

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DECISION BY LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

**COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – Section 168 (4)**

**Ref :LON/OOAG/BC/20060020**

**Property: Flat 11 Palmer House, Fortess Road, London NW5  
2HH**

**Applicant: Faze Investments Limited**

**Represented by: Ringleys Managing Agents**

**Respondent: Mr P L Bond**

**Application Date: 9<sup>th</sup> May 2006**

**Paper Determination**

**Date: 25<sup>th</sup> August 2006**

**Tribunal: H C Bowers BSC(Econ) MRICS MSc**

**Date of Decision: 25<sup>th</sup> August 2006**

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**Background:**

1. An application was made on the 9<sup>th</sup> May 2006 whereby the Applicant stated that the Respondent had replaced the front door of his flat and this had resulted in various breaches of the lease. It was acknowledge by the Respondent that following a burglary in 2003, he had arranged for the front door to be replaced.

2. A Pre Trial review was held on 22<sup>nd</sup> June 2006 and Directions were subsequently issued. It was considered that this matter could be dealt with by means of a paper determination.

### The Law:

3. The relevant parts of section 168 of the Commonhold and Leasehold Reform Act 2002 (the Act) provides:
- (1) *A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925(c20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.*
- (2) *This subsection is satisfied if –*
- (a) *it has been finally determined on an application under subsection (4) that the breach has occurred;*
- (b) *the tenant has admitted the breach,*
- .....
- .....
- (4) *A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*

### The Lease:

4. The Tribunal was only provided with a copy of the lease relating to Flat 4 Palmer House, which was dated 23<sup>rd</sup> February 2001. The Tribunal has assumed that the lease for Flat 11 is in the same format as the lease provided.
5. The particular clauses upon which the Applicant is relying under the lease provide:
- That the flat *Clause 1 .....(for the purpose of obligation as well as grant) include:-*
- (a) *the plastered covering and plaster work of the walls bounding the Flat and the doors door furniture and door frames .....*
- Clause 2 The Lessee HEREBY COVENANTS with the Lessor that the Lessee will at all times during the said term hereby granted duly observe and perform all the covenants and provisions following that is to say:-*
- .....
- (4) *Will at all times during the said term at his own expense effectually and substantially repair maintain drain cleanse and keep in repair the Flat including the entrance door thereto.....*
- .....
- (13) *Will not at any time during the said term without the licence in writing of the Lessor first obtained ..... make or suffer to be made any structural addition whatsoever in or to the Building or the Flat*

*or any buildings which may be erected thereon without such licence as aforesaid either externally or internally or (without such licence as aforesaid) make or permit or suffer to be made any alterations in any boundary or party walls or fences .....*

.....  
(22) *Will not stop up darken or obstruct any windows or light belonging to the Flat .....*

.....  
(29) *Will not do or cause or suffer or permit to be done any matter or thing detrimental to or causing damage to or liable to cause damage to the Flat .....*

6. In the Applicant's written representations, reference was made to Rules and Regulations. A full copy of these Rules and Regulations were not made available to the Tribunal and there is no reference to such Rules and Regulations in the lease that was provided. However for the sake of completeness the relevant paragraphs that the Applicant appears to be relying upon state:

*5.12.1 At the tenant's own expense obtain all necessary permissions and approvals under the Town and Country Planning Acts or otherwise for any additions and alterations to the Property ... and to produce to the landlord or its Surveyor all such permissions and approvals.*

*5.12.2 Not to do omit or suffer to be done ... any act matter or thing in on or respecting the Property required to be omitted or done (as the case may be) by the Town and Country Planning Acts or any Bye –Law or which shall contravene the provisions of the said Acts or Bye-Laws or any of them.*

*5.12.3 Indemnify and keep indemnified the Landlord from and against all actions costs expenses claims and demands in respect of any such act matter or thing done or omitted by or on the behalf of the tenant which shall contravene the said provisions of the said Acts or bye-Laws or any of them as aforesaid.*

#### **Applicant's Case:**

7. The Applicant states that the following a burglary at the subject premises the Respondent replaced the existing partial glazed front door to the flat with a solid wooden door, but without seeking consent of the Applicant. The replacement front door is not in keeping with the original front door and the front doors of other flats within the building.
8. It is stated that the replacement of the front door should be the responsibility of the Leaseholder and relies upon Clause 1(a) of the lease. It is further argued that the Respondent is only liable for the repair and maintenance of the front door and not for the replacement of the front door [Clause2(4)]

