



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

**Case Reference** : **MAN/00BN/LBC/2019/0018**

**Property** : **Flat 1, 15 Piccadilly, Manchester M1 1LT**

**Applicant** : **The Guinness Partnership Limited**

**Respondent** : **William Hei Chen**

**Type of Application** : **Determination under Section 168  
Commonhold and Leasehold reform Act 2002**

**Tribunal Members** : **Mr J R Rimmer  
Mr J Faulkner**

**Date of Determination** : **16<sup>th</sup> December 2019**

**Date of Decision** : **15<sup>th</sup> January 2020**

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**DECISION**

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**Order**        **The Tribunal finds that there has been a breach of covenant committed by the Respondent, as alleged by the Applicant, in respect of the lease of Flat 1, 15, Piccadilly, Manchester, as set out at paragraph 11 ,below.**

## **Introduction**

- 1        This is an application under Section 168 Commonhold and Leasehold Reform Act 2002 to determine whether or not there has been a breach of covenant relating to a lease of Flat 1, 15, Piccadilly, Manchester M1 1LT. The Applicant is The Guinness Partnership Limited and the application is dated 8<sup>th</sup> August 2019. It contains an outline of the alleged breach of covenant, subsequently expanded in the Applicant’s statement in support of its case and dated 4<sup>th</sup> September 2019.
- 2        The Respondent to these proceedings is the assignee of a shared ownership lease of the property in question dated 14<sup>th</sup> April 2000 and made between Northern Counties Housing Association Limited (1) and Guy Johnson (2) for a period of 99 years from that date. The Applicant is the current landlord under a head lease dating from 12<sup>th</sup> February 1999.
- 3        The Applicant make a single allegation. The lease contains a covenant by the leaseholder at Clause 3(15)(a) and (b)
  - (a)        Not at any time during the term to underlet sublet or part with possession of the whole or part of the premises (other than by way of mortgage) save in accordance with Clause (3)(15)(b) hereof and not to assign part only of the premises
  - (b)        The Tenant may (subject to the provision of Clause 3(16)) assign the whole of the premises with the prior written consent of the landlord and provided that the assignee first enters a direct covenant with the landlord to pay the specified rent and all other sums payable under the terms of the lease and to observe and perform the tenant’s covenants herein and to pay the landlord’s reasonable legal and administrative costs in connection therewith and subject to the assignee entering into the direct covenant aforesaid the landlord will not unreasonably withhold consent.

And it is alleged that, in breach of (a),the Respondent has been renting the property on short term arrangements under the “AirBNB” scheme.

- 4        The allegation was supported in detail by a report from Garym Lambert, a firm of specialist investigators, setting out at length the continuing history of the arrangements, both before and after the alleged breach was brought to the attention of the Respondent.

- 5 The response provided by the Respondent did not dispute that such AirBNB arrangements had taken place, but advised that they had now been brought to an end and the flat no longer advertised as available for those, or similar, short term lettings.
- 6 In view of the nature of the allegations and the information provided by the parties to the proceedings it was not considered necessary for the Tribunal to inspect the premises and neither party requested a hearing before the Tribunal. The matter has therefore been concluded on the basis of the papers submitted by the parties and what it saw upon its inspection.

### **The Law**

- 7 Section 168 Commonhold and Leasehold Reform Act provides as follows:
  - (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... (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in a 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)...
  - (4) A landlord under a long lease of a dwelling may make an application to (the First-tier Property 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 subsection (4) 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 a determination by a court, or
    - (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

## Submissions

- 8 Both the Applicant and the Respondent provided a statement of case in support of their respective positions and setting out the manner in which it considered that the covenant had been breached by the Respondent. They have been considered at length by the Tribunal and although that of the Applicant is of some length, in view of the number of supporting documents provided, they do not depart from the fundamental position set out above that such letting arrangements, unless falling within Clause 3(15)(b) and for which consent has been obtained, amount to a breach of Clause 3(15)(a).
- 9 The only matter for the Tribunal to determine is whether such a breach has occurred. Any issues relating to its continuance, or otherwise, any possible remedy, and the long-term effect upon the tenancy and the landlord and tenant relationship are not within the jurisdiction of this Tribunal.
- 10 **The Tribunal is entirely satisfied from what it has read in the papers before it that the arrangements entered into by the Respondent amount to a breach of Clause 3(15)(a). Whilst it might not be the case that such arrangements amount to underletting or subletting, the Tribunal is satisfied that they amount to a parting with possession of the flat, even if only for very short periods. In the circumstances outlined the renters appear to take up possession of the flat for the periods for which they have paid. They appear to go beyond the arrangements that would be likely to pertain in an old fashioned “bandb” or hotel situation where occupation may be allowed that falls short of parting with possession.**

Tribunal Judge  
J R Rimmer  
15<sup>th</sup> January 2020