



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

Case reference : **LON/00AY/LBC/2022/0006**

Property : **Flat 50 Kilner House, Clayton Street,
London SE11 5SE**

Applicant : **Estmanco (Kilner House) Limited**

Representative : **Mr Tristan Salter (Counsel)**

Respondent : **Mr Colin Vincent Owens**

Representative : **In person**

Type of application : **Declaration as to a breach of covenant –
Section 168(4) Commonhold & Leasehold
Reform Act 2002**

Tribunal members : **Judge Mr Ian B Holdsworth FRICS
MCI Arb
Mr Kevin Ridgeway MRICS**

Venue : **Remote**

Date of decision : **14th June 2022**

DECISION

The Tribunal determines that for the purposes of Section 168(4) of the Commonhold & Leasehold Reform Act 2002, a breach of the lease has occurred in that the Respondent has: -

- (i) failed to pay all duly demanded service charges and reserve fund contribution from March 2018 until 27 May 2022;
- (ii) failed to satisfy lease covenants that require the supply and installation of floor coverings to the property; and,

- (iii) sublet the premises on five occasions without the consent of the freeholder as required by the lease provisions.

The Application

- 1 By an application issued on 25 January 2022, the Applicant seeks a determination under Section 168(4) of the Commonhold & Leasehold Reform Act 2002 (**'the Act'**) that the Respondent tenant is in breach of their lease in respect of Flat 50 Kilner House, Clayton Street, London SE11 5SE (**'the Property'**) and that the Respondent has failed to pay duly demanded service charges, failed to supply and fit floor coverings to the Property and sublet the Property on a number of occasions without the consent of the freeholder.
- 2 On 23 February 2022 the Tribunal gave Directions:
 - (i) The Applicant's statement of case is at p39 of the Bundle.
 - (ii) The Respondent's Bundle was submitted as a separate document.
 - (iii) The Respondent also submitted supplementary materials, including photographs of the flat after the fitting of floor coverings, an invoice in respect of costs of carpet and two supplementary pleadings. These were submitted in week commencing 29 May 2022.
 - (iv) The Applicant's solicitor, Bolt Burdon, made a supplementary submission of financial history and outstanding service charges dated 30 May 2022.
- 3 At the hearing on 6th June the Applicant was represented by Mr Tristan Salter (Counsel) instructed by Bolt Burdon Solicitors. The Respondent represented himself in person.
- 4 Mr Max Haywood of Strangford Management (the Managing Agents) attended the hearing together with Thomas Cronin, a Director from Estmanco (Kilner House) Limited.

The Law

- 5 Section 168 of the 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.'

- 6 Strictly, all this Tribunal is asked to determine is whether the Respondent has breached a term of their lease. It is not for this Tribunal to consider whether another Court might grant relief from forfeiture.

The Lease

- 7 The lease is dated 30 March 1982 made between (1) Greater London Council, (2) Estmanco (Kilner House) Limited and (3) Stephen Paul Bailey (at p.11). The tenant covenants:

'2(7)E The Lessee hereby covenants with the Lessor and with the management company as follows without prejudice to the absolute prohibition hereinbefore contained but without the prior written consent of the Lessor to underlet the whole of the demised premises.

3(1) To pay the Lessor (subject to clause 7 hereof) an annual service charge in this Lease called the aggregate service charge of an amount determined in accordance with the provisions of and at the times and in the manner specified in clause 4 hereof.

3(8) Not to use or permit or suffer to be used the dwelling hereby demised for any purpose from which a nuisance can arise to the residents of other dwellings comprised within the estate or for any illegal or immoral purpose and not to hold any auction on the demised premises but to use the same only as a single private residence.

4(5) In addition to the costs expenses and outgoings by the Lessor aforesaid during the relevant financial year ... any such sums as the accountant may in his absolute discretion consider it reasonable to include ... in the amount of the aggregate service charge for the relevant financial year.

4(9) To cover and keep covered the floors of the dwelling demised with carpet and underlay save that the floors of the kitchen and bathroom may be covered with other suitable materials.'

Our Determination

- 8 It is common ground that the Respondent has taken recent action to remedy the breaches of the lease covenants identified in the application made to Tribunal in January 2022. These actions include: -
- (i) eight service charge payments to the Managing Agents made between 3-27 May 2022 amounting to £7,273. These payments were made to satisfy service charge arrears which are reported by the Managing Agent in the application to Tribunal.
 - (ii) The instruction to a carpet supplier and fitter to fit underlay and carpet throughout the Property; and
 - (iii) an application to the Managing Agent over the weekend of 4/5 June 2022 seeking permission for the current sub-letting of the Property to the tenant's resident at the Property.
- 9 Counsel for the Applicant acknowledged payment of £7,273 and confirmed there were no longer service charge arrears as at the date of the hearing. He also confirmed the Managing Agent intended to inspect the Property to confirm the carpets were laid in the property in accordance with the leaseholders obligations under the lease.
- 10 Counsel advised that on the morning of the hearing 6 June 2022 a request had been received from the Respondent seeking permission to sublet the Property.

