**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2020] UKUT 0138 (LC)**
**UTLC Case Number: LRX/96/2019**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT - BREACH OF COVENANT - long residential lease- tenant covenant not to remove landlord's fixtures without consent - whether breach of covenant when entrance door to flat replaced by tenant - whether entrance doors comprise landlord's fixtures - appeal allowed - section 168(4) of the Commonhold and Leasehold Reform Act 2002***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)**

**BETWEEN:**

**MR THIERRY GILLES FIVAZ**

**Appellant**

**and**

**MARLBOROUGH KNIGHTSBRIDGE MANAGEMENT LTD** **Respondent**

**Re: Flats 120 and 131,**
**61 Walton Street,**
**London,**
**SW3 2JU**

**His Honour Judge Stuart Bridge**

**Written representations**

*Martin Dray*, counsel for the appellant
*James Fieldsend*, counsel for the respondent

The following cases are referred to in this decision:

*Elliott v Bishop* (1854) 10 Ex 496
*Climie v Wood* [1869] LR 4 Exch 328
*Lambourn v McLellan* [1903] Ch 268
*Boswell v Crucible Steel Ltd* [1925] 1 KB 119
*Botham v TSB Bank Plc* (1997) 73 P & CR D1
*Elitestone Ltd v Morris* [1997] 1 WLR 687
*Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896
*Arnold v Britton* [2015] AC 1619
*Wood v Capita Insurance Services Ltd* [2017] UKSC 24

## Question

1. A tenant has a long residential lease of a flat within a block. He has covenanted not to remove any of the landlord's fixtures. He replaces the front door of the flat. Has he broken the covenant?

## The application

2. On 27 March 2019 the landlord Marlborough Knightsbridge Management Limited (hereafter "the respondent") made an application to the First-tier Tribunal (hereafter "FTT") for a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant had occurred.

3. The subject property comprised two one-bedroom flats being numbers 120 and 131 Marlborough, 61 Walton Street, London SW3 2JZ. Each of these flats has been at all material times let on long lease to Mr Thierry Gilles Fivaz (hereafter "the appellant"), the lease of 120 being dated 27 March 1978 and the lease of 131 being dated 12 June 1972. Since 23 September 2013 the appellant has been registered as the leasehold proprietor of both flats.

4. In about 2014 the appellant replaced the external doors to the two flats. It is not in dispute that the new doors were compliant with all relevant fire regulations, and were entirely fit for the purpose. However, the appellant's actions in replacing the doors resulted, nearly five years later, in the respondent's application to the FTT.

5. The context of the application is a long-running dispute between the appellant tenant and the respondent landlord. The landlord has proposed an extensive refurbishment programme to the block containing the appellant's two flats including replacement of all the external doors to the individual flats. The tenant has challenged the landlord's right to fund these works by resort to the tenants' service charge. That underlying dispute was not before the FTT which rightly had no regard to it in arriving at its decision.

6. The landlord's application to the FTT specified the covenant alleged to have been breached in the following terms:

> "We have been notified that the Respondent has removed some of the Landlord's fixtures and fitting [*sic*], notably the external doors at the properties, without the Landlord's consent."

7. After reciting clause 3(4) (to be found below at [14]), the application continued:

> "As the Respondent has removed the external doors to the Properties, which form part of the Landlord's fixtures and fittings, "[*sic*] without first having made a written application and having received the written consent of the Lessors to do so, the Respondent is in Breach of the Lease."

8. The application was therefore quite specific as far as clause 3(4) was concerned, particularising the breach as being the removal of landlord's fixtures. Later in the application, the grounds were summarised, stating that the Respondent

> "has removed some of the Landlord's fixtures and fitting [*sic*] without the Landlord's consent to do so and furthermore, this is preventing the Landlord from complying with their obligations under the Lease in fitting new fire safety doors."

9. On 22 May 2019 there was a hearing before the FTT at which both parties were represented by counsel. On 26 June 2019, the FTT determined the application in favour of the respondent landlord, deciding that there was a breach of covenant.