9. The Applicant is of the opinion that the replacement of the door, which is different in character to remaining doors, is in breach of clause 2 (29) in that the work has been detrimental to the building.
10. By replacing the existing door with a solid wooden door the Respondent is in breach of his obligations under Clause 2 (22) "Will not stop up darken or obstruct any windows or light belonging to the flat ...." Additionally the respondent is in breach of Clause 2(13), as he had not sought consent and a licence for the work undertaken.
11. It is argued that as the subject property is a flat within a listed building, it is subject to the Camden Council Listed Building Regulations. The replacement of the door is in contravention of the Camden Listed Building Regulations. No approach has been made by the Respondent to obtain the necessary consents from Camden and the Respondent had not indemnified the Applicant in respect of the contravention of the Camden Council Listed Building Regulations. Accordingly there has been a breach of the Rules and Regulations.
12. Finally it is suggested that any works carried out to this building without prior listed building consent is a criminal offence.

**Respondent's case:**

13. The Respondent considered that the security at Palmer House was poor and as a consequence of this and the burglary, he considered that it was appropriate to replace the existing door with a stronger door. He claimed that the original door had been badly damaged and was beyond repair and therefore replacement was necessary.
14. The Respondent mentioned that there have been a number of issues arising from the Landlord's management of the building. Additionally the Respondent raised the cost of replacing the door and the cost of dealing with this matter. However, these are issues that are not currently before the Tribunal.

**Determination.**

15. The burden of proof in this case must lie with the Applicant to prove that there has been a breach of covenant of the lease by the Respondent.
16. The first alleged breach is in respect of Clause 2 (4). From the information supplied by the Respondent it appears that the original door was beyond repair. In order to comply with his obligations under

Clause 2(4) it would have been necessary for the Respondent to replace the door. If replacement is the only option available to the Respondent then it would appear that this would be work in compliance with his obligations. Accordingly the Tribunal find that there is not a breach of Clause 2(4).

17. The second clause that the Applicant is relying upon is Clause 2(29) and that as the replacement door is different in character to the previous door and other doors in the building, that this is "Detrimental to or liable to cause damage to the Flat or the Building... or any part thereof .... In the opinion of the Tribunal the replacement of the door will not cause any physical harm to the Flat and the Building. Any harm that may arise is in respect of the perception and the aesthetics of the Building and the Flat. This is a subjective point. To some parties, the replacement door would be seen as an improvement, whilst to others the lack of uniformity with the remaining flats would be viewed as detrimental. In the opinion of the Tribunal, the Applicant has not made a sufficient case on this point to convince the Tribunal that the action has caused any detriment to the Flat or the Building. Accordingly it is determined that there has been no breach of this covenant.
18. The third clause the Applicant raised is Clause 2(22) and relates to "will not stop up darken or obstruct any windows or light belonging to the Flat or to the Building...". It is obvious that the replacement door is solid in comparison to the original partially glazed door. However, the Applicant has not proven the case that this fact in itself has resulted in the stopping up, darkening or obstruction of any natural light into the Flat or the Building. The Tribunal determines that there has not been a breach of this covenant.
19. The fourth proposed breach relates to Clause 2(13) of the lease and this relates to the necessity of obtaining a license from the Lessor prior to certain works being carried out. In the opinion of the Tribunal the replacement of the door is not a "new building or erection" and nor is it a "structural alteration". The Applicant has not proved his case on this point and accordingly, the Tribunal find that there has not been a breach of this covenant.
20. The Applicant then makes reference to various "Rules and Regulations" that have been breached by the Respondent. These Rules and Regulations have not been provided to the Tribunal and there is no reference to these Rules and Regulations in the lease that is provided. Accordingly it would appear to the Tribunal that whilst the Respondent may be in breach of these Rules and Regulations, no case has been made by the Applicant that the Respondent has covenanted to comply with these Rules and Regulations. As such the Tribunal can see no breach of the terms of the lease in respect of these Rules and Regulations.

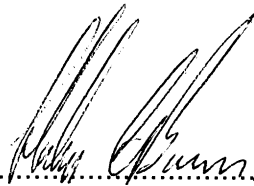
21. The final issues relate to the indemnity of the landlord and the potential criminal offence relating to the lack of Listed Building Consent. The Applicant has made no case as to which clauses in the lease that these actions apply. Accordingly the Tribunal find that these are no breaches of covenant in respect of these issues.

**Decision:**

22. The Tribunal find that the Applicant has failed to establish any prima facie case to demonstrate any breach of covenant by the Respondent.

Tribunal:

Chairman

  
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Date: 25<sup>th</sup> August 2006