



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

Case Reference : **MAN/36UD/LBC/2019/0030**

Property : **Flat 16 St Luke's Court, Franklin
Square, Harrogate, HG1 5DZ**

Applicant : **Yorkshire Housing Association**

Respondent : **Qualitas Domus Limited**

Representative : **Mr Sellers**

Type of Application : **Commonhold & Leasehold Reform Act
2002 Section 168(4)**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S.A. Kendall**

**Date of
Determination** : **11th March 2020**

Date of Decision : **7th April 2020**

DECISION

Decision

1. The Tribunal determines Qualitas Domus Limited is in breach of Clause 4 (1) and Paragraph 1 of the First Schedule of the Lease dated 22nd November 1985.

Application

2. This is an application dated 25th October 2019 by Yorkshire Housing Association (“Yorkshire Housing”) for an order, pursuant to Section 168(4) of the Commonhold & Leasehold Reform Act 2002 (‘the 2002 Act’) that there have been breaches of the covenant by the Lessee contained in Paragraph 1 of the First Schedule of the Lease relating to Flat 16 St. Luke’s Court, Harrogate (“the Property”).
3. The Tribunal was provided with a copy of the Lease dated 16th June 1995 for a term of 99 years from 1st April 1984 and made between the Yorkshire Metropolitan Housing Association Limited (1) and Kevin Hutchinson (2) (“the Lease”). The Lease was subsequently extended to a 189 year lease.
4. The Lessee of the Property is Qualitas Domus Limited (“Qualitas Domus”). It acquired its interest in the Property on 16th November 2018.
5. The Property is a flat on the first floor of a building comprising 29 flats.
6. Directions relating to the application were issued on 21st November 2019, providing for the filing of additional documentation and statement by both the parties and thereafter for the application to be determined without an inspection or hearing.
7. The matter was listed for determination on 11th March 2020.
8. This has been a paper hearing on the papers that has not been objected to by the parties. The form of paper hearing was by video by members of the Tribunal that was fully remote. A face to face hearing was not held because no-one requested the same and all issues could be determined on paper. The documents referred to in this decision are from the bundles supplied by the parties. The order made is at paragraph 1 of this decision.

The Law

9. Section 168 of the Act provides that before a landlord may apply to forfeit any lease for a breach of either a covenant or condition of the lease by the tenant, it must have been determined that a breach has occurred. This can be done either by a determination under 168(4) of the 2002 Act, by the tenant admitting the breach, or by a court making a determination.
10. Section 168 (4), under which the present application is made, provides as follows:

“A landlord under a long lease of a dwelling may make an application to a First-tier Tribunal for a determination that a breach of covenant or condition of the lease has occurred”

The Lease

11. Clause 4(1) of the Lease provides:

“That the Leaseholder and the persons deriving title under the Leaseholder will at all times observe the covenants set out in the First Schedule.”

12. Paragraph 1 of the First Schedule provides:

“Not to use the Premises nor permit the same to be used for any purpose whatever other than as a private residence in single occupation only nor for any purpose from which a nuisance can arise to the owners lessees or occupiers of the other premises in the Building or of the premises in the neighbourhood.”

Submissions

13. In 2019, Yorkshire Housing advised it had received complaints by other residents of St Luke’s Court that the Property, amongst others, was being rented out, on short lets, mainly thorough the Airbnb website. The behaviour of those renting the flats was causing disruption to the residents.
14. Yorkshire Housing described the types of complaints received as *“around noise nuisance, the volume of “strangers in the hallways”, the behaviour of some of the guests (trying to open doors on incorrect flats) and the use of their communal areas by those with no connection to it”*.
15. Yorkshire Housing stated that it had found Qualitas Domus was letting the Property on the Airbnb website and copies of the advertisements and reviews were provided to the Tribunal.
16. On 12th July 2019 Yorkshire Housing sent a letter sent to Qualitas Domus reminding it of its obligations under the terms of the Lease and in particular, the covenant contained within it regarding the use of the Property as a private residence.
17. On 17th September 2019 a meeting was held between Yorkshire Housing and Mr Sellers, representing Qualitas Domus (along with the owners of other properties in St Luke’s Court). At that meeting Yorkshire Housing stated it was confirmed the Property was being let on *“a short term/holiday let/temporary basis”*.
18. The Tribunal was advised that after this meeting the Property continued to be advertised on the Airbnb website.
19. The Tribunal was referred to ***Nemcova v Fairfield Rents Ltd [2016] UKUT 303 (LC)***. Here, the Upper Tribunal made a determination whether letting a property through Airbnb was a breach of a covenant that permitted the use of a dwelling as a private residence only. In this case the long lease contained a covenant:

“not to use the demised premises or permit them to be used for any illegal or immoral purpose or for any purpose whatsoever other than as a private residence”

20. Here His Honour Judge Bridge said the reference to “private residence” meant:

“ the question was not whether the premises are being used as the occupier’s home but whether they are being used as a private residence.”