10. The tenant duly sought permission to appeal. The FTT refused to grant permission, this appeal being brought with the permission of this Tribunal which was granted on 22 October 2019.

11. The appeal has been determined pursuant to the Tribunal's written representations procedure. The appeal bundle provided to the Tribunal contains:

> (1) Application to the FTT dated 27 March 2019
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> (2) Appellant's Response Statement dated 26 April 2019
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> (3) Respondent's Reply dated 3 May 2019
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> (4) Appellant's Skeleton Argument for the FTT hearing dated 21 May 2019
>
> (5) Respondent's Skeleton Argument for the FTT hearing dated 21 May 2019
>
> (6) The FTT decisions on this application (LON/00AW/LBC/2019/0024) and on an application by the same landlord heard on the same day in relation to another tenant, Celia Willis (LON/00AW/LBC/2019/0025)
>
> (7) Appellant's Application to the FTT for permission to appeal to this Tribunal dated 23 July 2019
>
> (8) Respondent's Response to that Application dated 1 August 2019
>
> (9) FTT's Refusal of Permission to Appeal dated 13 August 2019
>
> (10) Appellant's Upper Tribunal Appeal Documents dated 22 August 2019 (replicating much of the above, but including Application to this Tribunal for permission to appeal)
>
> (11) Respondent's Supplemental Response to the Application for permission to appeal dated 27 September 2019
>
> (12) Upper Tribunal's Permission to Appeal dated 22 October 2019
>
> (13) Respondent's Further Written Representations dated 8 November 2019
>
> (14) Appellant's Representations in Reply dated 20 November 2019

12. Somewhat surprisingly, the appeal bundle did not contain a copy of either of the relevant leases. Copies were later provided when requested by the Tribunal.

**The leases**

13. One may as well begin with the leases.

14. The two leases are accepted to be identical in all material respects. In clause 3(4) of each lease, the tenant covenants with the lessors as follows:

> "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 internal arrangement thereof or to remove any of the landlords fixtures therefrom without first having made a written application (accompanied by all relevant plans and specifications) in respect thereof to the Lessors… and secondly having received written consent of the Lessors… thereto and paying the fees of the Lessor… and any Mortgagee and their respective professional advisers."

15. In clause 4 of each lease, the tenant further covenants with the lessors… "and with and for the benefit of" the owners and tenants from time to time during the said term of the other flats comprised in the same block ("Marlborough" as it is referred to) as follows:

> "(1) Throughout the said term to repair maintain renew uphold and keep the Demised Premises and all parts thereof (other than such parts as are comprised and referred to in paragraphs (a) and (b) of sub-clause (5) of Clause 5 hereof) including so far as the same form part of or are within the demised Premises all windows glass and doors (including the entrance door to the Demised Premises) locks fastenings and hinges sanitary water gas and electrical apparatus and walls and ceilings drains pipes wires and cables and all fixtures and additions in good and substantial repair and condition…
>
> "(5) Throughout the said term to observe and perform the regulations set forth in the First Schedule hereto."

16. Each lease defines "the Demised Premises" in the following terms:

> "All those rooms known as flat No. [120 or 131] on the first floor of Marlborough including one half part in depth of the structure between the floors thereof and the (ceilings of the flat) (basement) below and one half part of the structure between the ceilings thereof and the (floors of the flat) (structure) above as the same is shown edged red on the plan annexed hereto.
>
> "NOTE: All walls except exterior walls in contact with the outside and walls wholly within the interior of the Demised Premises are party walls."

17. Two regulations contained in the First Schedule are relevant, and were referred to before the FTT:

"(17) Not at any time to do or permit the doing of any damage whatsoever to Marlborough the fixtures fittings or chattels therein the curtilage thereof or the path adjoining thereto and forthwith on demand by the lessors to pay to the lessors the cost of making good any damage resulting from a breach of this regulation.

"(20) Not at any time to interfere with the external decorations or painting of the demised premises or any other part of Marlborough."

