



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

Case Reference : **BIR/00CU/LBC/2021/0005**

Property : **Flat 29 and garage 29, Park Hall Close,
Walsall, WS5 3HQ**

Applicant : **Clarion Housing Association Limited**

Respondent : **Ranjit Singh**

Type of Application : **Application under section 168(4) of the
Commonhold and Leasehold Reform Act
2002 for a determination that a breach of
covenant or condition in the lease of the
property has occurred.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mr Thomas Wyn Jones, FRICS.**

Date of Decision : **20 September 2021**

Date Decision issued : **19 October 2021**

DECISION

Application and background

1. The Applicant freeholder brings this case before the Tribunal by an application dated 14 May 2021 and received by the Tribunal on 20 May 2021. The application requests that the Tribunal determine whether or not Mr Ranjit Singh, the Respondent tenant is in breach of a covenant not to sublet flat 29 and garage 29 Park Hall Close, Walsall, WS5 3HQ, "the property". The Applicant alleges that this breach was being committed on 8 September 2020.
2. Directions were issued on 28 May 2021. In those Directions it is noted that the Applicant has indicated that this case can be dealt with without the need for the evidence to be considered at a hearing, to be decided upon the written evidence in the papers. The Directions indicate agreement with this course of action, but provide for an oral hearing to be arranged, if the Respondent so requests. There has not been a request for an oral hearing.
3. In partial compliance with these Directions the Applicant has served a bundle of evidence that is said in the index to be 103 pages in length, but unfortunately the bundle is not paginated. This will make reference to individual pages within the bundle more difficult than it would otherwise have been. This is added to by a second statement and exhibits from the witness Jo Bedworth, a Tenancy Specialist employed by the Applicant. The Tribunal notes that this latterly referred to statement and exhibits are served late, are not dealt with by the Respondent's response (because they were served after the date of that response) and add little to the case. However, they are never the less admitted in evidence by the Tribunal because the Tribunal takes the view that paragraph 8 of the statement assists the Respondent's case.
4. In partial compliance with these Directions the Respondent has served a two page document, that fails to state what the Respondent's case is (dated 27 July 2021). It does however confirm that the Respondent does not require that an oral hearing be held.
5. The written evidence referred to paragraphs 3 and 4, above will be dealt with, where relevant, in the determination of the issues in the case.
6. This is a case in which it is clearly not necessary for the Tribunal to inspect the property.

The property

7. The property is a flat and garage in a block of flats that contains 36 flats. The freehold of the building is held by the Applicant.

Relevant provisions of the lease

8. The Respondent holds the remainder of a lease on the property (flat and garage) with a term of 99 years, commencing on 25 December 1974. The Respondent having acquired the remainder of the lease on 6 September 1989.
9. Schedule six of the lease sets out the covenants that bind the Respondent lessee's conduct during the term of the lease with regard to the property. Clause 29 states, "Not at any time during the said term to underlet the demised premises or any part thereof." There is a further provision that the lease can be terminated if this covenant is breached.
10. As such it would be a breach of covenant under the terms and conditions of the lease for the Respondent to sub let the property.

The Law

The Commonhold and Leasehold Reform Act 2002

Section 168. No forfeiture notice before determination of breach

(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.

Determination of the issues in the case

11. In this case the Applicant must satisfy the Tribunal on the balance of probability that the Respondent is in breach of clause 29 of schedule 6 of the lease. Further, as alleged in paragraph 5 of the application to the Tribunal, the breach of the lease must have been committed in a period including 8 September 2020.
12. The Respondent points out that the Applicant has failed to comply with direction 5, in that the Applicant has failed to paginate its bundle of evidence. The Tribunal agrees with the Respondent, (see paragraph 3, above). However, the Tribunal determines that it will not take any action as a result of this breach, it being fair and reasonable simply to make the comment as above.
13. The Respondent notes that although he is described as being the Respondent lessee, the witness Jo Bedworth also refers to Balbir Singh. As such the Respondent submits that the application is defective. The Tribunal does not agree with the Respondent. The application states that the Respondent lessee is Ranjit Singh. Jo Bedworth exhibits, as JB2, a HM Land Registry title document that proves that the lessee is Ranjit Singh and the Respondent Ranjit Singh has entered a "defence", pursuant to the Directions attacking parts of the Applicant's case with a view to establishing that he is not in breach of the above described covenant. The Tribunal will continue with the case and will determine whether or not the Respondent is in breach of this covenant.
14. The Respondent points out that in the application form paragraph 5, the Applicant specifies that the Respondent was in breach of the lease on 8 September 2020. The Tribunal agrees with the Respondent and will consider whether or not this is established by the Applicant.
15. The Respondent further contends that there is no evidence to support the claim that the property has been sublet or that Mr Rahman is renting the property. These submissions will be considered as issues are determined by the Tribunal.
16. The Respondent has not put forward any statement of his case and has not served any witness statements or exhibits. In essence the Respondent does not agree any facts but does not put forward any positive case to explain why it is that during the period of this lease two persons other than himself have been in occupation of the property, namely Alfred Agius and Mizanur Rahman.
17. The Applicant's case is that on 4 March 2020 an unidentified neighbour of the Respondent contacted the Applicant to inform the Applicant that the Respondent was subletting the property.

