



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

Case Reference : **LON/00BG/LBC/2019/0073**

Property : **25 Carter House, Brune Street,
London E1 7NN**

Applicants : **East End Homes Ltd (“the Applicants”)**

Representative : **Sam Phillips of Counsel**

Respondent : **Mr Darshan Singh (“the Respondent”)**

Representative : **Timothy Deal of Counsel**

Type of Application : **Determination of alleged breaches of
covenant.**

Tribunal Members : **Jim Shepherd
John Barlow FRICS**

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

DETERMINATION

Decision

The Respondent has been in breach of paragraph 1 and 2 of the Fourth Schedule of the lease dated 3rd September 1990 by using the premises at 25 Carter House, Brune Street London E1 7NN for short term holiday lets and/or as a business on *inter alia* 25-27 July 2019 and August 2019.

Background

1. The Applicants are the freeholder owners of the premises at 25 Carter House Brune Street London E1 7NN (The premises). The Respondent is the leaseholder pursuant to a lease dated 3rd September 1990. He originally held this interest with his father Rakha Ram who is now deceased. This was a Right to Buy purchase. In 2006 there was a stock transfer to the Applicants from London Borough of Tower Hamlets.

The Application

2. The Applicants made an application to the Tribunal for a determination that the Respondent was in breach of his lease. The application is dated 16th September 2019. The application is made pursuant to s.168 (4) of the Commonhold and Leasehold Reform Act 2002 ("S.168").

3. In the application the Applicants cite the clauses of the lease which they say have been breached. These are:

3.1 Paragraph 1 of the fourth schedule which states:

Not at any time to use or occupy or permit the Demised Premises to be used or occupied except as a private residential flat only in single or multiple occupation and in the event of the Demised premises being occupied by the Lessee with a lodger or lodgers or in multiple occupation to ensure that all statutory regulations and provisions relating to overcrowding are observed.

3.2 Paragraph 2 of the fourth schedule which states:

Not at any time to use or permit the use of either the demised premises or any part thereof for business purposes.

4. The application originally also relied on a prohibition on nuisance (clause 4(5) and para 3 of the fourth schedule) and a qualified prohibition on alterations (clause 3(5)), neither of these limbs of the application were pursued at the hearing.

5. The Applicants allege in the application that the Respondent has *inter alia* between 25-27 July 2019 used the premises otherwise than as a private residential flat and for business purposes when they were used for a 3-day holiday let in breach of paragraphs 1 and 2 of the Fourth Schedule as cited above. They relied in particular on the evidence of two officers of the Applicants, Alison Clarke and Edgar Tannah who visited the premises on 26th July and met a young female who confirmed that she and her family were staying at the premises with her family. She had booked a two night stay through Booking. Com under the heading *Central London Apartment 71 Wentworth Street, London E17TD*. There was a photo of her mobile phone record in the hearing bundle confirming this.

6. According to the application the visit on 26th July led the Applicants and their solicitor to make further internet inquiries of the listing for *Central London Apartment*. This showed a series of apartments connected to 71 Wentworth Street. There were photographs of various such apartments including photos of the premises. It was common ground that some of the photos related to the premises (although there was a reluctant acceptance on the part of the Respondent) and the Tribunal upon inspection were satisfied that the premises did feature. Indeed the premises were shown as two separate apartments with a shared bathroom. On the listing for these apartments they had been booked between 4th August 2019 and 31st August 2019 and were available between 1st February 2020 and 29th February 2020. The address given on the listing was 71 Wentworth Street, a property owned by the Respondent.

7. It is part of the Applicant's case that the Respondent does not live at the premises. They allege that he lives at 84 Claremont Road, London E70PZ which is another property that the Respondent has an interest in.

The Respondent's case

8. The Respondent opposes the application. In his grounds of opposition he states that he used the premises as a private residential home and until recently it was his home. He sublet to assured shorthold tenants from 6th September 2019. He says that at the time when the Applicants' officers visited the premises (July 2019) he had a lodger, Mr Castorio who had been left in the premises when he was recovering from

surgery and staying at 84 Claremont Road with his son. He had no knowledge of anyone staying at the premises. Neither had he any knowledge of the premises being marketed or used as a holiday let in August 2019. The covenants relied upon by the Applicants he submitted were personal covenants and he could not be responsible for the alleged breaches because he says he had no knowledge of them.

