



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

Case Reference : **MAN/00BY/LBC/2019/0007**

Property : **Apartment 35, White Court, Nelson Street,
Liverpool L1 5DN**

Applicant : **Redwing Living Limited**

Respondent : **David Addison**

Type of Application : **Determination under Section 168
Commonhold and Leasehold Reform Act
2002**

Tribunal Members : **Mr J R Rimmer
Mr J Faulkner**

Date of Decision : **9th November 2019**

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Order

The Tribunal finds that there has been a breach of covenant committed by the Respondent, as alleged by the Applicant, in respect of the lease of Apartment 35, White Court, Nelson Street, Liverpool, as set out Below.

Introduction

- 1 This is an application under Section 168 Commonhold and Leasehold Reform Act 2002 to determine whether or not there have been breaches of a number of covenants relating to a lease of Apartment 35, White Court, Nelson Street, Liverpool. The Applicants are the management company having responsibility for the management of the development at White Court. The application is dated 14th April 2019 and contains an outline of the alleged breaches of covenant, subsequently expanded in the Applicant's statements in support of its case.
- 2 The Respondent to these proceedings is the original lessee under a lease of the apartment in question dated 23rd March 2007. This is a shared ownership lease for a period of 125 years from that date at a rent and initial premium on respect of the original share purchased.
- 3 The Applicants make a number of allegations relating to what may be considered one matter. The Respondent, for circumstances in which he outlines in response to the application, has been letting the property on short term rentals under the "Air BNB" umbrella.
- 4 The Applicants allege that such lettings are in breach of 2 covenants within the terms of the lease which are considered below.
- 5 In view of the nature of the allegations and the information provided by the parties to the proceedings it was not considered necessary for the Tribunal to inspect the premises, nor hold a hearing in the matter. It has therefore been concluded on the basis of the papers submitted by the parties.

The Law

- 6 Section 168 Commonhold and Leasehold Reform Act provides as follows:
 - (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... (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in a 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)...
- (4) A landlord under a long lease of a dwelling may make an application to (the First-tier Property Tribunal) for a determination that a breach of covenant or condition in the lease has occurred
 - (5) But a landlord may not make an application under subsection (4) respect of a matter which-
 - (a) has been, or is to be, referred to arbitration pursuant to a post
 - (b) dispute arbitration agreement to which the tenant is a party,
 - (b) has been the subject of a determination by a court, or
 - (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

- 9 Section 169(5) gives the expression “landlord” the same meaning as in the whole of Part 2 of the Commonhold and Leasehold Reform Act, the significance of which is reflected below.

The alleged breaches

- 10 Clause 3 of the lease contains a number of covenants entered into by the leaseholder in favour of the landlord. Among them is clause 3(15) which provides:
- (a) Not to assign underlet sublet charge mortgage or part with possession of part only of the Premises
 - (b) At such time as the leaseholder’s share is 100% not to assign sublet or underlet the whole of the premises (other than by way of mortgage) nor grant an occupation licence or tenancy in any form thereof without the prior written consent of the landlord...
- 11 Clause 4 contains further covenants by the leaseholder with the landlord and expressed to be
 “for the benefit of the other tenants and occupiers from time to time of the other premises in the building (to) observe the covenants set out in the First Schedule and the registers of the ...title so far as the same relate to the premises and remain to be observed and performed...”
- 12 The first three covenants of the First Schedule provide, so far as the Applicant seeks to rely upon them:

- (1) Not to use the premises nor permit the same to be used for any purpose whatsoever other than as a private residence in single occupation only nor for any purpose from which a nuisance can arise to the owners leaseholders or occupiers of the other premises in the building or of the premises in the neighbourhood
- (2) (a) render void or voidable any policy of insurance on the Building or may cause an increased premium to be payable in respect thereof
(b) cause or permit to be caused nuisance annoyance or disturbance to the Superior Landlord Landlord owners leaseholders or occupiers of the Building or to all owners or occupiers of any premises in the neighbourhood or visitors thereto and to pay all costs charges and expenses of abating a nuisance and executing all such work as may be necessary for abating a nuisance and for carrying out works in obedience to a notice served by a local authority insofar as the same is a liability of or wholly or partly attributable to the default of the leaseholder.
- (3) Not at any time to exercise or carry on or permit to be exercised or carried on in or upon the premises or any part thereof any trade or business whatsoever.

