



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

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| Case Reference | : | CHI/00HE/LBC/2019/0047 |
| Property | : | Lodge No. 56 Hengar Manor, St Tudy, Bodmin, Cornwall, PL30 3PL |
| Applicant Representative | : | Bridge Leisure Parks Limited OTB Eveling LLP |
| Respondent | : | Gary Howlett |
| Type of Application | : | Breach of covenant in Lease. Section 168(4) Commonhold and Leasehold Reform Act 2002 "CLARA" |
| Tribunal Members | : | Judge C. A. Rai |
| Date of Decision | : | 25 February 2020 |

DECISION

1. The Tribunal determines that the Respondent is in breach of the tenant covenants of the Lease of the Property pursuant to which he is obliged to pay rent, additional rent and service charges. The reasons for its decision are set out below.

Background

2. The Applicant, represented by its solicitors OTB Eveling LLP, applied to the Tribunal for a determination that the Respondent is in breach of the terms of a lease of Lodge 56 Hengar Manor, St Tudy, Bodmin, Cornwall, (the Property), because he had failed to pay the rent and service charges due to the Applicant.
3. The Lease of the Property dated 21 May 2004 was made between Hengar Manor Limited and Colin Joseph Brown and Sylvia Margaret Brown. The Property was demised to the tenant for a term of 999 years from 1 December 2002.
4. The Application to the Tribunal was dated 23 October 2019. In Directions, dated 27 November 2019, made by Judge D. Agnew the Tribunal directed that:-
 - a. The Application and the documents which had accompanied it would stand as the Applicant's case;

- b. The Respondent must, send the Applicant a signed dated statement of truth statement either admitting the alleged breach or, if he denied it, explaining why he disputed the Application with copies of all the relevant documents on which he wished to rely;
 - c. The Applicant must prepare a “hearing bundle” for submission to the Tribunal which would contain all documents and representations made by both parties; and
 - d. The timescales within which both parties must comply with its Directions.
5. The Hearing Bundle was received by the Tribunal on the 22 January 2020 following which the parties were notified that the Tribunal would determine the application without a hearing unless either objected within 14 days. Neither party objected. The Bundle was divided into three numbered sections but the pages within those sections are not numbered as was required by the Directions.

The Applicant’s case

6. The Applicant provided the Tribunal with a copy of the Lease and copies of “Notices to long leaseholders of rent due” for three periods ending 31 March 2018, 31 March 2019 and 31 March 2020. In the Application, the Applicant stated under the sub-heading, “Details of Breaches”, that the Respondent has failed to pay rent of £300.40 for 2017, £312.37 for 2018 and £320.30 for 2019.
7. The notices are the only evidence, supplied to the Tribunal, that the rents were demanded. On each notice the date for payment is stated as 30 September 2019, albeit that the date on which each annual rent payment fell due is also stated.
8. The Applicant has provided copies of statements headed “Private owners statement of account with Hengar Manor Limited” dated 1 April 2017 to 31 March 2018, 1 April 2018 to 31 March 2019 and 1 April 2019 to 31 March 2020, respectively. It has also supplied a “Full statement 1 April 2017 to 31 March 20120”.(typed thus). That is addressed to “Mr Howlett”. It sets out the details of the outstanding ground rents for the years ending 31 March 2018, 2019 and 2020 together with the service charges due for the same periods and the charges for water supplied to the Property. VAT at 20% has been added to the service charges and water charges. A total amount of **£10,340.69** is shown as due to the Applicant.
9. The Applicant has provided a copy of the Land Registry Land Registers for Title Number CL207315, the leasehold title to the Property. It shows that the Respondent is the owner of the Leasehold interest in the Property and that he acquired it on 2 February 2015.
10. The bundle also contains copies of the registers of the freehold title to “land at Hengar Manor” but not the official plan. The Title Number is CL9825 and reveals that the Applicant acquired the freehold of the Property, (and other property), on the 1 August 2017. The Lease of the Property is noted in entry 69 of the Schedule of Notices of Leases.

11. The Applicant stated, in the Application, that the Respondent failed to pay rent for the periods 2017-2018, 2018 – 2019 and 2019 – 2020 as demanded. He said that the Respondent has not paid the service charges demanded for the same periods. The Applicant therefore seeks a determination that the payments are due and that the Respondent is in breach of his covenants under the Lease because he has failed to comply with clauses 2(1)(a) 2(1)(c) and 2(2) of the Lease and to adhere to the tenant covenants as set out in the Fourth Schedule of the Lease.
12. Rebecca Sidgwick’s witness statement, dated 21 January 2020, states that she is the general manager at Bridge Leisure Parks Limited which trades as Hengar Manor Country Park and that she demanded rent for the three rental periods ending in March 2017, 2018 and 2019 from the Respondent but none of the sums demanded have been paid.
13. She confirms that she also demanded service charges from the Respondent for the same periods under three separate invoices in the total sum of £9,407.53 and that these invoices have not been paid. The total sum outstanding is £10,340.69.
14. Ms Sidgwick refers to a letter the Applicant’s solicitor received from the Respondent on 13 December 2019, a copy of which is attached to her statement, in which the Respondent said that he would pay the outstanding sum from the proceeds of sale of his property. The Applicant’s solicitor responded indicating that the Applicant would be willing to agree to the proposed arrangement but stated that it would continue with the application to the Tribunal. In her statement she said that she was unaware of any steps taken by the Respondent to sell the Property.

