FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LBC/2019/0030**
Property	**:**	**Raised Ground Floor Flat, 119 Warwick Avenue London W9 2PP**
Applicant	**:**	**Edward James Harris**
Representatives	**:**	**In person**
Respondents	**:**	**Deepak Mohan Ahuja and Namrata Sohanlal Mehta**
Representative	**:**	**Christopher Mathew Solicitors**
Type of Application	**:**	**Application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Judge Professor Robert M Abbey**
Venue of paper based decision	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**1 July 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants the application for an order that a breach of covenant or condition in the lease has occurred pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002.

(2) The reasons for our decisions are set out below.

The background to the application

1. The Applicant seeks an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. The application concerns an alleged breach ("the alleged breach") affecting **Raised Ground Floor Flat 119 Warwick Avenue London W9 2PP** ("the property.").

2. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows with sub-section (4) shown in bold:

> *(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 (c. 20) (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, or*
> *(c)a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.*
>
> *(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.*
>
> ***(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.***
>
> *(5)But a landlord may not make an application under subsection (4) in respect of a matter which—*
> *(a)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
> *(b)has been the subject of determination by a court, or*
> *(c)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

3. The property is within a building that contains several other flats. The property is a raised ground floor flat being one of four flats in a Victorian terraced property. The property shares communal areas such as access ways with the other flats in the building of which it forms part. The landlord's title is registered. The Respondent is the registered tenant of the property. The Flat is held under a registered lease dated 20 November 2012 under title number NGL930570 for a term of 189 years from 25 December 1983 ("the lease"). The Respondent was registered as proprietor of the leasehold title in August 2015.

4. The application before the Tribunal was issued by the Applicant on 24th April 2019. The Applicant alleges in its application a breach of the lease covenants. In particular and in detail, the alleged breach is of clause 2.22.2 of the lease.

5. Clause 2.22.2 of the lease states that the tenant is-

> *"Not to assign or underlet or part with or share possession of the whole of the demised premises without the licence in writing of the lessor such licence not to be unreasonably withheld in the case if "(sic)" a respectable and responsible assignee or underlessee of the whole who shall enter into covenant with the lessor to observe and perform all the covenants on the part of the lessee herein contained...."*

The purpose of this covenant is to ensure that any tenant of the property cannot sublet the whole of the property without the written licence granted by the lessor.

6. In support of the allegation of a covenant breach the Applicant cites one action by the Respondent namely,

> (1) the granting of an assured shorthold tenancy dated 13 March 2019 where the respondent is named as the landlord and Jack Thornton Newman and Jan Rinck are named as the tenant

7. The Tribunal needs to establish from the written evidence presented to it whether or not, on the balance of probabilities, the Respondent has acted in such a way that the Respondent is in breach of the covenant in the lease.

8. There was no oral hearing as the parties agreed to the matter being dealt with by the tribunal on the papers before it. To assist in that regard the Tribunal was supplied with two bundles of evidence supplied by the parties.

The issues and the decision

9. The Tribunal had before it the two bundles of copy deeds copy correspondence and papers prepared by the Applicant and the Respondent. These were in the

form of two files containing copies of e-mails, statements, documentation and registered title copies and a copy of the lease as well as copy correspondence.

10. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issue in dispute.

11. The only issue for the Tribunal to decide is whether or not a breach of covenant or a condition in the lease had occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. Having considered and read all the written evidence and other submissions including legal submissions from the Applicant and the Respondent and having considered all of the documents provided, the Tribunal determines the issue as follows.

12. The Tribunal is of the view that there is a breach of covenant 2.22.2 of the lease.

13. The lease makes it quite clear that under-lettings require the written permission of the lessor. No such written permission was produced to the Tribunal. The Applicant stated that he had not given any such written licence as required by the lease covenant.

14. Solicitors for the Respondent wrote to the lessor by letter dated 22 May 2019 in which they stated that they had explained in detail to their client the consequences of breaching covenants. They went on to say, "*Our clients have in return confirmed to us that they will not be breaching any of the covenants in the future*". Later in the letter they say "*...we have explicitly advised out client that the terms of the lease must be adhered to strictly in the future*". There is no attempt on their behalf to deny that a breach had occurred and even suggested that the applicant submit a costs schedule to be considered by them with their client. The Tribunal is satisfied that the respondent is not seeking to deny the breach and has indicated that the breach will not occur in the future.

15. The Tribunal considered the case of *GHM (Trustees) Limited v Glass (2008) LRX/153/2007* which is a decision of the Lands Tribunal about the breach of a lease clause or covenant. The President George Bartlett QC wrote that "The jurisdiction to determine whether a breach of covenant has occurred is that of the LVT. The question whether the breach has been remedied....is a question for the court in an action for forfeiture or damages for breach of covenant.... "

16. The effect of the Lands Tribunal decision is clear. This Tribunal need only determine whether a breach has occurred. This Tribunal is satisfied that in the light of the evidence set out above that a breach has occurred and as such this Tribunal grants the application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002

17. The Applicant raised the question of costs. The Tribunal took the view that this was a decision for the County Court should the Applicant decide to seek forfeiture. Accordingly, the Tribunal makes no order as to costs.

18. Rights of appeal are set out in appendix 1 of this decision.

Name:	Judge Professor Robert M. Abbey	**Date:**	1 July 2019

Appendix 1

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).