Submissions, and determination

- 13 The Applicant provided a statement of case in support of its case and setting out the manner in which it considered that the covenants had been breached by the Respondent by his letting of the property on short term provisions within the Air BNB scheme. A witness statement was supplied in support of the case, made by a leaseholder of a nearby property, detailing the issues what could be considered noise, nuisance and anti-social behaviour of some of those taking advantage of the occupation of the Apartment 35. Further support was given in a detailed schedule of the complaints raised.
- 14 The current share of the property owned by the Respondent under the shared ownership scheme is stated in the submissions as being 50%.
- 15 The Respondent replied to the allegations in the form of an email to the Tribunal in which he admitted some short-term lettings, forced upon him by his current financial circumstances. He had sought, and received, permission some time ago for a sub-letting of the property and had received no complaint, commensurate with other leaseholders entering equivalent arrangements, until 2017
- 16 He is of the view that this matter has become an issue only by virtue of the differing views he has upon the matter compared with those of the current property manager.

- 17 The Tribunal is not satisfied on the above information that that the covenant in Clause 3(15) of the lease is relevant, with, or without, consideration of what verbal arrangements may have been entered into with the Applicant in the past.
- 18 Sub-paragraph 3(15) (a) refers only to a disposition of a part only of the premises. The arrangements with any occupant through Air BNB appears to envisage a temporary disposition of the whole of the premises.
- 19 Sub-paragraph 3(15) (b) applies only to an owner who has staircase to a full 100% ownership of the property and not to one who currently owns a smaller percentage, in the Respondent's case 50%.
- 20 The Tribunal does find that the mutual covenants in the First Schedule of the lease, and they are made with the landlord, of greater relevance, although it has not been convinced in relation to that concerning the rendering of any insurance policy void, or voidable (paragraph 2(a) of the Schedule). It may be that such arrangements as have taken place may do that, but no evidence has been provided of such a situation.
- 21 There remain to be considered three further covenants in the First Schedule (they are set out in full at paragraph 12, above):
 - (1) Paragraph 1 – not to use the premises for any purpose other than as a private residence and not for any purpose that might cause a nuisance to adjoining occupiers
 - (2) Paragraph 2(b) – not to cause, or permit a nuisance to the landlord, superior landlord, or other adjoining occupiers
 - (3) Not to exercise, carry on, or permit any trade or business upon the premises.
- 22 The Tribunal is satisfied that each of these covenants has been breached by the activity that has been carried out.
 - (1) Notwithstanding the reason why the Respondent has entered into short term agreements under the Air BNB arrangement, they appear to have been on a repetitive basis with a view to providing funds to finance the continued ownership of the flat. To the Tribunal's mind that amounts to a business activity.
 - (2) The Tribunal is satisfied that what is said in the witness statement of Mark Cranshaw is true. The conduct of some of the occupiers under the agreements have amounted to a nuisance and annoyance of at least one adjoining occupier. What is said is entirely in line with what the Tribunal hears as to the unfortunate conduct of a minority of temporary occupiers in similar situations. It is satisfied that Mr Cranshaw has described the situation that arose in an accurate manner. It is sufficient to amount, on the relevant occasions, to breaches of both the covenant at paragraph (1) and that at paragraph (2)(b).

23 The Tribunal notes that the Respondent states that he has ceased the relevant activity, but that is not a consideration here for the Tribunal. It need only be satisfied that breaches have occurred and there is no suggestion that the Applicant has permitted, or authorised, those breaches of those covenants.

J R Rimmer (chairman)
09 November 2019

