



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

Case Reference : **LON/00AG/LBC/2019/0077**

Property : **48 Reachview Close, Baynes Street,
London NW1 0TY**

Applicants : **(i)Reachview Freehold Ltd &
(ii)Reachview Management
Company Limited**

Representative : **Mr Cohen Counsel instructed by
Comptons Solicitors**

Respondent : **Ms Jiexin Cai**

Representative :

Also in attendance : **Mr Crompton Director of the
Management Company (on behalf
of the Applicant)**

Type of Application : **Application for a determination
UNDER Section 168 (4) of THE
COMMONHOLD AND LEASEHOLD
REFORM ACT 2002
in respect of whether the
Respondent has breached a
covenant in the lease**

Tribunal : **Judge Daley
Mr D Jagger MRICS**

Date of Hearing : **at 10 Alfred Place, London WC1E
7LR**

Date of Decision : **06 January 2020**

DECISION

Decisions of the Tribunal

(1) The tribunal makes the determinations as set out below.

The application

- a. On 17 September 2019 the Applicant made an Application for an order that a breach of covenant or condition in the lease had occurred pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002.
- b. The background to this matter was set out in the grounds of the Application which alleges that the Respondent had breached clause 2 (1) (8) and (12) of the lease.
- c. The Respondent Ms Jiexin Cai made no reply to the alleged breach.

(2) Directions were given on 25 September 2019.

(3) The directions stated at paragraph (3), that -: *“...The tribunal will reach its decision on the basis of the evidence produced to it. The burden of proof rests with the applicant. The Tribunal will need to be satisfied: (a) that the lease includes the covenants relied on by the applicant; and (b) that, if proved, the alleged facts constitute a breach of those covenants.”*

(4) The Directions also provided that the Applicant should send the Tribunal and the Respondent copies of the hearing bundle by 14 October 2019, and thereafter that the matter be set down for hearing on 27 November 2019.

The Background

(5) The subject Premises, is a 2 bedroom flat in a purpose built block of 62 flats. The Applicants are the freeholder of the building and the management company. The Respondent purchased the leasehold interest of the premises.

(6) The Respondents hold a long lease of the flat which requires the landlord to provide services and the Respondent leaseholder to observe specific covenants under the terms of the lease. The specific provisions of the lease will be referred to below, where appropriate.

The Hearing

(7) At the hearing the Applicant was represented by Counsel, the respondent was not present and was not represented. Also in attendance was Mr Crompton, who attended to give evidence on the Applicant's behalf.

(8) The Tribunal was informed that the Applicant had served the documents on London Residential who had been management agents/ letting agents for the Respondent. The Tribunal was informed that the Applicant had never had an address for the Respondent. Service charges were sent to London Residential who generally paid the charges on behalf of the Respondent. However the Applicant did not have a correspondence address for the Respondent.

(9) However London Residential had not participated in these proceedings. The Tribunal considered that it was reasonable to proceed in the absence of the Respondent. The Applicant had served the documents on the Respondent's agents. Who had not responded, London Residential also did not provide the Applicant with an address for the Respondent. We are satisfied that it is reasonable to proceed with the hearing in the absence of the Respondent.

The Lease which is dated 24 January 1984 contained the following covenants-: At clause 3 "*the Lessee HEREBY COVENANTS with the Lessor and as a separate covenant with the Management Company at all times during the said term to perform and observe (i) the stipulations and restrictions set forth in the Second Schedule hereto....*"

Paragraph 1 of the Second Schedule provides that the Lessee is "*to use the flat hereby demised as a single private residence in the occupation of one family only and for no other purposes and to use the garage hereby demised for the parking of one private motor vehicle only*".

Clause 2(12) states:

“The Lessee HEREBY COVENANTS with the Lessor ... not to cause permit or suffer to be done in or upon the demised premises any waste spoil or destruction nor any act or thing which may be or become illegal immoral or a nuisance annoyance or danger to or detrimental to any owner of occupier for the time being of any other part of the Estate”.

By clause 10 *“the Lessee ... COVENANTS with the Lessor and ... COVENANTS separately with the Management Company (a) that the Lessee will not during the term hereby granted assign sub-let or part with possession of the whole or any part or parts of the demised premises”*

- (10) The Applicant alleged that the respondent was in breach of the lease.
- (11) The Respondent did not attend the hearing as she lived abroad. She was also unrepresented.
- (12) The Applicant was represented by Counsel Mr Cohen who provided the Tribunal with a skeleton argument. He informed the Tribunal that the premises was situated in a small estate comprising, 62 flats in 4 blocks the premises was on the ground floor.
- (13) In his skeleton argument Mr Cohen stated that the evidence relied on by the Applicants shows, “the Respondent has been advertising on, and letting the Property through, a website called “www.bedandbreakfast.eu”. That evidence shows a print-out of the Property being listed for rental on 17 September 2019 at the aforementioned website and two reviews from previous parties who had rented the same through that website dated 26 July 2019 and 9 August 2019.” The Tribunal was referred to printouts of “verified reviews”. The reviews described the premises as “Superb” “A nice and clean apartment well located in Camden in a quiet neighbourhood. Everything was ready for the arrival, with the keys located in a nearby shop. Quick and responsive host. Would repeat in future.” The Tribunal asked how we could be sure that this related to the flat in issue. Mr Cohen referred to the back of the print outs which gave the address as 48 Reach View.

