



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

Case Reference	: CHI/00HY/LBC/2023/0009
Property	: The Perch, Beech Road, Box Hill, Corsham Wiltshire. SN13 8HB.
Applicants	: Linda Candy, James Candy, Pauline Candy and Sandra Walker.
Respondent	: Brenda Wolfe.
Tribunal Member	: Judge C A Rai.
Type of Application	: Application for a determination of breach under section 168(4) of The Commonhold and Leasehold Reform Act 2002 (CLARA).
Date type and venue of Hearing	: 8 September 2023; Decision made on the papers without an oral hearing.
Date of Decision	: 19 September 2023

DECISION

1. The Tribunal determines that it has no jurisdiction to deal with the application because the lease of the Property is not a “long lease” within the definition in sections 76 and 77 of CLARA.
2. The reasons for its decision are set out below.

Background

3. The Applicants applied to the Tribunal on 16 March 2023 for an order that a breach of covenant or condition in the lease has occurred.
4. The relevant lease is the lease of the bungalow known as The Perch, Beech Road, Box Hill, Corsham, Wiltshire. SN13 8HB (the Property). The lease of the Property is dated 24 June 2011 and was made between Sandra Kaye Walker, Linda Mary Garbett, James Patrick Candy and Pauline Anne Candy (the Lease).
5. The Lease was granted for a term of ninety years from the 24 June 2011 at the rent of a peppercorn. The Applicants are the Landlord referred to in the Lease. The Respondent is the Tenant. (Linda Candy was formerly known as Linda Garbett).
6. Following the application, the Tribunal issued directions which required amongst other things that the Respondent acknowledge the application and directions. The directions set out the nature of the application and the alleged breaches of covenant. The Tribunal sought confirmation that Linda Candy represented all the Applicants and evidence of the title to the Property. The Applicants were required to set out their case and supply copies of all relevant documents and any witness statements they wished to provide; the Respondent was required to respond to that statement and supply documents and any witness statement she wished to provide in support of her response.
7. The directions indicated that an oral hearing would be held during the last week of July 2023 and required that the Applicant prepare a hearing bundle prior to the actual date of the hearing. Subsequently the Tribunal made arrangements for the hearing to take place in Bristol on 24 July at 10 a.m.
8. When the Applicants submitted the hearing bundle Linda Candy informed the Tribunal that she had not received any written correspondence or documents from the Respondent. A Tribunal Judge subsequently examined that bundle. Having reviewed the Applicants documentation, the Tribunal Judge concluded that the Tribunal might not have jurisdiction to consider the application because the Lease is not a long lease as defined in sections 76 and 77 of CLARA.
9. The Tribunal issued further directions dated 12 July 2023 giving formal notice to both parties that it was minded to strike out the application because it had no jurisdiction to determine it. Both parties were invited to make further representations about the Tribunal's possible lack of jurisdiction. The schedule to those directions set out sections 76 and 77 of CLARA in full and both sections are also set out in the schedule to this decision).
10. Following the issue of the directions dated 12 July 2023 the Tribunal received an email dated 19 July 2023 from the "Admin Team" at Bath and North East Somerset Citizens Advice which written on behalf of the Respondent which said that it agreed that the Lease is not a long lease because it is terminable on death (on one month's notice) and the tenant is not allowed to assign or underlet the premises. It also stated that the Respondent was unwell and was temporarily staying with her daughter

on doctor's advice and that "She intends to return to her home and resume residence as soon as she is able to do so". Subsequently, in response to correspondence sent by the Tribunal, the Duty Supervisor from Citizens Advice stated that he had concluded that the organisation did not have the relevant expertise to offer the Respondent further advice and that had therefore signposted her towards other legal advice. [Email dated 27 July 2023].

11. In response to that correspondence (from Citizens Advice), the Applicant suggested that the Respondent had not previously resided in the Property and referred the Tribunal to specific evidence in the determination bundle and in particular to the minimal amount of electricity consumed at the Property between 8 November 2022 and 24 July 2023. [Letter dated 26 July 2023 from Linda Candy addressed to the Tribunal Judge].
12. The Tribunal issued further directions dated 31 July 2023 stating that it would determine the application without a hearing, on the basis of the written representations received, unless either party objected to its proposal. The parties were also invited to make further representations. Neither party objected. The Applicants indicated that they wished to rely on their existing submissions. The Respondent did not respond.
13. References to numbers within square brackets in this decision are to the electronically numbered pages of the determination bundle.

