

LON/00AP/LBC/2006/0057

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
ON APPLICATION UNDER SECTION 168(4) OF THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Applicants: Mr Theodoulos Elia

Respondent: Goldenkey Properties Limited

Property: 64A Grand Parade
Green Lanes
London
N4 1AF

Hearing date: 11 December 2006

**Determination without a hearing under Regulation 13 of the Leasehold
Valuation Tribunals (Procedure) (England) Regulations 2003**

Member of the Residential Property Tribunal Service:

Ms H Carr
Mr A Ring

Property: 64A Grand Parade, Green Lanes, London N4 1AF

THE APPLICATION

1. The Tribunal was dealing with an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (CLRA 2002) for a determination whether the Respondent has breached covenant in the lease of the property.
2. The Applicant, Mr Theodoulos Elia and Mrs Katina Elia are the lessor of 64A Grand Parade, Green Lanes, London N4 1AF (the property)
3. The Respondent is Golden Key Properties Ltd.
4. A pre-trial review was held on 2 October 2006. The pre-trial review directed that the application was to be determined without a hearing unless either the Applicant or the Respondent makes a written request to be heard before the determination. No such application was made.
5. The determination of the application was made on 11 December 2006. The Tribunal decided that it was not necessary to inspect the property in order to make its determination.
6. The matters in issue, and which required the determination of the Tribunal were as follows: -
 - (a) whether the lease includes the clauses which are alleged to have been breached
 - (b) whether the facts alleged by the Applicant are substantiated and
 - (c) whether those facts constitute a breach or breaches of covenant
7. The tribunal's decision is that
 - (a) The lease, at Schedule 1(1) contains a covenant which prevents the Respondent using the property for any purpose other than as a private residence in one occupation only.
 - (b) This covenant has been breached.
8. The salient parts of the evidence are given below under the appropriate heading.

Background

9. The property is a first floor flat. The ground floor of the property is let as a restaurant. The Applicant is also the Lessor of the restaurant. There is a further residential unit above the property.

10. The property was demised by a lease for a term of 99 years from 25 March 1984 and made between Theodoulos Elia and Katina Elia as Lessor and Savvas Georgios Levendi and Kyriaki Levendi as Lessee.
11. The Respondent acquired the lease by an assignment dated 13 May 1999.

The Applicant's submission

12. The Application arises from problems that have been caused by water escaping from the property and causing damage, loss and inconvenience to the proprietor of the restaurant situated underneath the property. The Applicant states that the problem of water leakage is long standing commencing when the Respondent became the Lessee of the property in May 1999. The Applicant has provided several statements from witnesses to the escape of water.
13. The Applicant argues that the escape of water is the result of breaches of various covenants contained in the lease. These alleged breaches are most helpfully listed in a letter written on behalf of the Applicant by Anne Brown Solicitors to the Respondent dated 31 July 2006. The alleged breaches are as follows:
 - (a) allowing water to escape from the property causing damage and nuisance to other occupiers
 - (b) failure to keep the demised premises in good and tenantable repair and condition
 - (c) doing or permitting to be done something which may render void or avoidable the policy or policies of insurance on the property or which may cause an increased premium to be payable in respect of any such policy
 - (d) altering the property by constructing a wall or walls to provide one or more extra rooms
 - (e) blocking the fire escape from the property which was formerly accessed from the kitchen of the property
 - (f) failing to allow access to the landlord and/or his agents upon reasonable notice for the purposes of inspection and/or repair
 - (g) using the property other than as a private residence in one occupation only
14. The pre-trial review directed the Applicant to provide a statement elaborating on these alleged breaches and in particular providing details of the alleged breaches, including factual statements and dates of the alleged breaches and identification of the relevant covenant(s) or condition(s) in the lease. Unfortunately the Applicant has not provided further information about the breaches.
15. The Applicant submitted a letter dated 30th November 2006 to the Tribunal from Haringey Council's Environmental Services which reports on conditions in the property as follows:

16. 'My assessment of the first floor flat showed that there were four lettings with 5 individual tenants. There was only one kitchen and one bathroom/wc. All the doors had locks on them. One of the front rooms was below Haringey's space standards i.e. 10m², and there was no lounge/living area'.
17. The letter was received by the Tribunal on 5th December 2006. The Applicant has faxed a copy of the letter to the Respondent. The Tribunal has not received any response to the letter from the Respondent.

