



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

**Case Reference** : **LON/00BE/LSC/2018/0458**

**Property** : **Flat 5 Milliners House, 171-173  
Bermondsey Street, London SE1  
3UW**

**Applicant** : **AHGR Limited**

**Representative** : **Mr Gary Cowen, Counsel**

**Respondent** : **Mr Rajesh Mohabeersingh**

**Representative** : **Not represented and not present**

**Interested Party** : **Mr Jason Pienaar was the owner of  
50% of the equity, represented at  
hearing by Mr Rahit Islam,  
caseworker at Law Dale Solicitors**

**Type of Application** : **Application for determinations as  
to reasonableness and payability of  
service charge and as to breaches  
of covenant in the lease**

**Tribunal Members** : **Judge P Korn  
Mr C Gowman BSC MCIEH  
Mr J Shepherd**

**Date and venue of  
Hearing** : **25<sup>th</sup> February 2019 at 10 Alfred  
Place, London WC1E 7LR**

**Date of Decision** : **26<sup>th</sup> February 2019**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The estimated service charges of £1,227.65 for the year 2018/19 are payable in full.
- (2) By virtue of his having underlet the Property without first delivering to the landlord the requisite deed of covenant the Respondent has committed breaches of the covenant contained in clause 2.10.2 of the Lease.
- (3) Through the behaviour of occupiers of the Property and their guests at a party on 8<sup>th</sup> September 2018 the Respondent has committed breaches of covenants contained in clause 3.3.1 of the Lease and contained in clause 3.4 combined with paragraphs 2.1 and 2.2 of the Seventh Schedule to the Lease.
- (4) No cost order is made.

## **The application**

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of certain service charges.
2. The Applicant also seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 that one or more breaches of covenant has/have occurred under the lease of the Property (“**the Lease**”).
3. The Applicant is the current freehold owner of the Property and the Respondent is the current (and original) leasehold owner. The Lease is dated 2<sup>nd</sup> September 2005 and was originally made between The Pavilion (SE1) Limited (1) and the Respondent (2).
4. In its service charge application the Applicant seeks a determination that the estimated service charges for the year 2018/19 totalling £1,227.65 are payable.
5. In its breach of covenant application the Applicant alleges that the Respondent is in breach of covenants contained in clauses 2.10.2, 3.3.1 and 3.4 of the Lease and contained in paragraphs 2.1, 2.2 and 2.4 of the Seventh Schedule to the Lease. The wording of the relevant part of each of those covenants is set out below:-

*Clause 2.10.2: “Not to ... underlet the whole or any part of the Demised Premises without first obtaining and delivering to the Landlord from the intended ...*

*underlessee a duly executed direct covenant in favour of the Landlord to perform and observe the covenants and obligations on the part of the Tenant herein contained”.*

*Clause 3.3.1: “Not to use or permit the use of the Demised Premises or any part thereof for any dangerous offensive noxious noisome illegal or immoral activity or in any manner that may be or become a nuisance or annoyance to the Landlord or to the tenant or occupier of any other part of the Block or any other neighbouring property”.*

*Clause 3.4: “To observe and comply with and to ensure that all persons for the time being occupying all or any part of the Demised Premises observe and comply with the regulations set out in the Seventh Schedule hereto ...”.*

*Paragraph 2 of the Seventh Schedule:*

*“2. In using the Common Parts and the Internal Common Parts neither the Tenant nor any member of its household shall*

*2.1 make any unnecessary noise*

*2.2 leave any litter other than in a receptacle provided for that purpose*

*2.4 leave or cause to be left unattended any furniture packages bicycles toys or any other thing”.*

### **Preliminary points**

6. On 8<sup>th</sup> February 2019 the Applicant’s solicitors wrote to the Tribunal applying for the Respondent to be barred from taking any further part in these proceedings on the basis of his non-compliance with the Tribunal’s directions. That application was refused.
7. On 22<sup>nd</sup> February 2019 the Applicant’s solicitors wrote to the Tribunal attaching a witness statement from Neil Curbison, a solicitor at the Applicant’s solicitors Colman Coyle. That statement referred to his having had a message from Mr Rahit Islam of Law Dale Solicitors, followed by a conversation with Mr Islam’s colleague, Sayad Abedin. Mr Abedin told him that a Jason Pienaar was the owner of 50% of the equity in the Property and that it was acknowledged that the

outstanding service charge was payable. Mr Abedin also said that it was acknowledged that there had been a breach of the covenant against nuisance.