(14) Mr Cohen referred to Andrew Crompton's witness statement. Mr Crompton was the director for each of the Applicant companies. In his statement Mr Crompton stated that proceedings were taken against Ms Cai in 2013. This was for sub-letting the flat and for service charge arrears. These proceedings were settled by way of Consent Order dated 3 June 2014. The respondent agreed at paragraph 3 of the order that "in accordance with clause 10 of the Lease the Respondent will not sublet the Property"

(15) Mr Cohen stated that the respondent had continued to unlawfully sublet the flat in breach of the lease. He stated that it appeared to be let as a B&B/holiday letting.

(16) He stated that the estate did not have insurance for holiday/ short term lettings. If there was to be a fire resulting in death or injury then it is likely that the Block insurance policy would be voided and would not cover the loss. He further stated that the lettings were causing a nuisance and annoyance for lessees at the premises in that the occupiers were coming and going at all hours of night pulling wheeled suitcases, and the occupiers causes additional littering. He stated that occupants passed his property to go to the Respondent's accordingly this caused a nuisance and annoyance to him as his property was near the Respondent's premises.

(17) Mr Cohen went through each of the clauses that he considered relevant to the breach. He referred the Tribunal to Paragraph (1) of the second schedule of the lease. He stated that the Respondent could not part with possession save for alienation of the whole of the premises. He stated that sub-letting was strictly prohibited. He referred the Tribunal to the undertaking which had been given by Ms Cai in 2013. In the consent order Ms Cai had given a positive undertaking to get tenants out. Paragraph (1) of the Schedule to the Consent Order, it stated that -: "...The Respondent will serve notice to quit upon the current occupiers of the Property immediately..."

(18) The Tribunal asked about whether the lettings amounted to a nuisance. Mr Cohen referred the Tribunal to *Woodfall Rights and Liabilities: Express Covenant "No nuisance or annoyance: no immoral use"*

“nuisance” is to be construed in the sense in which it is understood under the general law: that is to say “an inconvenience materially interfering with the ordinary comfort physically or human existence...An annoyance is a wider term than nuisance. “If you find a thing which reasonably troubles the mind and pleasure, not of a fanciful person or of a skilled person who knows the truth, but of the ordinary sensible English inhabitant of a house-if... there is anything which disturbs his reasonable peace of mind...” Counsel stated that where the short-term letting would cause the insurance to be vitiated this would “trouble the mind”.

(19) Mr Cohen referred the Tribunal to 4 cases which stated substantiated the breaches. The first case *Caradon District Council v Paton [2001] 33 H.L.R. 34, CA*. In this case the covenant provided that (2)... the purchaser here by covenants with the council... 2... nor to use or permit to be used the property for any purpose other than that of a private dwelling house...” In this case the use of the property as a holiday letting was found to be in breach of this clause. In paragraph 35. Lord Justice Latham stated “I consider that the answer to the question posed by this case is dependent on whether or not one can properly describe the occupation of those who are the tenants for the purposes of their holiday as being occupation for the purposes of the use of the dwelling house as their home. 36. Both in the ordinary use of the word and in its context it seems to me that a person who is in a holiday property for a week or two would not describe that as his or her home...”

(20) In *Newcova-v- Fairfield Rents Limited (2016) UKUT 303*.

(21) In paragraph 7. Of the Judgment it was stated that “It is accepted that the appellant, as the current Lessee of the premises, is obliged to comply with the covenants in the lease. She further accepts that she has granted a series of short-term lettings of her flat and that she has advertised its availability on the internet.” The Upper Tribunal decided that the use of the property for short-term lettings was a breach of covenant of the lease.

(22) *Bermondsey Exchange v Koumetto* (BO2LB714; 1 May 2018; HHJ Luba QC).

(23) This case had similar covenants to that of the Applicant’s in this case Jan Luba QC decided that -: “...Having considered the context of the grant of the lease, and the nature of the intended relationship between lessor and lessee taking account of the obligations entered into, I am of the view that in granting very short term lettings (days and weeks rather than months) as the appellant has done necessarily breaches the covenant under consideration.”