He continued:

48. “The clause does not state that the premises are to be used as the private residence of the lessee or occupier, but as a private residence. The use of the indefinite article (“a”) is significant. A person may have more than one residence at any one time- a permanent residence that he or she calls home, as well as other temporary residences which are used while he or she is away from home on business or on holiday. It is immaterial that the occupier may have another, more permanent residence elsewhere as there is no requirement that the occupier is using the property as his or her only (or main, or principal) residence. However, it is necessary, in my judgment, that there is a connection between the occupier and the residence such that the occupier would think of it as his or her residence albeit not without limit of time. In short, for the covenant to be observed, the occupier for the time being must be using it as his or her private residence.”

21. The judgment concludes that short term lettings, as here, are a breach of the covenant in that lease, it being said:

“Having considered the context of the lease and the nature of the intended relationship between the lessor and the lessee taking into account of the obligations entered into, I am of the view that in granting very term short lettings (days and weeks rather than months) as the appellant has done necessarily breaches the covenant under consideration”.

22. Mr Sellers, for Qualitas Domus, filed a statement opposing the application. He stated the company, when purchasing the Property, was not advised that its use would be restricted as provided for within the First Schedule. Airbnb was not in existence when the original Lease was drafted. Consequently the Landlord could not have anticipated such a use. Upon the basis there is no restriction within the Lease of letting out the Property, nor one saying it could only be let on short term lets, there is an inference Airbnb lettings are permitted.

23. In response to **Nemcova** Mr Sellers submitted there is a material difference in the respective leases in that the **Nemcova** lease was for a period of 99 years, whilst the Lease has been extended to 189 years. There are other properties within St Luke’s Square that are used for Airbnb, together with other let on 6-12 month tenancies.

24. With regard to the allegations of disturbances caused to the other tenants, it was said no evidence of those complaints had been provided and, furthermore, in a development such as St Luke's, it was inevitable there would be some noise and strangers within the complex.
25. Mr Sellers submitted the purpose of the covenant was to prevent the Property being used for business or uses other than as a residence. However, those Airbnb guests are using it as their residence and for no other purpose. Their use does not interfere with the use and enjoyment of other owners.

Determination

26. The Tribunal considered the Applicant's evidence and the submissions made by Mr Sellers
27. When considering the covenant within the Lease, this states it is not to "*be used for any purpose whatever other than as a private residence in single occupation*".
28. The decision in ***Nemcova v Fairfield Rents Ltd*** states that each case must be considered on its own facts. Here, the covenant prohibits the use of the Property for any other purpose than as a private residence. ***Nemcova*** establishes that any short-term letting, of the type arranged through Airbnb, breaches a covenant in those terms.
29. Mr Sellers stated Qualitas Domus was not advised, at the time of its purchase, that there was a restriction upon the use of the Property, as provided for within the First Schedule. This is not a matter for the Tribunal.
30. Mr Sellers has argued ***Nemcova*** should be distinguished from the facts here upon the basis the leases are of a different duration. The Tribunal does not find this to be material to its decision; the covenant remains the same whether it is contained in a 99 or a 189 year lease. The argument that Airbnb was not in existence at the time of the original Lease and therefore the Landlord would not have prohibited it is not accepted.
31. It was further said no evidence had been provided specifically linking the alleged disturbances at the development with the Airbnb users. This is correct. However, the Tribunal does consider the fact there are Airbnb users must give rise to more people passing through the development. The complaints described by Yorkshire Housing are such as suggest the perpetrators are more likely, than not, to be infrequent users rather than regular tenants. The descriptions of the complaints do not suggest they may be casual visitors, such as delivery drivers, painters or electricians as described by Mr Sellers.
32. The Tribunal does not accept the covenant is only to prevent the use of the Property for anything other than for residential purposes.
33. The Tribunal therefore determines Qualitas Domus has breached the covenant contained in the Lease by letting the Property on short-term lets.

Date: 7th April 2020
Judge: J.E. Oliver