtures and fittings without first seeking or obtaining the Applicant's permission.
  - (ii) Caused water ingress to the ground floor flat below as a result of these works of renovation and their method of being carried out and used the flat roof area over the ground floor flat for his personal use and that of his visitors.

- (iii) Reposition of water pipes to bathroom to cause water staining to exterior of building.
  - (iv) Played loud music so as to cause a nuisance and annoyance to other residents in the building.
  - (v) Installed a boiler to the exterior to the subject premises and over the flat roof of the ground floor addition without the Applicant's consent.
  - (vi) Replaced the floor in Flat 3 with a wood floor without recourse to proper sound insulation.
  - (vii) Used the flat roof over the ground floor flat addition without permission.
3. In support of these assertions the Applicant sought to rely upon two reports of Fenton Associates Chartered Surveyors dated 3/5/06 and 8/6/06 together with a witness statement of Savva Panayiodou, solicitor, dated 10/10/06.
4. At the hearing of this application the Applicant was represented by Mr. Lewis, counsel and instructed by Southgate & Co. Mr. Fenton BSc FRICS of Fenton associates gave oral evidence in addition to relying upon his reports. Mr.

Shawdon, solicitor of Abrahams Dresden, represented Mr. Donker. At the outset of the hearing the Applicant indicated it would not be perusing the alleged breach of the terms of the lease by the relocation of the bathroom. Mr. Donker admitted that he had removed the Applicant's fittings and fixtures from the bathroom without obtaining permission and had located the boiler on the exterior of the building. All other allegations were denied.

5. The Applicant also sought to rely on photographic evidence, which was said to show the boiler, fixed to the exterior; the water staining to the exterior, the repositioned water pipes to the bathroom and the water damage to the flat below. In evidence, Mr. Fenton stated that he had been familiar with the ground floor flat for over 15 years and had been asked to inspect it when reports of water damage to the interior had been received. Mr. Fenton attributed the cause of the water ingress to the flat below to damage caused during the renovation works to Flat 3 and the Respondent's workmen using the flat roof for access and the storage of building materials. Mr. Fenton asserted that additional pipe work to the bathroom would have been required, which could be seen in the photographs produced together with the lack of making good around the affected brickwork. Mr. Fenton stated he had inspected the interior of Flat 3 but had not opened up any part of the flooring to investigate whether any soundproofing had been laid and could not comment as to whether the original flooring was still in situ.

6. On cross-examination, Mr. Fenton accepted that the flat roof area was strong enough to be walked upon and asserted that the natural asphalt laid was good to last for 20-30 years, if not longer if regularly maintained. In this case, Mr. Fenton stated the flat roof was less than 20 years old. Mr. Fenton accepted that some patch repairs to the flat roof had historically been carried out as evidenced by the change in colour of the surface material. Mr. Fenton stated that he had not been able to inspect the (bathroom) pipe work and missing brickwork as a neighbour had erected a fence obstructing his access. He accepted that the work to remedy these matters had been carried out as Mr. Donker asserted.
7. In evidence, Mr. Donker asserted that he had carried out works of modernisation to his flat since its purchase in September 2005. Mr. Donker denied having had the pipe work altered or changes to the exterior brickwork but accepted that he had instructed his builder to look at any leak coming from this pipe once a neighbour had alerted him to this fact. Mr. Donker stated that he had not inspected the side of the building prior to his purchase of the subject premises.
8. Mr. Donker told the Tribunal that the original floorboards had not been removed but simply straightened and he had instructed his builder to use sound deadening material before laying the new wood flooring. Mr., Donker denied having parties at his flat or making any excessive noise at unsocial

hours. On questioning by the Tribunal Mr. Donker was unable to produce any specification of works carried out; any receipts for materials used or any invoice from the builder contracted to carry out the renovation works.