(24) Counsel Mr Cohen, submitted that-: “The Tribunal will also be invited to note that the breaches evidenced by reference to the advertisement on, and letting the Property through, the website called

“www.bedandbreakfast.eu” is simply the latest incident in a pattern of behaviour by the Respondent in which the Property has been let in breach of the covenants referred to herein and service charge arrears have been allowed to accrue. Specifically, the Respondent sub-let the Property in 2013 and 2014 and accrued service charge arrears.”

- (25) The Tribunal asked how the details of who the property was being sublet to had become apparent. Mr Cohen stated that Mr Crompton had googled the link of London Residential
- (26) Counsel also stated that the Respondent owed service charges; clauses 2(1), 2(8) and 8 of the Lease the Respondent covenants to pay the insurance premium contribution, costs incurred by the Lessor in performance of its duties in clause 2(8)
- (27) By clause 8 of the Lease the Respondent covenanted with the Management Company to pay the Management Company on the 30 June in every year whether or not legally demanded a sum equal to 1/60th of the total. By clause 1(b) the Respondent covenanted to pay a proportionate part in relation to the cost of insurance for the communal parts.
- (28) Mr Cohen referred the Tribunal to the service charge demand dated 12 May 2019 in the sum of £1,109.68 a copy of the Service charge breakdown and the summary of rights and obligations were included with the demand.
- (29) In his skeleton argument, Mr Cohen stated at paragraph 8. By letter dated 12 May 2019 demand was made of the Respondent via her appointed agent for sums totalling £1,109.68. Further demands for that same sum were sent on 15 July 2019 and 12 August 2019. In breach of the foregoing covenants the Respondent has failed to pay the sums set out therein. Accordingly, a determination of breach in respect of the same is sought from the Tribunal.
- (30) Counsel also sought a declaration that the costs were recoverable:- “In accordance with clause 2(15) of the Lease and the power to forfeit set out in clause 8 and 12(ii) of the Lease the Applicants seek a declaration to the effect that the sums they have incurred in respect of this application are recoverable pursuant to clause 2(15) of the Lease as constituting costs incurred “*incidental to the preparation and service of a notice under section 146 ... of the Law of Property Act 1925*” on the basis that these proceedings are a necessary pre-cursor to forfeiture and the Claimant has had, at all material times, an intention to serve a section 146 notice and, subsequently, forfeit the Lease (as per Barrett v Robinson [2014] UKUT 322 (LC)).”

The decision of the Tribunal on the breach of the lease

- (31) The Tribunal having heard from the Applicant, the Tribunal determines that:-
- (32) The Respondent is in breach of clauses paragraph (1) to use the flat ... as a single private residence for the occupation of one family only and no other purpose. The Tribunal in reaching this decision accepted the evidence of Mr Andrew Crompton. The Tribunal also noted the evidence provided from copies of the website reviews. The Tribunal accepted that the premises had been let as a short term holiday let up until 29 September 2019.
- (33) The Tribunal also find that the Respondent's actions amount to a breach of Paragraph 1 of the second schedule of the lease and clause 10 "not during the term hereby granted assign, sublet or part with possession. The Tribunal finds that the letting of the premises as holiday lets was in breach of this clause.
- (34) The Tribunal is not satisfied that the letting of the premises amounted to a breach of clause 2(12) although we heard from Mr Crompton that the occupants left at all hours of the day and used wheelie cases, and that they caused a nuisance because of littering. The Tribunal saw no evidence of this, we further noted that had the premises been occupied by the leaseholder there would have been no restriction upon her entering and leaving the flat. The Tribunal also had no evidence from a neighbouring occupant concerning the nuisance.
- (35) Further the Tribunal also had no evidence from the insurance provider that the short term letting was likely to vitiate the insurance. Accordingly we are not satisfied on a balance of probabilities.
- (36) In respect of the service charges, the Tribunal accepted that the Respondent was in arrears of service charge in the sum of £1,109.68.
- (37) The Tribunal was satisfied that the demand was served on the Respondent's agent. The Applicant's solicitor wrote to London Residential (managing agents for the Respondent. In an email dated 25 September 2019, London Residential stated that they would look into central allegations. Further they also asked for copies of the service charge demand stating that they would "arrange for immediate payment". The Tribunal was

informed that payment had not been made. Accordingly we find that the sum of £1,109.68 is payable as service charges.

(38) The Tribunal further finds that by clause 2(15) of the Lease, the Appellant is entitled to claim its cost as an administration charge. The Tribunal makes no determination as to reasonableness of the Administration charge.

(39) Accordingly the Tribunal finds that the Respondent is in breach of the lease as set out above.

Name: Judge Daley

Date: 06/01/20

Appendix of relevant legislation

A summary of the legislation is set out below

The Law

Appendix

Section 168 (2) of Commonhold and Leasehold Reform Act 2002

(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 covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under (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.

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.