**The decision of the FTT**

18. The FTT did not deal with the other issues raised by the dispute between the parties but focussed, quite rightly, on the question immediately before it: whether there had been a breach of covenant on the part of the tenant. Although the FTT was referred to a number of authorities, being both decided cases and relevant texts, the decision cited only two extracts: one from the 6th edition of Dowding and Reynolds on *Dilapidations*, chapter 25, and the other being a passage from the judgment of Scarman LJ in *Botham v TSB Bank Plc* (1997) 73 P & CR D1 stating the two tests relevant to determining whether a chattel has become a fixture, namely the method and degree, and the object and purpose, of the chattel's annexation.

19. Having referred to clauses 3(4) and 4(1) in the leases, the FTT succinctly concluded:

"[18] Whilst we can accept that replacement may constitute a repair, there is no evidence that the existing doors were in a state of disrepair. However, the renewing of a door does require the removal of same. Such removal requires the consent of the landlord under the provisions of clause 3(4) if it is held that the door is a fixture.

"[19] We have considered the various cases put to us and the arguments raised by Counsel. It seems to us that there is no doubt that the door is a fixture. It is connected to the Property and does not stand there by its own weight. It provides security and privacy to the owners of the flat and is also providing potential privacy and security to those people using the common parts. It is not in our finding a chattel. In those circumstances, although the provisions of clause 4(1) require the tenant to repair, maintain, renew and uphold the demised premises, the removal of the front door and the replacement with another does in our finding require the consent of the landlord. This seems logical because one would expect a landlord to want to maintain some commonalty of doors to the Property and in the light of the recent problems with regard to fires in flats certainly an intention to ensure that the doors provided sufficient fire safety. By requiring consent to change such an item, it enables the landlord to control whether the door meets the safety requirements as well as providing a suitable alternative to ensure that the ambience of the building is maintained. In this case it appears to be the Applicant's wish to establish that they were entitled to replace all the doors. However, no point appears to be taken by Mr Fivaz that replacing the doors in 2014, without complaint, prevents the Applicant from now raising the allegation of a breach.

"[20] We therefore find that as the door is a fixture, the consent of the landlord was required before it was removed and replaced. We therefore find there has been a breach of the condition of the lease.

> "[21] It does not seem to us that the regulations are particularly helpful on determining this matter. And make no findings therefore that there has been any breaches of the regulations. The breach rests with clauses 3(4) and 4(1) which we find are not mutually exclusive but should be read in conjunction with each other."

20. The application to the FTT had made reference to clause 4(5) and regulations 17 and 20. The grounds expanded upon this allegation, claiming that the Respondent had breached those regulations

> "in that the Respondent has damaged the Landlords fixtures and fittings, interfered with the external decorations of the Properties and failed to keep up with the buildings' appearance in respect of the new doors that have been fitted."

21. The FTT's refusal (at [21] of its decision) to make any findings about breaches of the regulations (and hence of clause 4(5)) has not been specifically criticised by the respondent in the course of this appeal. The one issue between the parties has been whether the FTT was correct to find that there has been a breach of clause 3(4) by removal of the landlord's fixtures.

**The appeal**

22. It is the final concluding paragraphs of the FTT decision (those set out at [19] above) upon which the appellant tenant directs its criticism, submitting (1) that the FTT failed to consider (in the light of the House of Lords decision in *Elitestone Ltd v Morris* [1997] 1 WLR 687 to which it was referred) whether the doors were neither chattels nor fixtures but were part and parcel of the land itself; and (2) that it failed to address the tenant's contention that the entrance doors to the flats were an integral part of the land demised, and not therefore landlord's fixtures as it concluded.

23. This submission does not require much by way of development, but the following passage from the appellant's grounds of appeal provides a good summary:

> "An entrance door is, by its very nature, an integral part and parcel of the flat it serves. No flat within a block is built or complete without an entrance door; the door is self-evidently a fundamental element in its construction. A unit is not, in any meaningful sense, a flat without a front door. A front door is not added (by way of afterthought) as "an accessory" to a flat; it goes with, and is part of the essence of, the flat itself. Without a front door, the accommodation is not self-contained and enclosed; it is not a separate set of premises (an essential characteristic of a flat). A front door- which provides security and privacy to the owner (as the FTT noted in its decision at [19])- is essential to the use of the land as residential premises. A reasonable person does not conceive or speak of a flat, or a block of flats, if the unit(s) lack(s) front doors."

