

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/00ML/LBC/2005/0007

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 168(4) of the COMMONHOLD AND LEASHOLD
REFORM ACT 2002**

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| Property: | First Floor Flat, 54 York Road, Hove, BN3 1DL |
| Applicant: | Swanlane Estates Limited (landlord) |
| Respondent: | Hyde Housing Association Limited (tenant) |
| Date of Application: | 11 August 2005 |
| Directions: | 19 August 2005 |
| Decision: | 7 November 2005 |

Member of the Leasehold Valuation Tribunal

Ms J A Talbot MA Cantab

Ref: CHI/00ML/LBC/2005/0007

Property: First Floor Flat, 54 York Road, Hove BN3 1DL

Application

1. This was an application made on 11 August 2005 by the landlord, Swanlane Investments Ltd ("Swanlane"), for a determination whether a breach of covenant by the tenant, Hyde Housing Association Ltd ("Hyde") has occurred.
2. Directions were give by the Tribunal on 19 August 2005, proposing that the matter should be dealt with on the fast track without an oral hearing or inspection. Neither party requested a hearing. Accordingly, the matter was determined by a chairman sitting alone on the consideration of documents alone. Swanlane provided a bundle of documents for the Tribunal's consideration, but Hyde did not.

Law

3. Section 168 subsections (1) and (2) of the Commonhold and Leasehold Reform Act 2002 provide that a landlord may not serve a notice under Section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined, on an application to the Leasehold Valuation Tribunal under Section 168(4), that the breach has occurred.
4. A determination under Section 168(4) does not require the Tribunal to consider any issue relating to the forfeiture other than the question of whether a breach has occurred.

Lease

5. The Tribunal was provided with a copy of the lease of the first floor flat at the property. The lease is dated 14 June 1984, and is for a term of 99 years from 25 December 1983, at an initial ground rent of £30, rising by increments to £120 per annum.
6. Insofar as is material to the application, at Clause 3(5) the lease contains the following covenant on behalf of the tenants:

"not at any time during the said term to make any alterations in or additions to the Demised Premises or any part thereof or to cut maim alter or injure any of the walls or timbers thereof or to alter the landlord's fixtures herein without first having made a written application (accompanied by all relevant plans and specifications) in respect thereof to the Lessors and secondly having received the written consent of the Lessors thereto".

7. The flat, or Demised Premises, is stated in the Particulars to be the first floor flat, and is more fully described in the First Schedule to the lease. It includes, at paragraph (a) to the Schedule:

"... the internal plastered coverings and plaster work of the walls bounding the Flat and the ... window frames fitted in such walls (other than the external surfaces of such ... window frames) and the glass fitted in such window frames".

8. The Building is stated in the Particulars to be 54 York Road Hove, and in paragraph (9) of the Recitals is defined as the buildings of which the Demised Premises forms part.

Alleged Breach

9. Swanlane alleged that Hyde had breached Clause 5(3) of the lease by the replacement at first floor level without the landlord's consent of the bay window in a UPVC type. These works were alleged to be carried out without planning permission and without conforming to the regulations applying to the Conservation Area in which the property is situated.

Facts

10. The property is a terraced house in Hove converted into four flats. The property lies within a Conservation Area. Hyde is a Registered Social Landlord and lessee of the first floor flat. The Chichester Diocesan Housing Association ("CDHA") is part of the Hyde Housing Group and the flat occupied by their sub-tenant.
11. The property was managed until about January 2005 by managing agents DGA, on behalf of Swanlane. In the Statement of Case dated 9 September 2005, signed by Swanlane's in-house solicitor, Ms Becker, it was admitted that there had been serious shortcomings in DGA's management. Following the subsequent appointment of chartered surveyors Michael Richards & Co, Swanlane learned that the first floor bay window had been replaced.
12. The Tribunal was provided with copies of draft Particulars of Claim and a surveyor's report from Nigel Enever ("Enever") FRICS on behalf of the tenant of the ground floor flat, Ms Sutcliffe Armstrong, in contemplation of litigation against Swanlane for damages for failure to maintain and repair. From these, the Tribunal accepted that there had been a long-standing problem of water ingress to the top of the bay window in the ground floor flat. No action was taken by DGA. In an attempt to resolve the problem, CDHA, of its own accord, around mid May 2003, replaced the existing timber bay window with one of UPVC type.
13. From the ensuing correspondence during 2005 between Swanlane, Michael Richards, and Michael Burrage, CDHA's Supported Housing Maintenance Surveyor, the Tribunal noted that CDHA had not denied incorrectly installing the UPVC window and had offered to re-instate a timber sash. However, despite several requests from Swanlane, CDHA has not admitted any breach of covenant.
14. Swanlane relied on Enever's report to further assert that the replacement window works had been poorly carried out, and as a result, structural damage had been caused to the property, requiring extensive costly remedial works for which they hold CDHA or Hyde responsible. CDHA has denied liability for these further works.

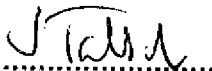
Decision

15. The Tribunal decided, from the facts found, that CDHA's act of replacing the window without permission, which was not disputed, amounted to a breach of the tenant's covenant not to make any alterations to the flat without prior written consent of the landlord, at Clause 3(5), recited in full above (paragraph 4). Plainly, the windows formed part of the Demised Premises as described in the First Schedule, also set out above (paragraph 5).
16. Swanlane has further asserted that Hyde is liable for further remedial works caused by the breach. The Tribunal makes no findings on this issue; its jurisdiction is limited to whether there has been a breach of covenant.
17. It may be arguable that the breach could be remedied by re-instatement of a new timber sash window, and that the issue of further remedial works would arise only by way of an action for damages flowing from the breach. However, for the same reasons, the Tribunal does not have the power to consider these issues, which would be matters for the County Court to decide.

Determination

18. For the reasons given above, the Tribunal determines that the replacement of the first floor bay window by the tenant without the landlord's consent is a breach of Clause 5(3) of the lease.

Dated 7 November 2005



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Ms J A Talbot MA Cantab.
Chairman