The Respondent's submission

18. The Respondent admits that there have been a number of incidents with water escaping from the property to the restaurant below. However it argues that each of those incidents has been responded to appropriately and that none of the incidents arose from the same cause. It produced invoices relating to works in support of its statement.
19. The Respondent further argues that the Applicant has failed to respond to the directions to give proper details of the alleged breaches, to identify the relevant conditions or covenants in the Lease, and has failed to make any legal submissions in support of the application.
20. It denies any breach of conditions or covenants and provides specific arguments in relation to certain alleged breaches. In particular it argues
 - (a) that the exit door was blocked by its predecessor in title and that the blockage is not a structural alteration and did not require the landlord's consent. It denies that the exit was a fire exit.
 - (b) that whilst an additional bedroom was created in the property as a result of the erection of a partition wall, this alteration was not structural and did not therefore require the landlord's consent.
21. The Respondent asserts that the flat has been at all times and continues to be used as a private residence only. It states that the current tenant is a Mr Morad Lashar who is holding over following the expiry of a tenancy which commenced on 1 April 2005.
22. It also points out that as the Applicant did not provide a surveyor's report in connection with his application he is unable to substantiate his claim that the property is not in good and tenantable repair and condition.
23. The final argument of the Respondent is that if the Tribunal finds that the alleged breaches to be proved then the Applicant has waived the breaches by accepting ground rent for the property.

The Tribunal's decision

24. The Tribunal was extremely concerned that the Applicant had failed to provide it and the Respondent with the information which the pre-trial review had directed the Applicant to provide.
25. Having read the lease it considered the allegations made by the Applicant in connection with potential breaches of the lease and made determinations in relation to each of the potential breaches.
26. In relation to the allegation that the Respondent allowed water to escape from the property causing damage and nuisance to other occupiers, the Tribunal determined that this breach was admitted by the Respondent but that the breach had been remedied and therefore there is no continuing breach of covenant.
27. In relation to the Respondent's alleged failure to keep the demised premises in good and tenantable repair and condition, and the Respondent's alleged breach of the covenant not to make any structural alterations to the property, the Tribunal determined that the Applicant had failed to prove either of the alleged breaches to the requisite standard as he had failed to provide professional or other evidence to substantiate his allegations.
28. In relation to the allegation that the Respondent is doing or permitting to be done something which may render void or avoidable the policy or policies of insurance on the property or which may cause an increased premium to be payable in respect of any such policy, the Tribunal determined that the Applicant had failed to prove the alleged breach to the requisite standard.
29. In relation to the allegation that the Respondent has blocked the fire escape from the property which was formerly accessed from the kitchen of the property, the Tribunal noted that the plan attached to the Lease of the property does not show an exit door. Therefore the Tribunal determined that there has been no breach of the covenant not to make structural alterations to the property in connection with the blockage of the exit from the kitchen.
30. In relation to the allegation that the Respondent has failed to allow access to the landlord and/or his agents upon reasonable notice for the purposes of inspection and/or repair, the Tribunal determined that the Applicant had failed to prove the alleged breach to the requisite standard.
31. In relation to the allegation that the Respondent has been using the property other than as a private residence in one occupation only, the Tribunal took note of the letter from the Environmental Services of Haringey Council. In this letter it is stated that the Respondent was present during the Environmental Health Officer inspection of the property. It records that the Respondent informed the Environmental Health Officer that it 'had only recently found out that the property was being used as a flat in multiple occupation. With this information he is now seeing alternative accommodation for the existing tenants and he will be taking over the management of the property immediately. Once the property is vacated he will carry out renovation works and will let the flat to one household.'

32. Although the letter was produced to the Tribunal and to the Respondent only 6 days prior to the hearing, and the Tribunal has had no response from the Respondent in connection with its contents, the Tribunal considered that the Respondent was not prejudiced by its contents as it was present at the inspection of the property.
33. On the basis of the evidence from Haringey Council the Tribunal determines that the Respondent is in breach of this covenant. However the Tribunal notes that the Respondent is taking steps to remedy the breach.
34. The Respondent's argument that the Applicant has waived breach of covenant because of receipt of ground rent is only relevant in connection with the Tribunal's determination that there has been a breach of the covenant that the property should be used as a private residence in one occupation only. The Tribunal considered that the breach was so recent that the waiver argument was inapplicable and therefore determined that the Applicant had not waived the breach of this covenant.

Tribunal: Ms H Carr



Date: 10.1.2007