Respondent’s case

15. The only evidence from the Respondent before the Tribunal is the letter dated 30 November 2019 addressed to the Applicant’s solicitor asking if the Applicant “would be happy for the sale to proceed in January 2020 if the total amount of £10,340.69 is paid from the sale proceeds of £15,000”.

The Law

16. A determination by a Tribunal under section 168 of CLARA is a pre-requisite for service of notice by a Landlord under section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or a condition in its lease.
17. The Applicant seeks a determination from the First-tier Tribunal, pursuant to this application made under section 168 (4) of CLARA, that a breach of lease has occurred. Parts of section 168 are set out below:-

S. 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 (c 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied”

S.168(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.....has finally determined that the breach has occurred”**

S.168(4)

A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for a determination that a breach of a covenant or condition in the lease has occurred.

18. In section 5 of the Application Form the Applicant stated that it also seeks a determination that the payment demanded from the Respondent is due.

Reasons for the Decision

19. The Lease demises the Property to the Tenant for the term and obliges the Tenant to pay the yearly ground rent, (defined as the Rent), initially £200 per annum, payable in advance on and from 1 April in each year of the term and subject to review in accordance with the provisions of the Sixth Schedule to the Lease on 1 April 2005 and in each succeeding period of one year. **[Clause 2(1)(a)]**.
20. The Tenant must also pay by way of Additional Rent, on demand in advance and exclusive of Value Added Tax, (VAT):-
- a. a proportion of the sums paid by the Landlord for insuring the Development in accordance with the covenant in the Lease. **[Clause 4(2)]**. Development is defined as being the land within title numbers CL9825 and CL9826. **[Clause 2(1)(b)]**; and
 - b. A Service Charge in respect of the services other than the insurance of £1,450 per annum + VAT; and a contribution towards the cost of supplying water and disposal of sewerage at a rate of £225 per annum + VAT. **[Clause 2(1)(c)]**; It is stated that the Service Charge will increase annually in accordance with the provisions of the Sixth Schedule to the Lease.
21. In each case the payments referred to in paragraph 20 above are reserved and stated to be recoverable “as rent”.
22. In Clause 2 of the Lease the Tenant covenants to perform the provisions set forth in the Fourth Schedule of the Lease. The Fourth Schedule is headed “Tenants Covenants”. The Tenant covenants to pay the Rent, the Additional Rent and the service charge + VAT and there is also an obligation to pay interest at 4% above the base rate of National Westminster Bank plc on payments more than seven days overdue.
23. The Sixth Schedule to the Lease provides that both the Rent and the Service Charge shall be reviewed each year on 1 April, on an upwards only basis, and index linked by reference to a stated formula which enables the calculation of an increase by reference to the Index defined

as being the Index of Retail Prices published by the Department of Employment or any successor Ministry or Department. **[Clause 1(4)]**. The Landlord is required to give the Tenant written notice of the increases in the Rent and the Service Charge becoming due before 1 April in each year or as soon as possible thereafter.

24. In summary the Respondent is obliged under the terms of the Lease of the Property to pay Rent, a contribution towards the cost of insurance of the Development, defined as Additional Rent, and the Service Charge. The Rent and Service Charge increase annually in line with the increase in the Retail Prices Index. The Service Charge reserved under the Lease is not a service charge within the definition in section 18 of the Landlord and Tenant Act 1985 because it is fixed and does not vary in accordance with the relevant costs, (of the services provided). The Applicant has however asked for a determination that the payment it seeks to recover is due, to demonstrate that the Respondent is in breach of the tenant covenants in the Lease.
25. On the basis of the information that has been provided to it this Tribunal finds that:-
 - a. The Applicant currently owns the freehold of the Property and is entitled to receive the payments which it has demanded from the Respondent.
 - b. The Respondent is the owner of the leasehold interest in the Property and is liable under the terms of the Lease to pay the amounts demanded by the Applicant.
 - c. Statements setting out the amounts of payments due to the Landlord in accordance with the Tenant covenants in the lease for periods ending on 31 March 2018, 2019 and 2020 have been sent to the Respondent. In his letter dated 30 November 2019 addressed to the Applicant's solicitor, the Respondent accepted that the total amount due is £10,340.69, (the outstanding sum). This is consistent with the Applicant's written evidence.
 - d. The outstanding sum has been calculated in accordance with the provisions of the Lease if the correct index linked increases have been applied. The Tribunal has not checked these figures as the increases have not been disputed by the Respondent.
 - e. Although the copies of the annual statement of accounts refer to some additional variable costs the Applicant has not included these figures in its claim or in the "Full Statement" a copy of which is within section 1 of the Bundle.
 - f. Notwithstanding there is no evidence within the Bundle that the statements were addressed and sent to the Respondent the Tribunal have noted that this is stated in Ms Sidgwick's witness statement and has not been disputed by the Respondent.
 - g. Although the definition of "Development" in the Lease refers to two title numbers the only title registers of the Applicant's property in the Bundler is for title number CL9825.
26. The Tribunal has concluded that:-
 - a. The Applicant is entitled to seek payment of the sums demanded from the Respondent under the Lease; and

- b. the total amount which the Applicant seeks to recover has been demanded from the Respondent and that he is aware of the amount due to the Applicant.
27. The Tribunal therefore determines that the Respondent is in breach of the covenants in the Lease to pay the Rent, the Additional Rent and Service Charges in the total sum of Ten Thousand Three Hundred and Forty Pounds and Sixty Nine pence (£10,340.69).

Judge C. A. Rai.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.