



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/23UB/LBC/2019/0028

**Property** : 18 Evelyn Court, Malvern Road,  
Cheltenham, Gloucestershire GL50 2 JR

**Applicant** : Evelyn Court (Cheltenham) Limited

**Representative** : Mr Michael Smith

**Respondent** : Mr Paul Doran-Jones

**Representative** : N/A

**Type of Application** : Section 168(4) of the Commonhold and Leasehold  
Reform Act 2002

**Tribunal Members** : Judge S Lal

**Date and venue of  
Hearing** : 8<sup>th</sup> November 2019

**Date of Decision** : 8<sup>th</sup> November 2019

---

**DECISION**

---

**Application**

1. The matter was subject to Directions issued on 8<sup>th</sup> August 2019.
2. The Tribunal has been provided with a Bundle of 101 pages which it has read. The Bundle was prepared by the Applicant. It contained within it the relevant lease, statements of case from the Applicant and Respondent, a number of email exchanges and witness statements relating to the case and copy of a previous Tribunal decision relating to the parties and the property in question.

## **The Issue**

3. The Applicant seeks a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent is in breach of various covenants contained in the lease dated 20<sup>th</sup> July 2001 between (1) The Applicant and (2) Mark Garwood which was assigned to the Respondent on 11<sup>th</sup> September 2009 (the “Lease”).

## **The Case for the Applicant**

4. The Applicant is the freeholder of Evelyn Court which comprises a block of flats. The Respondent is the leasehold owner of flat 18. The Applicant claims that the Respondent is in breach of the following provisions of the Lease:
  - (a) paragraph 23b of Part 1 of the Seventh Schedule to the Lease which states that the Lessee must “ *Not at any time during the said term separately to assign transfer or part with the possession or occupation of any part or parts of the Demised Premises but only to assign transfer or part with the possession thereof as a whole.....*”.
  - (b) paragraph 25 of Part 1 of the Seventh Schedule to the the Lease which states that the Lessee must “ *Within one month after the date of any and every assignment transfer mortgage charge underlease or tenancy agreement (including any immediate or derivative underlease or tenancy agreement) of the whole of the Demised Premises for any term.....give or procure to be given to the Lessor notice in writing of such disposition or devolution or transfer of title with full particulars thereof and in the case of an underlease a copy thereof for registration and retention.....and to pay or cause to be paid at the same time to the Lessor a fee of not less than Thirty five Pounds in each case with Value Added Tax thereon in respect of each notice*” .
  - (c) paragraph 10 of Part 2 of the Seventh Schedule to the Lease which states that the Lessee must “ *At all times keep the floors of the Demised Premises covered with a suitable and effective sound-deadening material*”.
  - (d) Paragraph 12 of Part 2 of the Seventh Schedule to the Lease which states that the Lessee must “ *Not keep any dog cat bird or other animal or reptile in the Demised Premises without the prior written consent of the Lessor which consent may be revoked at the reasonable discretion of the Lessor*”.

5. The Applicant contends that the Respondent has not heeded the Tribunal Decision of 4<sup>th</sup> April 2018 when the Respondent was found to be in breach of the covenants in paragraph 25 of Part 1 of the Seventh Schedule and Paragraph 1 of Part 2 of the Seventh Schedule to the Lease which obliges the Respondent to use the Demised Premises only as a private residence for occupation by a single family. The Applicant contends that following this Decision the Respondent allowed new residents to occupy the Premises on 22<sup>nd</sup> November 2018. Although the Respondent claimed that Mr Matthew John was occupying the flat for a few months and that he was a friend of his, the Applicant contends that additional people lived there from time to time with or without Mr John being present.
6. The Applicant claims that the Respondent did not give any particulars of the tenancy which was requested by the Applicant and there was no confirmation from the Respondent that the flat was being occupied by a single family. The Applicant advised the Respondent on 3<sup>rd</sup> December 2018 that a tenancy agreement was required. The Applicant states that the Respondent responded by saying “I do not need an assured shorthold tenancy, I stay at the property and will continue to do so”. The Applicant contends that Mr John was more than a “house guest” as asserted by the Respondent and that the Respondent had parted with occupation of the flat.
7. The Applicant further asserts that when Mr John moved out of the flat on 28<sup>th</sup> April 2019, Ms Karen Dyer and Mr Declan Vaughan moved in with a dog. The Applicant claims that the Respondent has failed to provide any particulars in relation to the new occupants.
8. The Applicant contends that the Respondent is in breach of covenant because the occupants in the flat are more than house guests. The Applicant asserts that the Respondent does not live at the Property and that he has therefore effectively parted with occupation/sub-let the flat without providing the required notice to the Applicant or paying the required fee.
9. In addition, the Applicant claims that the Respondent is in breach of his obligation under paragraph 10 of Part 2 of the Seventh Schedule to the Lease to lay sound deadening material on the living room floor. The Applicant says that the Respondent was advised of this on 22<sup>nd</sup> June 2017 and 19<sup>th</sup> April 2019 but has taken no action and the living room still has bare floorboards which cause a noise disturbance to the flat below.
10. Furthermore, the Applicant claims that the Respondent is in breach of his obligations under paragraph 12 of Part 2 of the Seventh Schedule to the Lease as the current occupants have a dog and no consent has been obtained from the Applicant. The Applicant has informed the Respondent that consent is unlikely to be given under the current Estate Regulations.