The Applicants' Case

14. The Applicants claim is that firstly, the Respondent has failed to keep the Property in good repair as required under clause 6 of the Lease. They state that the disrepair of the roof and in particular missing tiles has resulted in water penetration. The disrepair to the gutter has resulted in penetrating damp in the kitchen. Linda Candy stated that the Applicants became aware that the gas boiler could not operate because there was no electricity supply to the Property. She said that the Applicants had entered the Property and turned off the water supply to preserve the pipes. This has resulted in severe mould growth in the kitchen and living area. The garden has never been maintained and is now "seriously overgrown and inaccessible".
15. Secondly clause 7 of the Lease provides that the Tenant must not make alterations to the structure of the Property without prior written consent from the Landlord. The Tenant requested permission to alter the back porch, which consent was given. The work was started in 2018 but not finished. The "new" set of steps were deemed to be unsafe and since that time there has been no safe access to the rear of the Property.
16. The Applicants stated that since the Lease was granted the Respondent has rarely occupied the Property. In 2016 a serious water leak resulted in considerable damage to the Property and its contents. An amount of £47,000 was claimed from the buildings insurer. The Property was not habitable until September 2017. Since that date the oven and fridge freezer do not appear to have been used. The Applicants have submitted

that the Respondent has made frequent assertions that she would return to live in the Property but has not done so. They state that they believe that the Respondent has not occupied the Property during the six months prior to the date of the application.

17. The Applicant referred the Tribunal to letters left by them at the Property and telephone conversations with the Respondent. Mrs Candy referred to her most recent letter to the Respondent, dated 8 February 2023, sent by signed delivery post, in which the Applicants again referred to the breaches of the tenant obligations in the Lease. Subsequently the electricity supply to the Property has been reconnected.
18. The Applicants stated that they have discussed their concerns and the breaches of the tenant covenants with the Respondent on several occasions and that she has accepted that the garden is overgrown and that tiles are missing from the roof. Despite her being given time to remedy these omissions she has not attempted to repair the roof or maintain the garden. The Applicants also confirm that the Respondent has not admitted or denied breaching clause 15 of the Lease.
19. The only significant correspondence from the Respondent in the hearing bundle is a handwritten letter dated 18 December 2018 [61] in which she makes various comments on her plans to tidy up the Property and stated that she has always regarded it as home as she has no other. She suggested that the flood had resulted in considerable devastation and upset and it had taken her a long time to recover.
20. Despite the promises which the Respondent made to sort out the Property a letter from the Applicants to the Respondent dated 6 June 2019 stated that the porch remained unfinished and that a discarded carpet remained on the outdoor steps.
21. Photographs in the bundle [63] annotated as having been taken by Sandra Walker on 4 June 2020, show the fridge containing only bottled drinks, an unused oven, the overgrown garden and empty bins.
22. A letter dated 7 February 2023 sent by Linda Candy (on behalf of all the Applicants) to the Respondent confirms that at this date the roof tiles were still missing although one of the Applicants and her husband (or partner) had undertaken a temporary repair. The back entrance remained in disrepair as it had been since 2017. The lack of heating had compromised the condition of the property. [At that time the Applicants turned off the water supply as no electricity supply was connected]. The guttering above the kitchen remained broken and the garden remained overgrown. The letter set a three week deadline for the Respondent to remedy all of the identified problems and confirmed that the Applicant would apply to forfeit the lease if the Respondent failed to address the problems.

23. Although the application does not specifically confirm this, the Tribunal has concluded that the Applicants are siblings and that the Respondent was granted a lease of the property following the death of the Applicants' father. A letter dated January 2016 sent by Linda Candy to the Respondent includes a statement that... "my father cared for you so much that he wanted you to have the security of a home when he died" [39].

The Respondent's case.

24. The only correspondence received by the Tribunal from, or on behalf of the Respondent, are the two emails from Citizens Advice referred to in paragraph 10 and 11 above. Those two emails provide evidence that the Respondent has received correspondence and is aware of the Application and the proceedings.
25. The correspondence disclosed by the Applicants in the determination bundle show that there has been a regular and sustained effort on their part to engage in dialogue with the Respondent which has, for the most part, resulted in only an occasional response.
26. The emails from Citizens Advice agree that the Tribunal has no jurisdiction to determine the application.