The inspection

9. The Tribunal carried out an inspection of the property in the morning prior to the hearing. Representatives on behalf of the Applicants were present as was the Respondent's son, Mr Jagjiwan Sanger.

9.1 The subject property forms part of a purpose built block of flats probably constructed in the early part of the twentieth century. The construction is of brick under a tiled mansard roof and the accommodation generally appears to be spread over four floors.

9.2 Flat 25 is located on the first floor of the block with access being gained via an entry phone gate at ground floor level. The accommodation comprises three rooms, kitchen, shower room and separate wc. The property benefits from central heating and double glazing. Internally, the flat appears to be in a reasonable decorative condition but evidence of dampness was noted in the front room and mould was visible on the shower room ceiling.

9.3 During the inspection it was noted that a small rectangular area on each of the three doors leading to the bedrooms/living room had been painted over (rather poorly). The location of the paintwork would seem tie in with the positioning of the door numbers that are mentioned later in this decision.

9.4 During the inspection the Tribunal spent some time comparing the premises with the photographs that had featured on Booking.Com and which were relied upon by the Applicants. We concluded that at least some of the photographs featured were of rooms in the premises.

The witness evidence

10. Alison Clarke a Neighbourhood Housing Manager provided a short witness statement dated 18th October 2019 in which she confirmed that she and Edgar Tannah had visited the premises on 26th July 2019 and met a young woman in her early 20s of Far East Asian appearance. She showed the officers her mobile phone on which she had booked a 2 night stay from 25th July - 27th July 2019 through Booking. Com. The address 71 Wentworth Street was used as the contact address. The guest showed Ms Clarke a small picture containing "House Rules" for the premises. The House Rules which are attached to Ms Clarke's witness statement refer to people called Chris and Valeria.

11. Edgar Tannah, a housing officer for the Applicants, provided a more detailed statement dated 23rd October 2019. He described a visit that he and a colleague made to the premises in March 2018 when he found a cleaner there. He took photographs, which were subsequently lost on the computer but then recovered for the hearing. The photographs show three room doors with numbers on them. There are also photographs of beds with towels neatly placed on them.

12. Mr Tannah also referred to a letter sent to the Respondent on 21st June 2018 because the premises had been advertised on Booking. Com at that time. The advert is attached to the witness statement and refers specifically to the premises. Mr Tannah refers to three meetings he had attended with the Respondent (9th October 2018, 10th October 2019 and 29th January 2019) when the Respondent had denied using the premises as a holiday let. He had said that he had been living in one room and let other rooms for up to 3 months. Mr Tannah also corroborated Ms Clarke's evidence in relation to the visit on 26th July 2019. Finally he exhibited correspondence between the Respondent and the local authority in which the former had used 84 Claremont Road as his address.

13. The Applicants' solicitor, David Gethin produced a witness statement dated 12th November 2019 in which he described investigations he had carried out of Gioacchino Castorio the man who the Respondent said was his lodger. Mr Gethin had tracked Mr Castorio down and they had a telephone conversation on the afternoon of 7th November 2019 in which Mr Castorio had said: that he had held a tenancy of the premises for three months; he had paid a deposit; that others had stayed at the premises for short periods of time (2-3 days); that he had never stayed with the Respondent; that the landlord on the agreement was named as Romano International Limited; that he had dealt with two gentlemen called Ilkan and Robert; all three rooms were used as bedrooms each with a lock on the door and a number; he had stayed in room 2 and shared the kitchen and bathroom with other occupiers. Finally he said that he had moved out before 15th August 2019.

14. In the Applicants' reply dated 12th November 2019 Mr Gethin made further submissions in relation to the case against the Respondent. He explained that Romano International (the company on the tenancy agreement described by Mr Castorio), is a building company that the Respondent is associated with, he is a former secretary, the company is based at 33 Wentworth Street (a property that the Respondent has an interest in). With reference to the Booking.Com evidence and 71 Wentworth Street (see above), Mr Gethin states that the listing had been removed since the application had been made. There was a new reference to a "Liverpool Street House" giving 33 Wentworth Street as the listing address. There was then a further listing for the Liverpool Street House at 25 Wentworth Street. Mr Gethin submits that the change of address is a deliberate manipulation of the evidence. Finally of relevance is the recent sales information produced by the Applicants which shows that there are numbers on the bedroom doors.