8. Mr Islam attended the hearing and said that he (and his firm) represented Mr Pienaar but not the Respondent. At the start of the hearing he applied for an adjournment to enable him to provide more information but that request was refused on the basis that he had not offered a proper rationale as to why the proceedings should be adjourned at this late stage.
9. Mr Islam also said that Mr Pienaar had himself already paid the outstanding service charge. The Tribunal raised the question as to whether there was still a dispute in relation to the service charge and therefore whether the Tribunal had jurisdiction to make a determination. A short break was then taken to enable the Applicant to establish what had been paid by whom and on what basis, but the Applicant was unable to obtain sufficient clarity on this point in the time available and the Tribunal concluded that a determination was therefore still needed.
10. In relation to the Seventh Schedule to the Lease, at the hearing the Applicant did not pursue the alternative argument as to whether there had been a breach of paragraph 1.4.

#### **Applicant's case on service charge**

11. Mr Curbison has recorded in his evidence that Mr Abedin of Law Dale Solicitors admitted in conversation that this sum was due and owing.
12. At the hearing Mr Cowen for the Applicant took the Tribunal through the service charge provisions in the Lease and a brief analysis of these provisions was also included in the Applicant's skeleton argument.
13. On 24<sup>th</sup> June 2018 the Applicant made a demand for quarterly interim payments, following which the Respondent paid a proportion leaving the sum of £504.17 outstanding. On 29<sup>th</sup> September 2018 the Applicant made a demand for the next quarter's interim payments (£723.48) which meant that the total outstanding was £1,227.65. This is the amount in respect of which the Applicant now seeks a determination.
14. The Applicant submits that the above sum is due, is payable under the Lease and is reasonable.

### **Mr Pienaar's representative's comments on service charge**

15. Mr Islam said that Mr Pienaar accepted that the abovementioned service charge sum of £1,227.65 was payable and that he had paid it.

### **Applicant's case on other alleged breaches**

16. As regards clause 2.10.2 of the Lease, the Applicant submits that there has been a clear breach of a covenant contained in this clause as the Respondent has underlet the Property without first delivering to the landlord the requisite deed of covenant. The Applicant relies on the evidence of Mr Case, referred to below. It also refers to the placing of a notice on the front door of the Property reading "Pienaar Europe Rentals" which it submits suggests strongly that the Property is not occupied by Mr Pienaar himself.
17. As regards clauses 3.3.1 and 3.4 of the Lease and paragraphs 2.1, 2.2 and 2.4 of the Seventh Schedule to the Lease, the Applicant refers the Tribunal to evidence relating to a party at the Property which spilled into the common parts.

### **Mr Case's evidence**

18. Mr Case is a property manager at Hampton Wick Estates Limited, the Applicant's managing agents. In his witness statement he states that the Respondent does not reside at the Property and that in September 2008 the Respondent gave the managing agents a correspondence address of 36 Whatley Road, London SE22 9DD and has at no stage thereafter notified them of a further change of address.
19. In September 2018 the managing agents were notified by Rachael Scott, the lessee of Flat 11, that a placard had been installed on the front door of the Property referring to "Pienaar Europe Rentals" and she emailed through a photograph of the placard. Mr Case has concluded that Pienaar Europe Rentals is a residential letting company that is subletting flats on short lets. Mr Case also notes that there is a restriction on the registered title to the Property in favour of Mr Pienaar. He adds that the Applicant has confirmed to him that the Respondent has never delivered a deed of covenant following any subletting.
20. In relation to the nuisance allegations, Ms Scott also informed the managing agents (at the same time) that the occupants of the Property had caused considerable disturbance and nuisance to the other residents of the building. In particular, Ms Scott states that on 8<sup>th</sup> September 2018 there was a very loud party at the Property and certain guests were smoking marijuana, drinking and vomiting in the corridors. Vomit was left in the corridors, and police were called after

an altercation between two of the party guests. The police were in attendance for over 4 hours before the party was closed down, and Ms Scott has provided photographs.

21. Mr Case was cross-examined by the Tribunal on his evidence.
22. In relation to the service charge, Mr Case said that only the amount of £1,227.65 was being claimed, rather than the larger amount set out in the Statement of Account, as there had been a further credit since the Statement of Account was printed off.

### **Ms Scott's evidence**

23. Ms Scott has also provided a witness statement but did not attend the hearing to be cross-examined on that evidence. Counsel for the Applicant understands that she is currently abroad.
24. Ms Scott's witness statement covers the information which Mr Case states in his own witness statement came from Ms Scott.