24. Subsidiary to this central submission, the appellant contended that, even if the doors were "landlord's fixtures" within clause 3(4) of the leases, the FTT failed to consider and address his contentions that replacing them did not constitute a "removal" as "removal connotes a

situation where an item is taken away without provision of a substitute (such that the item no longer exists)". In this case, each of the doors was replaced by another door and there was in consequence no material change to the premises as a whole.

25. The appellant further contended that in holding, at [21], that clauses 3(4) and 4(1) were not mutually exclusive but should be read in conjunction with each other, the FTT failed to address his argument that they should be regarded as separate covenants and in doing so adopted "a perverse and wholly uncommercial interpretation of the lease" under which a covenantor would be required to carry out works while being at the same time precluded from doing so without obtaining prior consent from the landlord.

26. In reply, the respondent landlord submits that the FTT arrived at a decision which it was entitled to make. It contends that the FTT carried out an exercise of contractual interpretation in determining that the doors were "landlord's fixtures" and that it was clear that in so doing the FTT considered, and rejected, the possibility that they were neither chattels nor fixtures but an integral part of the building. This was the proper interpretation as the doors were not, as in some previous cases, part of the structure of the building: "it cannot be said that without them Marlborough cannot be described as a building at all". On the contrary, the doors were things affixed to the structure of the building, and therefore appropriately described as "landlord's fixtures".

27. The respondent further submits that the FTT was right to conclude that when the doors were replaced that comprised a removal of the landlord's fixtures in breach of clause 3(4) of the leases. It contends that in [19] the FTT dealt implicitly with the distinction between permanent and temporary removal and that it properly concluded that removal of the doors and their replacement with different doors was in breach of that clause and consistent with its purpose, as objectively assessed.

28. There is one further issue I should mention. In granting permission to appeal, this Tribunal noted that the FTT decision, while concluding that there had been a breach of covenant, did not identify what that breach was. This was not a ground upon which the appellant tenant had relied, and the respondent contends that on a reading of the decision as a whole it was clear that the FTT found that the tenant was in breach of clause 3(4). The appellant accepts that this was not a distinct ground that had been advanced but contends that "the manifest lack of clarity" in the decision is a feature of "the inadequate and muddled treatment of the various issues in the case" by the FTT. The reference in [21] of the FTT decision to clause 4(1) (breach of which the landlord had never alleged) without any explanation as to how it had been breached, demonstrates, according to the appellant, that the FTT decision is "obscure and unsafe".

**Discussion**

29. The question is whether the FTT was right to conclude that there had been a breach of covenant by the tenant in replacing the entrance doors of the flats. The appellant accepts that he replaced the doors but disputes that in doing so he broke any covenant in the lease.

30. For the purposes of this appeal, it is accepted by the respondent that it is clause 3(4) which is central. That is the covenant, contends the respondent, that was broken when the tenant replaced the entrance doors of the flats. The respondent does not rely on what the FTT said in [21] in relation to clause 4(1) and does not contend that the tenant's actions comprised a breach of any covenants in the lease other than clause 3(4). Nor does the respondent contend (now or previously) that by replacing the doors the tenant made alterations to the demised premises contrary to the more general terms of the prohibition contained in clause 3(4). In its decision, the FTT recorded, at [9], that it was accepted that the entrance door was not a structure and therefore "not caught by the alterations or additions clause."

31. Two issues therefore remain for decision. The first is whether the entrance doors to the flats were "landlord's fixtures" within the terminology employed by clause 3(4). The second, which arises only if the first issue is determined in favour of the landlord, is whether the tenant, in replacing the doors, "removed" them, and thereby breached clause 3(4).