15. The Respondent, in his witness statement dated 5th November 2019, admitted that the listings on Booking.Com have photos of premises that resemble the premises but he denied that he had anything to do with this. He stated that he had heard of cases in which unscrupulous characters had used photos of different premises in order to attract bookings and cites a suspicion that he had in relation to a Mr Kuzznicki that he said was a tenant of his at 71 Wentworth Street. He exhibited correspondence in this regard. He stated that his neighbours had keys along with other people and that they could have taken photos. He denied he received the letter from Mr Tannah dated 21st June 2018 with the previous allegation of a Booking.Com listing of the premises. He repeated his account that Mr Castorio was his lodger who lived with him at the premises until February 2019 when he had gone into hospital. He had recuperated at 84 Claremont Road staying with his son leaving Mr Castorio at the premises. He gave him notice to leave on 15th August 2019 and they parted on bad terms. He had then let the premises out on an AST in September 2019. The Respondent exhibited medical evidence all of which is addressed to 84 Claremont Road. He also exhibited letters from friends and neighbours none of which bore addresses.

16. The Respondent's son Jagjiwan Sanger also submitted a witness statement dated 5th November 2019 which largely mirrors his father's account. He had tried to contact Mr Castorio without success.

The hearing

17. At the start of the hearing the Tribunal admitted new evidence from the Applicants consisting of the photographs from March 2018 which had originally been thought lost and a redacted email from a neighbour stating that items, including a double bed had been removed from the premises on the evening prior to the Tribunal's inspection. The Tribunal also admitted some recent evidence of letters addressed to the Respondent at the premises.

18. In cross examination Ms Clarke confirmed that she had not met the Respondent at the premises when she had visited in July 2019 and that the house rules did not mention his name. Mr Tannoh confirmed that he had previously followed up a complaint from a neighbour that alleged that the premises were being used as a brothel. The complaint turned out to be unfounded. He also confirmed that when he interviewed the Respondent in October 2018 he had maintained the premises were his home. He also confirmed that the Respondent was not at the premises when he had visited in July 2019 and he had not done a visit in August 2019.

19. In cross examination Mr Gethin confirmed that Mr Castorio would not provide his tenancy agreement for the premises. He was concerned that it was not in his best interests. He was not hostile towards the Respondent but clear in stating that he had not been living with him. He had not wanted to do a witness statement as he didn't want to get involved.

20. In his oral evidence the Respondent said that a bed had been removed from the premises before the Tribunal inspected. He said the single bed was broken. He denied that he had given Mr Castorio a tenancy. He had met him in his clothing shop. He had allowed him to stay in the premises rent free and without paying a deposit. He helped him in the shop. He told him to leave in August 2019. He was not happy but he left. He denied that he was not living at the premises. He had moved with his son temporarily whilst he was recuperating. He used a number of correspondence addresses, including his son's address. He denied that he had placed the adverts on Booking. Com as he could not use a computer. He had 10 other properties on long leases some of which were let using tenancy agreements. He accepted that the photos from 2018 looked like the premises and that some of the photos on the Booking. Com site also looked like the premises.

21. The Respondent alleged that someone had taken the photos without his permission. He could not explain why there was a woman in his flat in July 2019 other than to say it was nothing to do with him. He accepted that he did not have a license to let the premises out but said he had applied for the license on 30th August

2019. He repeated that Mr Castorio was his lodger. Although he was just a lodger he had taken a copy of his passport. He could not explain why Mr Castorio had mentioned Romano International.

22. In relation to the numbers on the doors in the photographs he said he had removed them in March 2018. He had no idea why the numbers appeared again on the doors in the photographs when the property was being marketed for sale this year. He seemed to suggest that the Estate Agent may have had something to do with this.

23. In closing Mr Deal submitted that there was no hard evidence against his client. He said that misrepresentations on Booking. Com were apparently commonplace. Mr Castorio had been in the premises at the relevant time and he and the Respondent had parted on bad terms. The Respondent had let him stay because he appeared trustworthy. At the relevant time he was in sole charge of the premises and anything that had gone on at the premises was his responsibility.