9. In submission, Mr. Shawdon asserted that the subject (demised) premises did not comprise of the external walls or roof areas and that therefore allegation in respect of any breach concerning the flat roof and external walls were outside the terms of Mr. Donker's lease. Therefore there could be no breach of the terms of the lease.
10. Mr. Shawdon submitted that allegations of noise had not been proved as the only evidence produced had been handwritten diary notes and no oral evidence called to substantiate the entries. Mr. Shawdon accepted that the fixing of the boiler was a structural alteration and would be remedied has had the external pipe work to the bathroom about which nothing had been known by Mr. Donker. Mr. Shawdon submitted that the Applicant had failed to prove that sound insulating material had not been laid but conceded that in accordance with the terms of the lease prior approval for new flooring should have been sought from the Applicant.
11. In his submission, Mr. Lewis sought to persuade the Tribunal that the external walls must form part of the demised premises otherwise the lease would make no sense. He conceded that there was evidentiary difficulty in establishing any

noise nuisance on the part of the Respondent but asserted that the evidence supported the Applicant's contention that the external plumbing and consequent damage to Flat 1 below and the external wall and window frame had been caused by the Respondent's renovations. Mr. Lewis stated it was not necessary to decide whether soundproofing had in fact been laid only whether permission for the new flooring had been sought from the Applicant.

### The Tribunal's Decision

12. The First Schedule of the lease sets out the description of the demised premises and excludes:

*“(a) any part of parts of the Building situated above the surfaces of the ceilings or below the floorboards of the demised premises*

*(b) any of the main timbers joists roof or foundations of the Building or any of the walls thereof (except such plaster work or other coverings thereof and any of the other arts thereof which are expressly excluded in this demise)*

*(c) any conducting media not exclusively serving or used by the demised premises.”*

### Clause 3.1(e)

13. The Tribunal finds as it is admitted by the Respondent that he has removed the lessor's fittings and fixtures to the bathroom without first obtaining the lessor's written consent.

Clause 4(1)

14. The Tribunal finds that the Respondent has not been in breach of this clause in so far as it is alleged that his contractor's caused damage to the flat extension roof above the ground floor flat or water damage to the interior of the flat below. Further, it is the Tribunal's opinion that the flat roof does not form part of the demised premises and therefore does not fall under the Respondent's obligation to "*repair, maintain, uphold and keep*".
15. It was conceded by Mr. Lewis that the Applicant no longer wanted to maintain the bathroom had been relocated within the premises. However, the Tribunal finds that the water staining of the external wall has been caused by the works of renovation and the renewal or introduction of new pipe work to the bathroom leading to the exterior of the demised premises. The Applicant accepts through Mr. Fenton that the leaking to this pipe has been remedied.

Second Schedule: Clause 4

16. The Tribunal finds that they have not been able to prove on the balance of probabilities that the Respondent has caused nuisance and annoyance by loud parties or music or other noise disturbance until the early hours of the morning. The Tribunal bases very little reliance on a few handwritten diary sheets by Mr. A. McKee of Flat 1 who has not produced a witness statement or be asked to attend the hearing to give oral evidence on which he can be cross-examined. Further, the Tribunal noted that very few of the specific



incidents recorded on these diary sheets involved incidents taking place in anti-social hours as defined in the lease.

Second Schedule: Clause 8


17. The Respondent accepts that he has attached a boiler to the exterior of the demised premises. The Tribunal finds that this has necessitated the running of pipe work through both the interior wall of the demised premises and the exterior wall (not part of the demised premises). The Tribunal finds that this work constitutes a breach of this clause of the lease.

Second Schedule: Clause 11

18. The Tribunal finds that the Applicant has failed to show that on the balance of probabilities that sound-proofing material has not been laid on the floors of Flat 3, particularly as no attempt has been made to lift part of the new flooring to see what lays beneath it. However, this clause states:

*“All floors of the demised premises (except for this purpose the floors of any wall to closet bathroom shower compartment and kitchen) shall be covered with carpet or other sound-deafening material approved by the Lessor and all piano fortes or like instruments shall be place on sound-deadening and insulation blocks or castors.”*

19. However, the Tribunal are of the view that this clause concerns not so much the quality of the floor covering that has been laid, but rather whether the Respondent has sought the lessor's prior approval for *any* replacement covering, whether it was sufficiently sound-deadening or not. Consequently, the Tribunal finds, and the Respondent accepts that he has not sought or obtained the lessor's approval to install his new floor covering (apparently over the existing).
20. In conclusion the Tribunal finds that the Respondent has breached clauses 3(1)(e) and 4(1) of the leases and clauses 8 and 11 of the Second Schedule of the lease to the extent identified above.

Signed:  , chairman .

Dated: 11/11/07