## **The Case for the Respondent**

11. The Respondent denies that Mr Matthew John, a work colleague, was occupying the flat as a tenant. The Respondent claims that he himself is still living at the flat on a part-time basis as his business interests are in Gloucestershire. The Respondent says that Mr John paid no rent or bills. On this basis, the Respondent claims that he has not assigned, transferred or parted with possession of the Property. The Respondent also denies that he has parted with occupation of the flat.
12. In relation to the alleged breach of paragraph 10 of Part 2 of the Seventh Schedule to the Lease, the Respondent states that the carpet in the living room was taken up due to a possible water leak coming from the flat. The Respondent claims that the matter is unresolved so the carpets have not been relayed. The Respondent claims that the Chairman of the Applicant at the time agreed to the removal of the carpet.
13. In relation to the alleged breach of paragraph 12 of Part 2 of the Seventh Schedule to the Lease, the Respondent admits that his colleague has a dog but claims he himself is not in breach of the Lease as the dog is not kept by him.

## **Consideration**

14. The Tribunal has considered the statements of the Applicant and the Respondent. The Tribunal has also considered in detail the email exchanges and the witness statements contained in the bundle and has made a number of observations. In an email dated 2<sup>nd</sup> May 2018 from the Respondent to the Applicant's Representative, Mike Smith, the Respondent states "I do not collect mail sent to 18 Evelyn Court when clearly I do not currently live there." Although this date appears to be before Mr John moved into the flat, it begs the question whether the Respondent was in occupation of the flat if his mail was being sent to his Guildford address. In an email dated 23<sup>rd</sup> November 2018, Mike Smith confirmed he had issued the flat 18 parking permit to Mr John. In his reply, the Respondent does not mention that the permit should be issued to himself, again an indication that he did not visit the flat regularly at that time.
15. The Tribunal notes that as early as 3<sup>rd</sup> December 2018, the Respondent was advised by Mike Smith that he had parted with occupation of the premises and that he was in breach of the Lease. He advised that this be remedied by entering into an assured shorthold tenancy agreement with the occupier. The Respondent denied that a tenancy agreement was necessary but Mr Smith made it quite clear that he regarded Mr John as more than a visitor as he had keys to the flat, a parking permit and his own visitors. In his response, the Respondent asked to address the management committee on 10<sup>th</sup> December but he did not follow this through and did not attend the meeting.

16. The Tribunal notes that when in April 2019 there were complaints about excessive noise and security issues in relation to the flat, it was Mr John and not the Respondent who responded to the complaints and apologised to the management company. The Tribunal considers this to be further evidence that Mr John was in occupation of the flat and was behaving in the manner of a tenant rather than a mere visitor as asserted by the Respondent.
17. On 11<sup>th</sup> May 2019, Mike Smith emailed the Respondent about the new people who had taken up residence with a dog. The Respondent was not cooperative in his reply in saying “I don’t have to inform the management company of who is staying with me at Evelyn Court”.
18. The Tribunal notes that in his witness statement of 27<sup>th</sup> August 2019, Jonathan Simmonds (living in flat 17) states that the Respondent has not lived in the flat for a couple of years. Mr Simmonds confirms that Mr John lived in the flat from November 2018 initially along with three other people but then on his own from early 2019. Mr Simmonds also confirms that Karen Dyer and Declan Vaughan moved in with their dog at the end of April 2019 and have had their mail re-directed to flat 18. The witness statement of Keith Piggott (flat 19) also appears to confirm the facts stated in Mr Simmond’s witness statement as to who was occupying flat 18 and for what period of time. Mr Simmond’s further statement appears to contradict the Respondent’s reasons for removing the carpet from the living room floor.
19. The Tribunal has also considered the letter of 15<sup>th</sup> October 2019 sent to the Tribunal by Mike Smith. On balance, the Tribunal considers the letter to be a coherent summary of events. Mr Smith states that the Respondent’s characterisation of the occupants as house guests was an attempt to bypass his obligations to provide notice of any tenancy to the Applicant.
20. The Tribunal considers that Mr Smith did all he could to apprise the Respondent of his obligations under the Lease in relation to the occupants of the flat and the obligations under paragraph 10 and 12 of Part 2 of the Seventh Schedule to the Lease. The Tribunal also accepts that Mr John behaved in a way consistent with being a tenant. He had his own key and parking space and entertained guests without the Respondent being present. The witness statements and emails suggest that the Respondent is not in occupation of the flat and that he has sublet to third parties, namely Mr John and then Ms Dyer and Mr Vaughan, on an informal basis.

21. On the balance of probabilities, the Tribunal therefore considers that the Respondent is in breach of the the following covenants:
- (a) Paragraph 25 of Part 1 of the Seventh Schedule to the Lease. The Tribunal considers that from the end of November 2018, the papers indicate that the Respondent no longer occupied the Property and that he had entered into an informal tenancy agreement with Mr John and then Ms Dyer and Mr Vaughan. It follows that the Respondent was obliged under paragraph 23(a) of Part 1 of the Seventh Schedule to the Lease to enter into a shorthold tenancy agreement with his occupants and provide notice to the Applicant under Paragraph 25 of Part 1 of the Seventh Schedule to the Lease and pay the required fee. It is the Tribunal's view that the covenants in the Lease were drafted to prevent a Lessee allowing multiple tenants and short term informal letting arrangements.
  - (b) Paragraph 10 of Part 2 of the Seventh Schedule to the Lease. It is apparent from the photographic evidence in the papers that the living room in flat 18 has not been carpeted for whatever reason and that the Respondent is therefore in breach of this covenant in the Lease. The Tribunal's view is that this is a breach which is easily remedied by the Respondent.
  - (c) Paragraph 12 of Part 2 of the Seventh Schedule to the Lease. The Respondent has admitted that there is a dog staying in the flat but has denied that it is "kept" by him. The Tribunal does not accept this argument as the Respondent is responsible for ensuring that anyone who occupies the Property adheres to the covenants he has made and therefore prior written consent of the Applicant should have been obtained.
22. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
23. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

24. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Judge S. Lal

Date 14 November 2019