The Lease.

27. The Lease is for a term of ninety years at a peppercorn rent. It is a lease for life drafted on terms which would enable the Tenant to occupy the Property without paying a monetary rent for the remainder of her life. The Landlord is obliged to insure the Property; in return the Tenant is obliged to live in it and to keep it in good repair.
28. Subclause 14(1) contains the Landlord's obligation to insure the Property Subclause 14(3) obliges the Landlord to reinstate any damage caused to the Property unless the insurance is rendered void or the insurers refuse payment because of any prior act of default of the Tenant [7].
29. Clause 6 of the Lease [5] states that "The Tenant must keep the Property in good and reasonable state of repair and properly decorated clean and tidy and repair maintain and renew the pipes drains sewers wires and conduits serving the Property and keep electrical and gas appliances in good working order and keep the garden of the Property in a reasonable condition provided that the Tenant is not under an obligation to carry out repairs to the garden which would mean the Tenant having to bring the garden to a better standard of repair than a the present day."
30. Either party can terminate the Lease in defined circumstances but in the landlord's case it is a prerequisite that termination can only be implemented during the Tenant's life if the tenant is in breach of specific obligations in the Lease.

31. Clause 15 of the Lease states that the landlord can terminate the lease at any time after the death of the tenant or after the tenant permanently ceases to use the Property as her residence whichever is the earlier by giving one month's notice in writing to the tenant or her personal representatives as the case may be. Clause 15 states that "Unbroken absence from residence in the Property for a period of six months shall be conclusive evidence of the Tenant having permanently ceased to use the property as her residence." [8].
32. Clause 16 of the Lease states that the term may be ended by the Tenant giving one month's notice in writing the landlord expiring at any time [8].
33. Clause 17 is the "notice provision" which both confirms the application of section 196 of the Law of Property Act 1925 (as amended) and states specifically that "any notice to be served on the Tenant shall also be deemed to be validly served if delivered to the Property.
34. Clause 7 of the Lease states that the Tenant must not make any alterations to the structure of the Property without the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed [5].

The Law and the Reasons for the Tribunal's decision.

35. Section 168(1) of CLARA is set out in full in the Schedule to this decision. It states that a landlord under a long lease cannot serve a notice under section 146(1) of the LPA 1925 in respect of a breach by the Tenant of a covenant or condition in the lease, unless subsection (2) is satisfied.
36. Subsection 2 states that it is satisfied if it has been finally determined on an application made under subsection 168(4) that a breach has occurred or the Tenant has admitted the breach or a court in any proceedings (including a arbitral tribunal in particular proceedings) has finally determined that a breach has occurred.
37. The Applicants are seeking a "final" determination from this Tribunal that a breach of the Lease has occurred.
38. Section 168 refers to a "long lease". A "long lease" is defined in sections 76 and 77 of CLARA for the purposes of Chapter 1 of CLARA. Chapter 1 of CLARA deals with leasehold reform. Section 168 is within Chapter 5 of the CLARA but subsection 169(5) states "**long lease**" has the **meaning given by sections 76 and 77 of this Act**, except that a shared ownership lease is a long lease whatever the tenant's total share.
39. Section 77 states that a lease is a long lease if it exceeds 21 years however section 77 (1) states that a lease terminable by notice after [a death or marriage or the formation of a civil partnership] is not a long lease if (a) the notice is capable of being given at any time after (as provided in the Lease) the death of the Tenant (b) the length of the notice is not more than three months (one month in the Lease) and (c) the terms of the lease preclude both its assignment and the subletting of the whole of the demised premises.

40. Section 10 of the Lease states that the Tenant must not assign or charge this Lease or underlet or part with possession or occupation of the Property.
41. The Tribunal has therefore concluded that the Lease of the Perch is not a long lease within the definition in CLARA. because it is terminable by notice after the death of the tenant, the length of the notice is not more than three months and the Tenant cannot assign the Lease or sublet the whole Property during the term.
42. Since the Lease of the Perch is not a long lease this Tribunal has no jurisdiction to make an order under section 168(4) of CLARA. Therefore, the Application must fail.
43. Whilst it is not part of this decision, or indeed the reason for this decision, the terms the Lease, presumably drafted to comply with the will of the late father of the Applicants, make it possible for the Applicants to serve notice if the Tenant has not resided at the Property for more than six months. Therefore, another path is available to the Applicants to achieve their objective without the need for an order made under 168(4) of CLARA.