### **Mr Pienaar's representative's comments on other alleged breaches**

25. Mr Islam said at the hearing that there had been many underlettings and that Mr Pienaar had notified the Applicant's managing agents on many occasions that he proposed to underlet the Property. He accepted, though, on behalf of Mr Pienaar that there had been breaches of covenant in that the Respondent had underlet the Property without first delivering to the landlord the requisite deed of covenant.
26. Mr Islam said that he was unable to comment regarding the alleged breach of covenant relating to nuisance.

### **Mr Palmer's evidence**

27. Adam Palmer is another solicitor at Colman Coyle and he has given a witness statement as to service of documents. He states that he carried out a search of the search directory 192.com and searched for the Respondent. The search result shows his address to be 36 Whately Road, London N22 9DD and that he has not been living at the address recorded at the Land Registry (Flat 99 Devon Mansion) since 2005. Accordingly, correspondence and documentation were sent to the Respondent at 36 Whately Road.
28. At the hearing Mr Palmer admitted that correspondence had been returned undelivered after having been sent to the 36 Whately Road address. He also said, in response to a question, that he did not have an email address for the Respondent.

## **Tribunal's analysis**

### **Preliminary point**

29. The Respondent has not engaged at all with these proceedings and there is at least a question as to whether he has received a copy of the application or of the directions or any other papers. However, based on the information available we are satisfied that the Applicant and the Tribunal have sent documentation to the Respondent's last known address. Furthermore, Mr Pienaar was clearly aware of these proceedings as he instructed his solicitors to represent him at the hearing, and it was clear from the hearing that Mr Islam (for Mr Pienaar) had knowledge of the case and of the issues.
30. In our view, by far the most likely explanation for Mr Pienaar's and Mr Islam's knowledge of the position is that the Respondent will have shared with Mr Pienaar information received by him. Even if the information somehow reached Mr Pienaar direct, there is no plausible reason to conclude that he did not, or would not have had the opportunity to, share the information with the Respondent.
31. Our factual conclusion on this point, therefore, is that the Respondent will have received the relevant paperwork.

### **Service charge**

32. The Applicant has provided information as to what it states is owed by way of service charge. It has pointed to the relevant Lease provisions and submits that the amounts are reasonable. The Respondent has made no written or oral submissions. Mr Islam on behalf of Mr Pienaar accepts that the service charge is payable and states that Mr Pienaar has already paid.
33. In the light of the above, we consider it to be self-evident in the absence of any challenge whatsoever that the service charge sum of £1,227.65 is payable in full.

### **Underletting**

34. Mr Case's evidence that there have been underlettings is not strong. There is a notice on the door and there have been complaints of nuisance caused by occupiers of the Property, but these are not in our view sufficient evidence by themselves to demonstrate that the Respondent has in fact underlet the Property.
35. However, Mr Islam confirmed at the hearing on behalf of Mr Pienaar that the Property has been underlet several times. Furthermore, he did

not claim that a deed of covenant had been delivered prior to the grant of any of these underlettings and he impliedly accepted on behalf of Mr Pienaar that it had not been. We do not consider it credible that that Mr Pienaar would admit this breach if it had not in fact occurred and therefore we are satisfied that the Respondent has underlet the Property without first delivering to the landlord the requisite deed of covenant.

### Nuisance

36. Whilst Ms Scott was not available to be cross-examined on her evidence it is still appropriate to attach some weight to that evidence. Mr Case was available to be cross-examined, and therefore to the extent that his evidence does not merely repeat that of Ms Scott his evidence is also of value.
37. The Respondent has offered no evidence on this issue and Mr Pienaar through Mr Islam has not commented on it. We are satisfied on the basis of the evidence before us that the party referred to by Ms Scott took place and that the antisocial behaviour referred to by her also took place.
38. We consider the abovementioned behaviour to have constituted a breach of clause 3.3.1 of the Lease as it involved activity which was dangerous offensive noxious noisome illegal and immoral. It also constituted a breach of clause 3.4 coupled with paragraphs 2.1 and 2.2 of the Seventh Schedule to the Lease as it involved the making of unnecessary noise and the leaving of litter other than in a receptacle provided for that purpose.

### Costs

39. No cost applications were made.

**Name:** Judge P Korn

**Date:** 26<sup>th</sup> February 2019



## **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

## **APPENDIX**

### **Appendix of relevant legislation**

#### **Landlord and Tenant Act 1985 (as amended)**

##### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

##### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

##### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,

- (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Commonhold and Leasehold Reform Act 2002**

### **Section 168**

(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 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.

(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.