24. In reply Mr Phillips stated that the evidence from March 2018 showed that there had been a pattern of using the premises for short lettings. When information had been sought from the Respondent to prove his occupation of the premises he had failed to provide it. Recent documents included a council tax reminder which appeared to show the premises were empty. He submitted that the Respondent's account was not credible.

The Law

25. Section 168 states the following:

168 No forfeiture notice before determination of breach

(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 the appropriate 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.

(6) For the purposes of subsection (4), “appropriate tribunal” means—

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to a dwelling in Wales, a leasehold valuation tribunal

extract from 1995 Act

Findings

26. In order to make a determination that the Respondent is in breach of his lease the Tribunal would need to find on a balance of probabilities that he had either used or permitted the use of the premises in a way which was not as a private residence or he had used or permitted the use of the premises as a business. The use of a premises for short term holiday type lets does not constitute use a private residence: *Nemcova v Fairfield Rents Ltd* [2016] UKUT 303 (LC) and such use would also be use as a business.

27. The Tribunal was faced with credible evidence from the Applicants which appeared to support the allegation that the Respondent had breached his lease.

27.1 Firstly there was the visit by the two officers in July 2019 who had found a family staying at the premises on a short term basis. The Tribunal accepts the evidence of the two officers to be a truthful account.

27.2 Secondly there was the apparently credible internet evidence connecting the premises and the Respondent with the Booking. Com website. The connection with the Respondent has fluctuated in the sense that different check in or correspondence addresses have been used but by and large these are also addresses that he has an interest in. The Tribunal accepts that it is not coincidental that the change of these addresses coincides with the bringing of the present proceedings. On a balance of probabilities the Tribunal finds that the Respondent was seeking to evade detection by using a different contact address.

27.3 Thirdly there is the evidence of Mr Gethin who spoke to Mr Castorio who made detailed allegations about his occupation at the premises. The detail of the allegations, including the name of the company on the alleged tenancy agreement of which the Respondent has an association, emphasises the credibility of that evidence. Mr Castorio said that while he had stayed at the premises others had also stayed for short periods of time which again supports the fact that the premises were used for short term holiday lets. The Tribunal takes into account the fact that Mr Castorio did not attend or make a witness statement however despite the suggestion by the Respondent that he had an axe to grind there was no real evidence of this and it is

unlikely he would have been able to fabricate the detail that he gave Mr Gethin during a relatively impromptu telephone call.

27.4 There is other circumstantial evidence which reinforces the Applicants' case. In particular there are the photographs of the numbered doors from March 2018 and the listing in Booking. Com for the same period. There are also the numbered doors on the more recent sale documents. The Respondent's explanation that some other party had put the numbers on the doors without his permission appears to the Tribunal to be incredible. The Tribunal also found the Respondent's account of Mr Castorio's occupation lacked any real credibility. It is very unlikely that the Respondent, an owner of a small portfolio of properties would have allowed Mr Castorio to stay in his home rent free.

27.5 In fact the Tribunal found the overall tenor of the Respondent's evidence to be questionable. The Tribunal was asked to believe that he was taken advantage of by an unknown party who had let his flat out without his knowledge in the summer of 2019. In other words he was the victim of a scam with a third party making money out of his home. There was simply no evidence to support this extraordinary suggestion. In fact the evidence pointed in the other direction. In particular even if the Tribunal could accept that the Respondent was a victim of such a scam in 2019 what about the evidence from 2018? This evidence reinforced the fact that there was in fact a pattern of breach by the Respondent himself.

27.6 In summary the Tribunal finds on a balance of probabilities that the Respondent was in breach of his lease by using the premises for holiday lets and as a business. He had been told by the Applicants that this was not permitted in 2018 and yet had continued the practice in 2019. The tribunal also finds that the Respondent was not in residence when the premises were used in this way. There was considerable evidence of him occupying 84 Claremont Road and little connecting him with the premises at the relevant time.

27.7 The Tribunal accordingly makes a determination that the Respondent has breached, paragraphs 1 and 2 of the Fourth Schedule to his lease dated 3rd September 1990 by using the premises at 25 Carter House, Brune Street, London E1 7NN for short term holiday lets and/or as a business on *inter alia* 25-27 July 2019 and August 2019.

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).

Judge Shepherd

9th December 2019