FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LBC/2020/0044 P**
Property	**:**	**140 and 142 Telford Avenue, London, SW2 4XQ**
Applicant	**:**	**Simon Gayer**
Respondent	**:**	**Sofia Haque**
Representative	**:**	**DKLM**
Type of application	**:**	**Commonhold & Leasehold Reform Act 2002 - Section 168(4)**
Tribunal member(s)	**:**	**Judge Sheftel**
Date of decision	**:**	**28 January 2021**

DECISION ON JURISDICTION

The application

1. By application received by the tribunal on 3 September 2020, the Applicant seeks a determination that the Respondent has breached the terms of her lease, pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act").

2. The Applicant and Respondent are joint owners of the freehold title to 140 and 142 Telford Avenue, London, SW2 4XQ. According to the Respondent's solicitors, they hold the freehold title as tenants in common.

3. Further, according to the application form, Mr Gayer is the leaseholder of the ground floor flat and Ms Haque is the leaseholder of the first floor flat.

The issue on jurisdiction

4. By letter to the parties dated 26 November 2020, the tribunal expressed a preliminary view that the provisions of the 2002 Act disqualify one of two joint landlords from making an application for a declaration under section 168 of the 2002 Act. If correct, the tribunal would consequently, have no jurisdiction to accept the application. The letter advised that *"…you may wish to withdraw your application. If not withdrawn the judge may strike out your case …"*. Further, the letter invited the Applicant to respond, and subsequent directions also provided an opportunity for the Respondent to make any written representations as to the question of the tribunal's jurisdiction.

5. By email to the tribunal dated 4 January 2021, the Applicant requested that the tribunal proceed and issue a formal judgement. Among the reasons, he stated that "*A recorded ruling will give guidelines and give direction to many unfortunate Freeholders who are Tenants in Common owning 50% each and being also the leaseholders (Joint ownership). This will allow them to have an understanding of their legal position and standing*".

6. In response, by letter dated 6 January 2021, the Respondent's solicitors made submissions in support of the contention that the tribunal lacks jurisdiction. They also pointed out that the Applicant's email to the tribunal did not advance any argument in support of the submission that the tribunal had jurisdiction. In conclusion, they invited the Tribunal to strike out Mr Gayer's application, under Rule 9(3)(e) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

7. For the avoidance of doubt, rule 9(3)(e) provides that The tribunal may strike out the whole or part of the proceedings or case where "*the tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding*".

Discussion

8. Section 168 of the 2002 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 (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.

(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) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(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.

(5) But a landlord may not make an application under subsection (4) in 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 determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(6) For the purposes of subsection (4), "appropriate tribunal" means—

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to a dwelling in Wales, a leasehold valuation tribunal

9. Pursuant to subsection (4), an application under section 168 of the 2002 Act may be made by 'a landlord'.

10. By section 169(5) of the 2002 Act, 'landlord' for the purposes of section 168 has the same meaning as in '*Chapter 1 of this Part*' of the 2002 Act.

11. Section 112(5) of the 2002 Act defines "a landlord" as follows:

"Where two or more persons jointly constitute either the landlord or the tenant or qualifying tenant in relation to a lease of a flat, any reference in this Chapter to the landlord or the tenant or to qualifying tenant is (unless the context otherwise requires) a reference to both or all of the persons who jointly constitute the landlord….".

12. Applying the definition in section 112(5), where two persons jointly constitute the landlord of a property, the reference to 'landlord' in section 168(4) of the 2002 Act means both of them. In other words, an application for determination of breach cannot be brought by one of two landlords acting alone but only by both of them together.

13. Although the wording in section 112(5) of the 2002 Act includes the words "*…unless the context otherwise requires…*", it is difficult to see how that could lead to a different conclusion or that the context *requires* a departure from the express position – and no submissions have been advanced in this regard.

14. At first sight, it might seem odd that a person in Mr Gayer's position – one of two joint freeholders – might not be able to bring an application under section 168 of the 2002 Act for a determination of breach of covenant, against a lessee who happens to be the other joint freeholder. The freehold and leasehold structure in the present case is not uncommon and the effect of such conclusion would be that a person in the position of Mr Gayer would be left without remedy under this part of the 2002 Act and would instead presumably have to seek other relief in the County Court. Nevertheless, having regard to the statutory scheme as set out above, there does not appear to be scope for suggesting that an application under section 168 of the 2002 Act could be made by one of two joint freeholders acting alone.

Conclusion

15. For the reasons set out above, it is determined that the tribunal has no jurisdiction to hear the application and accordingly it is struck out pursuant to rule 9(3)(e) of the 2013 Rules.

16. This has been a remote determination on the papers which has not been objected to by any of the parties. The form of remote determination was P: Paper Determination. A face to face hearing was not held because it

was not sought or practicable and all issues could be determined on the papers

Name: Judge Sheftel **Date:** 28 January 2021

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).