32. The respondent contends that the status of the entrance doors can only be resolved as a matter of contractual interpretation; that the FTT was required to interpret the leases and to decide whether the doors, on a true construction of those leases, were "landlord's fixtures".

*Were the entrance doors "landlord's fixtures"?*

33. I agree with the respondent that the Tribunal is necessarily concerned with a matter of contractual interpretation. Those principles, as laid down by the House of Lords in *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896 are well known, and I do not intend to repeat them here. I note that in subsequent cases the principles have been qualified to a limited extent, and in my judgment the summary provided by Woodfall at 11.07 accurately states the current law:

> "It has been emphasised that commercial common-sense cannot trump the words of the instrument, and that commercial common-sense cannot be applied retrospectively [*Arnold v Britton* [2015] AC 1619]. The task is to ascertain the objective meaning of the language which the parties have chosen. This is not a literalist exercise focused solely on parsing the wording of the particular clause. The court must consider the contract as a whole and, depending on the nature, formality and quality of the drafting, give more or less weight to the wider context in reaching its view as to that objective wording [*Wood v Capita Insurance Services Ltd* [2017] UKSC 24]."

34. The leases must be therefore construed in the light of the words that have been used paying due regard to the particular context in which those words are to be found. It is not a matter of asking, in the abstract, whether the entrance door to a flat leased by a landlord to a tenant is a "landlord's fixture". This is because it is possible that, in different contexts, and in different leases, an entrance door may or may not be captured by that terminology. And it must be said, considering previous decisions of the courts, that the phrase "landlord's fixtures" has proved problematic. That being the case, it is all the more important to consider its meaning in the context of the particular leases in which the covenant is found.

35. The learned editors of Dowding & Reynolds on *Dilapidations*, 6th edition, in a footnote to para 25-03, refer to three cases where judicial concern is expressed about "landlord's fixtures". In *Elliott v Bishop* (1854) 10 Ex 496, Martin B describes the expression as "a most inaccurate one". In *Lambourn v McLellan* [1903] Ch 268 Vaughan Williams LJ said that it was "not a happy expression". Finally, in *Boswell v Crucible Steel Ltd* [1925] 1 KB 119 Scrutton LJ confessed that he had "always had a difficulty in understanding what is meant by "landlord's fixtures"."

36. Against that rather unpromising backdrop, Dowding & Reynolds (at para 25-03) venture the following comment on the phrase:

> "It has no particular significance in the law relating to fixtures, save to denote fixtures which are not tenant's fixtures. However, it is an expression which is sometimes used in repairing or similar covenants. It is generally used to refer to fixtures which the tenant is not entitled to remove [*Lambourn v McLellan*, above at 274], either because they were annexed to the premises by the landlord (and were therefore part of the demised premises from the outset) or because they were annexed by the tenant after the grant of the lease but the circumstances are such that, for whatever reason, he has no right to remove them."

37. It must be said that this does not take us very much further: while clause 3(4) imposes an obligation on the tenant not to remove the landlord's fixtures, it goes no further in describing what it is that the tenant cannot remove. One thing is clear (and accepted by both parties to this appeal): that to comprise a "landlord's fixture", the item or object in question must be a "fixture". It must be, furthermore, a fixture which is not a "tenant's fixture", defined by Dowding & Reynolds, above, as "a fixture which is (subject to the terms of the lease) removable by the tenant."

38. The main criticism made of the FTT by the appellant tenant is that, in determining whether the doors were fixtures, it adopted a binary approach rather than the tertiary approach advocated in *Elitestone*, above. The FTT asked itself whether the entrance doors are chattels. It found, rationally, in view of the fact that they are attached to the building, that they are not. But it then jumped to the conclusion that, if they are no longer chattels, they must be fixtures without giving any apparent consideration to the third option- that they are neither chattels nor fixtures but are, by virtue of being an integral part of the flat (and indeed the building as a whole) "part and parcel of the land."

