



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

**Case Reference** : **LON/00AH/LBC/2023/0012**

**Property** : **16 St. James Court, St James's Road, West Croydon, CR0 2SE**

**Applicant** : **Fencott Limited**

**Representative** : **Lee Pomeranc Solicitors**

**Respondent** : **(1) Buy Prop Limited  
(2) MC Housing Limited**

**Representative** : **None apparent**

**Type of Application** : **Determination that a breach of covenant has occurred  
(Commonhold and Leasehold Reform Act 2002, s 168(4))**

**Tribunal Members** : **Tribunal Judge Prof R Percival**

**Date and venue of Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **12 September 2023**

---

**DECISION**

---

### **The application**

1. The Applicant seeks a determination Commonhold and Leasehold Reform Act 2002, s 168(4) that the Respondent has breached a covenant or condition of the lease.
2. Directions were given on 11 April 2023 and amended on 12 July 2023. The case was allocated to the paper track. Neither party has requested an oral hearing.

### **The property**

3. The property is a two bedroom flat in a three storey purpose built block.

### **The lease**

4. The lease is dated 22 May 1978. The term of the lease is 99 years, minus three days, from 29 September 1934.
5. In clause 2(15)(ii), the lessee covenants  
“Not to assign underlet or part with the possession of the Flat without first obtaining from the assignee transferee underlessee or undertenant a covenant directly with the Lessor to pay the contribution covenanted to be made under sub-clause (2) hereof and in the case of an assignment or transfer a further covenant by the assignee or transferee with the Lessor to pay the rent hereinbefore reserved and to observe and perform all the covenants on the part of the Lessee and conditions herein contained.”
6. Sub-clause (2) of clause 1 (which I assume is what is referred to in incomplete form in the clause) is the clause providing for the service charge, under which the lessee covenants to pay the service charge. The covenant to pay the reserved rent is in clause 2(1).
7. Clause 2(15)(iv) requires the lessee to  
“Upon every assignment transfer underlease mortgage charge or other document affecting this Lease to give to the Lessor within one month thereafter notice in writing thereof and also if required by the Lessor to produce each such document to the Lessor’s solicitor and pay a fee of FIVE POUNDS for the registration of each document.”

### **Determination**

8. The Applicant alleges that the first Respondent transferred the property to the second Respondent without providing deeds containing the covenants set out in clause 2(15)(ii) or the notice required by clause 2(15)(iv).

9. The application is supported by a brief witness statement from Mr S Unsdorfer of the managing agents of the block, Parkgate-Aspen Limited, to which is exhibited a number of documents. Mr Unsdorfer states that there was a transfer of the property from a Mr Shen on 8 July 2021 to the first Respondent. At some point, the exhibits indicate, an unsigned copy of an HM Land Registry TR1 transfer form was received by Parkgate in respect of the transfer from Mr Shen to the first Respondent.
10. Emails sent during January 2022 exhibited to the witness statement refer to a further transfer from the first to the second Respondent at some point between that date and January 2022. The same solicitor (according to the witness statement and the emails) acted for the first and second Respondents in that transfer. An HM Land Registry copy of register of title dated 14 November 2022 shows a transfer to the second Respondent on 18 February 2022.
11. Finally, the bundle includes a letter dated 18 November 2022 from the Applicant's solicitors to the first Respondent alleging a breach of clause 2(15)(ii) only, the solicitor noting that it is proposing to commence forfeiture proceedings.
12. No material has been received from either Respondent. The Tribunal, having noted that nothing had been received from the Respondents, and enquires were made as to whether the Applicant had served its bundle to the Respondents as required by the directions. It transpired that it had not, the Applicant's solicitors are reported as saying, because they did not have an email address for them. The bundle was sent by post (they reported) on 10 July 2023 (at the start of the week initially set down in the directions for the written determination to take place).
13. Despite the lack of a clear and coherent account of the factual background, or of submissions as to the law, I am content to conclude from the material provided that the first Respondent did not provide the deeds or notices required by clauses 2(15)(ii) and (iv). The correspondence shows that, despite a number of emails and letters, the first Respondent has consistently failed to respond, and has not provided the materials required.
14. The covenants bind the lessee for the time being in possession. Since the first Respondent is no longer in possession, it would appear that the threat of forfeiture is ineffective. However, I am also prepared to accept that a determination under section 168(4) may have wider uses than only in connection with forfeiture, and so am prepared to make the determination to that effect.
15. The Applicant added the second Respondent in its application. There is nothing in the papers to indicate any breach by the second Respondent, and it is not clear to us why it was added as a respondent.

16. *Decision:* (1) the first Respondent has breached clauses 2(15)(ii) and 2(15)(iv) of the lease; (2) the second Respondent has not breached any covenant in the lease.

**Rights of appeal**

17. 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 London regional office.
18. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
19. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
20. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

**Name:** Tribunal Judge Professor Richard Percival      **Date:** 12 September 2023

## **Appendix of relevant legislation**

### **Section 20C**

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal<sup>2</sup> or leasehold valuation tribunal or the First-tier Tribunal<sup>3</sup>, or the Upper Tribunal<sup>4</sup>, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal<sup>4</sup>, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.