18. On 6 March 2020, Jo Bedworth, accompanied by Sarah Thurley (who is described by the witness Jo Bedworth as being the local Neighbourhood Response Officer), visited the unidentified neighbour and all three persons then visited the property and spoke to the tenant, Mr Alfred Agius. Mr Agius handed to Jo Bedworth a copy of his tenancy agreement (Applicant's bundle, JB4).
19. JB4 is an assured shorthold tenancy agreement for the property, dated 22 March 2019 and commencing on the same date for a period of six months at a rent of £700 per month. The Landlord is said to be Mr Piarra Avtar William Singh and the tenant being Alfred Agius.
20. Mr Alfred Agius stated that he was in the process of arranging to move out of the property, which appears to have been completed on or around 25 June 2020.
21. The Tribunal also has regard to exhibit JB9. This is a letter from npower that states that Alfred Agius was responsible for the payment of gas and electricity bills at the property from 3 May 2019 to 7 July 2020.
22. Alfred Agius has not made a witness statement, but Jo Bedworth states that Alfred Agius told her on 6 March 2020 that he was the tenant of the property. Jo Bedworth's statement has been served on the Respondent and that evidence has not been challenged. Jo Bedworth spoke with Alfred Agius, in the presence of other persons and took possession of JB4, which is a tenancy agreement for the property letting it to Alfred Agius. JB9 is clear evidence that Alfred Agius was paying the gas and electric bills for 9 months, the last payment being made on 20 May 2020.
23. Having considered all the evidence in the case and particularly the evidence described above, the Tribunal determines that from 22 March 2019 (JB4) to at least 20 May 2020 (JB9), the property was sub let to Alfred Agius in breach of the covenant in the lease that commenced on 25 December 1974, schedule 6, clause 29 (dealt with in paragraphs 8 and 9, above). This is not the breach specified in paragraph 5 of the Tribunal's application form, it is however a clear breach that falls within the ambit of clause 4(a) of the lease and could therefore have led to the lease being terminated. In fact the lease was not terminated, the Applicant choosing to continue to accept rent payments from the Respondent and send the respondent a warning letter.
24. On or about 13 July 2020 a warning letter was sent to the Respondent informing him that he should not sub let the property (JB5). A letter pointing out that the Respondent is not permitted to sub let the property was also sent to the letting agent Henry Preston Lettings (JB6).
25. On 23 July 2020 the undefined neighbour contacted the Applicant to report that new tenants had moved into the property.

26. At 7.15 am on 8 September 2020 Jo Bedworth, accompanied by Sharla Mae Murphy visited the property again. Ms Murphy has not provided a witness statement, but is described by Jo Bedworth as being a colleague of Jo Bedworth. Jo Bedworth spoke to a man who introduced himself as being called Miz Rahman, stating that his uncle was permitting him to stay at the property and that he did not have a tenancy agreement. Mr Rahman called his uncle on a telephone and Ms Murphy spoke to that person who amongst other things said, "well you are getting your money are you not?" In these circumstances the Tribunal determines that this telephone call is likely (on the balance of probability) to have been with the Respondent.
27. The Tribunal notes the evidence from npower that from Mr Mizanur Rahman became responsible for the payment of gas and electricity bills at the property from 8 July 2020 to the date of the letter, being 19 October 2020, making three payments during that period.
28. This is the breach referred to in paragraph 5 of the Tribunal application form. The Applicant relies on the clearly established earlier breach of the covenant in the lease (paragraph 23, above) and suggests that the Tribunal can infer that a similar breach was again being committed.
29. Jo Bedworth in her second statement, paragraph 8 states, "Clarion (the Applicant) do not have any proof that Mr Rahman is paying rent to the Respondent..."
30. The Tribunal determines that it is not satisfied that a breach was again being committed on 8 September 2020, by sub letting the property, for the following reasons. The Tribunal determines that for there to be such a breach there must be a tenancy agreement (whether in writing or oral, does not matter) but there must be a rent being paid. All that has been proven in relation to 8 September 2020 is that Miz Rahman was occupying the property and paying the gas and electric bills. Mr Rahman could have been in occupation by the grant of a mere licence to occupy the property given to a relative, and not a breach of the lease.
31. This case has been conducted during the Covid-19 pandemic, but the Tribunal's procedures in dealing with this case have not in any way been modified as a result if the pandemic.

Decision

32. The Tribunal Decides that from 22 March 2019 (JB4) to at least 20 May 2020 (JB9), the property was sub let to Alfred Agius in breach of the covenant in the lease that commenced on 25 December 1974, schedule 6, clause 29, dealt with in paragraphs 8 and 9, above. This is not the breach complained about by the Applicant.

33. The Tribunal Decides that that it is not satisfied that the lease was breached on and around the date of 8 September 2020, as described in paragraph 5 of the Tribunal application form.
34. Appeal against this Decision is to the Upper Tribunal. If any party should wish to appeal, they have 28 days from the date that this Decision is sent to them to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds for that appeal, providing particulars of those grounds, stating the paragraphs of the Decision that are appealed against and the result that the party making the application for permission to appeal seeks as a result.

Judge Tonge

Date this Decision sent to the parties 19 October 2021