39. In deciding whether an object is a fixture the leading authority is *Elitestone Ltd v Morris*, above, where the House of Lords adopted the "three-fold classification" proposed by Woodfall on *Landlord and Tenant* at 13.131:

> "An object which is brought onto land may be classified under one of three broad heads. It may be (a) a chattel; (b) a fixture; or (c) part and parcel of the land itself. Objects in categories (b) and (c) are treated as being part of the land."

40. This classification, building upon past authority such as *Boswell v Crucible Steel Ltd*, above, acknowledges that the status of an object, initially a chattel, may change but determines that

when the object ceases to be a chattel it may not necessarily become a fixture. The point is well made by Woodfall at 13.136:

> "All structures are constructed out of materials which were originally chattels, such as the bricks used to build a wall. Where an article which was originally a chattel is built into the structure of a building, it will not usually be regarded as a fixture but as part of the building itself. Thus "things may be made so completely a part of the land, as being essential to its convenient use, that even a tenant could not remove them. An example of this class of chattel may be found in doors or windows." [*Climie v Wood* [1869] LR 4 Exch 328] "

41. In *Boswell v Crucible Steel Ltd*, above, a lease of a warehouse contained a tenant covenant to repair "the inside of the demised premises including all landlord's fixtures." The demised premises were, in the words of Scrutton LJ, "practically enclosed in a wall of glass". As a result of the activities of "mischievous persons" outside the premises a number of the windows were broken, and the landlord claimed that the tenant was liable to repair them. Bankes LJ found it impossible to say that the windows, as they formed "part of the original structure of the house", fell within the definition of landlord's fixtures; Scrutton LJ agreed.

42. Atkin LJ summarised his views as follows:

> "A fixture, as that term is used in connection with a house, means something which has been affixed to the freehold as accessory to the house. It does not include things which were made part of the house itself in the course of its construction. And the expression "landlord's fixtures," as I understand it, covers all those chattels which have been so affixed by way of addition to the original structure, and were so affixed either by the landlord, or, if by the tenant, under circumstances in which they were not removable by him. As these windows were part of the original structure, representing the walls of the house, so that without them there would be nothing that could be described as a warehouse at all, they cannot come under the head of landlord's fixtures."

43. The respondent seeks to distinguish *Boswell v Crucible Steel* on the facts. In *Boswell*, the windows were part of the structure: they were in effect the walls of the building, and without walls there would be no building. Here, the respondent contends, the doors were not part of the structure of the building, and without an entrance door to an individual flat there would still be a building. The doors had been affixed to the structure, after it had been built, by way of addition by the landlord. The respondent therefore submits that the entrance doors would fall within the ordinary meaning of "landlord's fixtures".

44. It is important to remember that the demised premises are not the building (the block of flats) but the tenant's individual flat. Each lease is a demise of one flat only, albeit with ancillary rights granted over the building as a whole. In that context, the entrance door to the flat assumes a far greater significance, and while the door may still not be part of the structure of the flat, the absence of a door would derogate significantly from the grant of the flat. Moreover, to paraphrase Atkin LJ, the doors had been made part of the flat itself in the course

of its construction. Indeed, as both parties accept, the doors were themselves part of "the Demised Premises" within the terminology of the lease.

45. Not only would it seem counter-intuitive to say that the entrance doors were, at one and the same time, both part of the land demised to the tenant and landlord's fixtures, such a construction would not accord with the words of the lease. Clause 4(1), set out above at [15], imposes on the tenant an obligation to repair (etc.) the Demised Premises (as defined in the lease) and all parts thereof. It expressly includes within that repairing obligation an obligation to repair the entrance door of the Demised Premises and then refers separately, in setting out the scope of the obligation, to "all fixtures and additions". If the entrance door to the flat were intended to be a fixture, it would be captured by the reference to "fixtures" in the words of the covenant. There would therefore be no need to make any express reference to the door itself in defining the scope of the repairing obligation.

46. In proceedings of this kind, the burden falls on the landlord to establish (on the balance of probabilities) that the tenant has committed a breach of covenant. In my judgment, that is a burden which the respondent has failed to discharge. Not only did the FTT omit to address an important question (whether the entrance doors were part of the demised premises), there is no doubt in my judgment that its conclusion- that the doors were "landlord's fixtures"- was wrong as a matter of law in that it does not accord with a proper construction of the terms of the lease.