Judge C A Rai

Schedule

Sections 76 and 77 of CLARA

76 Long leases

- (1) This section and [section 77](#) specify what is a long lease for the purposes of this Chapter.
- (2) Subject to [section 77](#), a lease is a long lease if—
 - (a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise,
 - (b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not a long lease),
 - (c) it takes effect under [section 149\(6\)](#) of the [Law of Property Act 1925 \(c. 20\)](#) (leases terminable after a death or marriage [or the formation of a civil partnership]¹),
 - (d) it was granted in pursuance of the right to buy conferred by [Part 5](#) of the [Housing Act 1985 \(c. 68\)](#) or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act,
 - (e) it is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent., or
 - (f) it was granted in pursuance of that Part of that Act as it has effect by virtue of [section 17](#) of the [Housing Act 1996 \(c. 52\)](#) (the right to acquire).
- (3) “*Shared ownership lease*” means a lease—

- (a) granted on payment of a premium calculated by reference to a percentage of the value of the demised premises or the cost of providing them, or
 - (b) under which the tenant (or his personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of those premises.
- (4) “*Total share*”, in relation to the interest of a tenant under a shared ownership lease, means his initial share plus any additional share or shares in the demised premises which he has acquired.

77 Long leases: further provisions

- (1) A lease terminable by notice after [a death, a marriage or the formation of a civil partnership]¹ is not a long lease if—
- (a) the notice is capable of being given at any time after the death or marriage of [, or the formation of a civil partnership by,]² the tenant,
 - (b) the length of the notice is not more than three months, and
 - (c) the terms of the lease preclude both its assignment otherwise than by virtue of [section 92](#) of the [Housing Act 1985](#) (assignments by way of exchange) and the sub-letting of the whole of the demised premises.
- (2) Where the tenant of any property under a long lease, on the coming to an end of the lease, becomes or has become tenant of the property or part of it under any subsequent tenancy (whether by express grant or by implication of law), that tenancy is a long lease irrespective of its terms.
- (3) A lease—
- (a) granted for a term of years certain not exceeding 21 years, but with a covenant or obligation for renewal without payment of a premium (but not for perpetual renewal), and
 - (b) renewed on one or more occasions so as to bring to more than 21 years the total of the terms granted (including any interval between the end of a lease and the grant of a renewal),
- is to be treated as if the term originally granted had been one exceeding 21 years.
- (4) Where a long lease—
- (a) is or was continued for any period under [Part 1](#) of the [Landlord and Tenant Act 1954 \(c. 56\)](#) or under [Schedule 10](#) to the [Local Government and Housing Act 1989 \(c. 42\)](#), or
 - (b) was continued for any period under the Leasehold Property (Temporary Provisions) Act 1951 (c. 38),
- it remains a long lease during that period.
- (5) Where in the case of a flat there are at any time two or more separate leases, with the same landlord and the same tenant, and—
- (a) the property comprised in one of those leases consists of either the flat or a part of it (in either case with or without appurtenant property), and
 - (b) the property comprised in every other lease consists of either a part of the flat (with or without appurtenant property) or appurtenant property only,
- there shall be taken to be a single long lease of the property comprised in such of those leases as are long leases.

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]¹ 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.

Section 169(5)

(5) In [section 168](#) and this section—

“*arbitration agreement*” and “*arbitral tribunal*” have the same meaning as in [Part 1](#) of the [Arbitration Act 1996 \(c. 23\)](#) and “*post-dispute arbitration agreement*”, in relation to any breach (or alleged breach), means an arbitration agreement made after the breach has occurred (or is alleged to have occurred),

“*dwelling*” has the same meaning as in the 1985 Act,

“*landlord*” and “*tenant*” have the same meaning as in [Chapter 1](#) of this Part, and

“*long lease*” has the meaning given by [sections 76 and 77](#) of this Act, except that a shared ownership lease is a long lease whatever the tenant's total share

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.