



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

Case Reference : **MAN/36UD/LBC/2019/0031**

Property : **Flat 18 St Luke's Court, Franklin
Square, Harrogate, HG1 5DZ**

Applicant : **Yorkshire Housing Association**

Respondent : **Dr John Harrison**

Representative : **In Person**

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 Dr John Harrison is in breach of Clause 4 (1) and Paragraph 1 of the First Schedule of the Lease dated 18th July November 1986.

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 18 St. Luke’s Court, Harrogate (“the Property”).
3. The Tribunal was provided with a copy of the Lease dated 18th July 1986 for a term of 99 years from 1st April 1984 and made between the Yorkshire Metropolitan Housing Association Limited (1) and Susan Ann Wadkin (2) (“the Lease”).
4. The Lessee of the Property is Dr John Harrison (“ Dr Harrison”). He acquired his interest in the Property on 28th August 2009.
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 Dr Harrison 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 Dr Harrsion reminding him of his 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 Dr Harrison (along with the owners of other properties in St Luke’s Court). At that meeting Yorkshire Housing stated Dr Harrison 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. Dr Harrison stated Yorkshire Housing had always been aware that the Property was purchased as a holiday home, his primary residence being elsewhere.

23. With regard to the allegations of disturbances caused to the other tenants, it was said Dr Harrison was only aware of one complainant.

24. Dr Harrison confirmed he advertises the Property on the Airbnb website. However, he has rules for any visitors, employs a professional cleaner who cleans not only the Property, but also the surrounding communal area. The lettings on Airbnb commenced in December 2018 and not in March 2018, as alleged.

25. Dr Harrison argued Yorkshire Housing had always been aware the Property was purchased as a holiday home for the use of family and friends. The lettings on Airbnb are around this usage. Yorkshire Housing would agree longer lettings, but this would not be possible,

- since it would not allow for the flexibility necessary for the use of the Property by his family and friends.
26. Dr Harrison queried the use of the phrase “in single occupation” within the covenant, querying the fact he and other members of his family have used the Property. This appears contrary to the covenant.
 27. Dr Harrison submitted Yorkshire Housing should reconsider the Lease to allow properties within the development to be used as holiday lets; the Lease, in its present form is out-dated.

Determination

28. The Tribunal considered the Applicant’s evidence and the submissions made by Dr Harrison. Dr Harrison accepted he did let the Property on the Airbnb website and had done so since December 2018.
29. 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*”. 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.
30. Dr Harrison stated Yorkshire Housing have always known his purchase of the Property was as a holiday home. The Tribunal accepts this use does not breach the covenant within the Lease. In ***Nemcova*** a clear distinction was drawn by HHJ Bridge between the wording “*a*” and “*the*” private residence as referred to in paragraph 20 above. The covenant in the Lease refers to “*a*” private residence and, as such, does not mean it has to be the only residence of Dr Harrison.
31. Dr Harrison has queried the phrase “in single occupation”. The Tribunal is not required to make a determination upon this point.
32. Whilst Dr Harrison has suggested Yorkshire Housing should reconsider its stance regarding holiday lets, it is not obliged to do so. It is entitled to enforce the Lease in its current terms.
33. The issue for determination is whether the renting of the Property on Airbnb amount to a breach of the covenant within the Lease. The Tribunal finds that it does. ***Nemcova*** is clear that where the covenant is in the terms as in the Lease, short term lettings, as those through Airbnb, are in breach of it. The lettings are, by their very nature, usually for a few days. Those renting the Property do not have any connection with it and cannot regard it as their residence. The requirement for the Property to be used as a private residence is therefore not met.

Date: 7th April 2020

Judge: J.E. Oliver