*Were the doors "removed" by the tenant?*

47. Clause 3(4) prohibits the tenant from removing any of the landlord's fixtures. In view of the decision of the Tribunal that the doors were not landlord's fixtures, it is not necessary to decide the second issue- whether they were "removed" when, as is accepted, the tenant replaced them with other doors.

48. The appellant contends that he was entitled to replace the doors with other doors: that clause 4(1) imposed a covenant to "renew" the demised premises, and that in doing as he did he was simply complying with his contractual obligation.

49. The FTT did not analyse in any detail the argument advanced by the appellant that the doors were renewed and replaced rather than removed, "removal" occurring only when the item taken away is not replaced by a substitute. The FTT did state that it seemed "logical" that removal of the doors in such circumstances would require the landlord's consent as one would expect a landlord to want to maintain "some commonalty of doors to the Property" and to ensure that doors provided "sufficient fire safety" "in the light of the recent problems with regard to fires in flats". It should be noted that the respondent landlord has never claimed that the replacement doors provided by the appellant did not comply with relevant safety regulations and that the FTT was construing a lease that was entered into some years before public attention was acutely drawn to the problems it obliquely adverted to by the Grenfell fire.

50. In order to construe clause 3(4) properly, however, it is necessary to assume, for the purposes of argument, that the doors were "landlord's fixtures", that they had been provided by the

landlord and that they remained the landlord's property and removable by the landlord should the landlord so decide.

51. On that basis, the respondent has submitted that taking the doors away, even though the doors are themselves replaced with other doors by the tenant, would inevitably involve their removal. The item which was the landlord's property would have gone: the new doors added by the tenant would not become "landlord's fixtures" as a matter of law. On the other hand, as the appellant has submitted, if the word "fixture" is used to describe whatever is for the time being fulfilling the function of a door, to replace the original door with another door would not necessarily comprise a removal of the fixture.

52. It is not necessary in view of the conclusion reached above on the issue of "landlord's fixtures" to give a definitive answer to this issue.

*Failure to identify breach*

53. The appellant submits that the FTT failed to identify with sufficient precision what covenant had been broken by the tenant. There is considerable merit in that submission. The Tribunal noted, when granting permission to appeal, that the FTT decision stated only that there has been a breach of covenant, suggesting (in [20]) that the finding of breach follows from the conclusion that the door was a fixture.

54. It may be possible to infer from the decision as a whole- notably [17] where it is stated that clause 3(4) contains a prohibition against removing landlord's fixtures without having the landlord's consent- that the breach identified is a breach of clause 3(4). Unfortunately, the confusing final sentence in [21] ("The breach rests with clauses 3(4) and (4)(1) [*sic*] which we find are not mutually exclusive but should be read in conjunction with each other") appears to detract from rather than support what would otherwise be the natural inference of the decision as a whole. It should be emphasised that it has never been contended by the respondent landlord (either before the FTT or in the course of this appeal) that the tenant was in breach of clause 4(1).

55. The point made by the appellant is a strong one. The purpose of section 168(4) is to provide clarity and to ensure that the parties know the scope and extent of tenant default prior to the inception of forfeiture proceedings. Where application is made for a determination pursuant to section 168(4) it is essential that if a breach is proved the FTT states in clear terms what covenant (or condition) has been broken by the tenant. It should not be left to the parties to read between the lines.

**Conclusion**

56. For the reasons set out above, this appeal must be allowed. The question then is whether the application should be remitted to the FTT.

57. I do not see the purpose of doing so. There is no evidence that requires to be heard. The parties are agreed on the facts. The question whether the external doors are landlord's

fixtures is a question of law, and it is a question this Tribunal has answered in the negative, in the appellant's favour. The respondent cannot in these circumstances hope to succeed in establishing that in replacing the external doors the appellant committed a breach of covenant.

**HH Judge Stuart Bridge**

**29 April 2020**