



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

<b>Case Reference</b>	:	<b>LON/00BK/LBC/2019/0087</b>
<b>Property</b>	:	<b>36 Cameron House, Townshend Estate, St John's Wood Terrace, London NW86LR</b>
<b>Applicants</b>	:	<b>The City of Westminster ("the Applicants")</b>
<b>Representative</b>	:	<b>Tazafar Ashghar Counsel</b>
<b>Respondent</b>	:	<b>Madhukar Kothari ("The Respondent")</b>
<b>Representative</b>	:	<b>Non attendance</b>
<b>Type of Application</b>	:	<b>Determination of alleged breaches of covenant.</b>
<b>Tribunal Members</b>	:	<b>Jim Shepherd Kevin Ridgeway</b>
<b>Date of Decision</b>	:	<b>6 January 2020</b>

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**DETERMINATION**

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**Decision**

1. The Respondent is in breach of Clause 18 of the Seventh Schedule of his lease dated 30th January 2004.

## **The Application**

2. The City of Westminster, "The Applicants" seek a determination pursuant to s. 168(4) of the Commonwealth and Leasehold Reform Act 2002 ("the Act") that the Respondent has breached his lease by using the premises at 36 Cameron House as a business; by not using them for residential purposes only and by allowing a nuisance to be caused to other residents in the block. Their application is unopposed. The Respondent has played no part in the proceedings despite being sent directions (page 16-19 of the bundle) and despite being sent a letter by the Tribunal seeking clarification as to why he had not complied.

## **Background**

3. The Applicants are the freehold owners of Cameron House which is on the Townsend Estate, St John's Wood Terrace, London NW86LR (Freehold title is at page 27 onwards). The Respondent is the leaseholder of 36 Cameron House (leasehold title on page 70-71). The lease was originally a Right to Buy lease pursuant to the Housing Act 1985, which was granted on 30th January 2004 for a term of 125 years (lease is page 39-68).

4. The Applicants rely principally on clause 18 of the Seventh Schedule of the lease which prohibits the Respondent from using the Demised premises:

*for any trade profession or business whatsoever but to keep and use the Demised premises as a single private flat for residential purposes only.*

5. They also rely on a covenant preventing nuisance ( Clause 17 of the Seventh Schedule ) but accepted that the evidence to support this breach was not as strong.

## **The allegations**

6. The Applicants' evidence was given in the form of a witness statement by Zakia Qureshi (Page 20 onwards). She states that the Respondent has been using the premises for paying guests through the Booking.com and Airbnb platforms. She relies on adverts that have been placed on these sites together with reviews. The premises are referred to throughout as "St Johns' Apt".

7. There is a message from St John's Apt which identifies the full address of the premises. This links the premises with the title- St John's Apt (page 73). There are various adverts on both platforms making reference to the facilities in the premises (Pages 74-77). Finally there are a series of reviews from people who have stayed at the premises (Page 79 onwards). These make clear that the premises were being used as short term holiday lets.

8. Ms Quereshi also outlined the fact that the Applicants had received complaints from other residents of the block about the use of the premises for short term lets. These complaints appear to stem from one particular leaseholder whose sub - tenants were being caused nuisance. That leaseholder did not attend to give evidence and save for an allegation about a water leak the allegations of nuisance were somewhat vague. In his submissions Mr Asghar accepted rightly that the nuisance allegations were not the strongest part of the Applicants' case.

9. Ms Quereshi wrote to the Respondent informing him that he was in breach of his lease on 15th April 2019 and 29th July 2019. Judge and Priestly the Applicants' solicitors sent a letter before action on 13th August 2019. None of these letters generated a response from the Respondent save that Ms Qureshi told the Tribunal that she had spoken to the Respondent on the telephone when he had told her that

the premises were let on an assured shorthold tenancy. Mr Qureshi asked to see the tenancy agreement. This was not forthcoming.

## **Findings**

10. It is compellingly clear from the documentary evidence produced by the Applicants that the premises have been used for short term holiday lets via both Booking. Com and AirBnB. This constitutes the use of the premises as a business in breach of Clause 18 of the Seventh Schedule. Furthermore this sort of short term letting runs contrary to the requirement in Clause 18 that the occupier uses the premises as a single private flat for residential purposes only (see *Nemcova v Fairfield Rents Ltd* [2016] UKUT 303 (LC)).

11. Moreover it would appear from the Tribunal's own enquiries that the premises are still being advertised on Booking. Com, despite the ongoing proceedings. Further the Respondent has not sought to defend his actions in any way and has taken no role in the proceedings.

12. Accordingly the breach in relation to clause 18 is made out. The alleged breach in relation to nuisance is not made out as the evidence was vague and inconclusive in this regard.

## **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**

**6th January 2020**