Failure to pay service charges and reserve fund contribution

- 11 It is agreed between the parties that under the terms of the lease, a service charge including a reserve fund contribution is payable by leaseholders. The Respondent did not challenge the payability or reasonableness of the charges made under the lease provisions described in clauses 3(1) and 4(5).
- 12 Counsel for the Applicant referred Tribunal to the Applicant's response to the Respondent's statement of case dated 30 May 2022. This contained a financial history of the service charge payments for Flat 50 as at 30 May 2022. It showed from 28 March 2018 the service charges had been in constant arrears with the peak arrears in January 2021 at £7,880.46.
- 13 The Respondent claimed that the demand for service charge in year 2021 was not made. The Tribunal was referred to copies of the Demands included in the Applicant's bundle at p.A78, A81 and A85. These demands comply with appropriate statutory procedure and the Respondent, when shown by Counsel

for the Applicant, accepted that they had been served upon him in previous years.

- 14 We are satisfied that the service charges are payable and that the monies were properly demanded. The Respondent did not satisfy the obligation to pay these monies until his most recent payment dated 27 May 2022. The Tribunal conclude the Respondent was in breach of the lease obligations from 28 March 2018 until 27 May 2022. It is acknowledged that the amount in arrears varied but the lease specifies an obligation to pay the rendered demands in accordance with the lease provisions. This was not done.

Failure to maintain sufficient and adequate floor coverings

- 15 The Respondent contended that during his occupation of the Property until around 2016 he used rugs to mitigate noise caused by foot 'traffic' across the floor surfaces of the Property. He argued that he had received no complaints during his occupation of the Property.
- 16 Counsel for the Applicant referred the Tribunal to schedule 4(9) which requires leaseholders to:

'To cover and keep covered the floors of the dwelling hereby demised with carpet and underlay save the floors of the kitchen and bathroom may be covered with other suitable materials'

- 17 The Respondent accepted he had failed to do this despite repeated requests from the freeholder through the Managing Agent.
- 18 The Tribunal noted that the Respondent was first contacted by a tenant of the Property in 2017. There is evidence contained in the bundle of numerous email exchanges designed to elicit a response from the Respondent on the matter of floor coverings and no action was taken by the Respondent despite these repeated requests.
- 19 The Respondent confirmed that on 2 June 2022 underlay and carpet was laid across all floors, except to the kitchen and bathroom of the Property. The Respondent confirmed in his submission that prior to this date, the floor did not comply with clause 4(5).
- 20 The Tribunal concludes that from the date of the initial complaint contained in an email at p.44, dated 12 November 2017 until 2 June 2022, the floor coverings obligation contained in Schedule 4 Clause 9 was not satisfied and the lease covenant was breached.

Subletting of the property without the landlord's prior written consent

- 21 The Respondent confirmed to the Tribunal that since he vacated the Property he had sublet the dwelling on five occasions. In response to a question from Tribunal the Respondent confirmed that on none of these occasions had he obtained prior written permission of the freeholder to sublet the Property.
- 22 The Respondent confirmed to the Tribunal that the current tenants who occupied the property during the final quarter of 2021 were good tenants. The

Respondent was eager that these proceedings did not interfere in any way with their beneficial enjoyment of the Property. He was dismissive of any obligation to secure the freeholders permission for this sub-letting.

- 23 The Tribunal infers from the Respondents submission that there was a blatant disregard of clause 2(7)E and no permission was sought from the Lessor to underlet the Property on any occasion since the Respondent left the Property.
- 24 The Tribunal also notes that, despite the application to Tribunal on 25 January 2022 no request was made to the Lessor to regularise the current letting.
- 25 The Tribunal accepts the Applicant's submission that clause 2(7)E is unequivocal in the requirement to seek prior written consent for subletting, whilst the leaseholder is protected by the requirement that the Landlord's consent is not to be unreasonably withheld.
- 26 The Respondent admitted in his submission to Tribunal repeated failure to seek prior permission from the freeholder to sub-let on five occasions. Despite a claim by the Respondent the administrative procedure for sub-letting had changed when new managing agents were appointed, the Tribunal are satisfied the Respondent breached the terms of clause 2(7) e of the lease by his actions.

Discretion

- 27 The Tribunal discussed with the parties the recent actions taken by the Respondent to remedy the breaches of covenant.
- 28 The Tribunal raised with the parties whether it had any discretion to make a determination that a breach of covenant had occurred despite recent undisputed actions to remedy those breaches. Counsel explained that his clients sought a determination from Tribunal on whether the leaseholder had committed a breach of the lease terms. He argued it was not the role of this Tribunal to consider remediation or the motive of the Landlord in seeking the determination. The role of Tribunal is to determine whether the Respondent breached a term of the lease.
- 29 If the Tribunal has a discretion, it is satisfied that this is a case where the Tribunal should make a determination and the likely consequence of its findings is that the Lessor will require the Lessee to seek retrospective consent for the subletting of the Property and to provide confirmation through inspection that the floor coverings satisfy the requirements specified in Schedule 4(9) of the lease.
- 30 It is apparent from the Tribunal proceedings the Tribunal Application and subsequent hearing acted as a catalyst for the Respondent to remedy longstanding breaches of covenant.

Name:

Ian B Holdsworth

Date:

14th June 2022

Judge

RIGHTS OF APPEAL

- 1 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.
- 2 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.
- 3 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.
- 4 The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.