



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

Case reference : **MAN/30UN/LBC/2021/0004**

Property : **Flat 5 Smithy Court, Smithy Lane,
Preston, PR4 4HJ**

Applicant : **G & O Securities Ltd**

Representative : **None**

Respondent : **Mr Riadh Abdulla**

Representative : **Johnson and Boon Solicitors**

Type of application : **Commonhold and Leasehold Reform
Act 2002 – Section 168(4)**

Tribunal member(s) : **Tribunal Judge L. F. McLean
Tribunal Member Mr J. Faulkner**

Date of determination : **1st September 2022 on the papers
without a hearing in accordance with
rule 31 of the Tribunal Procedure
(First-tier Tribunal) (Property
Chamber) Rules 2013**

Date of decision : **1st September 2022**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Respondent has breached the covenants in his lease of Flat 5 Smithy Court, Smithy Lane, Preston, PR4 4HJ (“the Property”) relating to underletting and use (namely Clause 3(17) of the said lease, and paragraph 1 of the Second Schedule thereto) through the granting of sub-tenancies and the exclusive occupation of the Property by sub-tenants during various periods between 22nd September 2014 and 20th April 2021.**

The application

1. The Applicant seeks a determination pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached the covenants in his lease of Flat 5 Smithy Court, Smithy Lane, Preston, PR4 4HJ (“the Property”) relating to underletting and use.
2. In his Witness Statement, the Respondent states “I therefore seek an Order for the wasted costs that I have been forced to incur”. Beyond that, the Respondent makes no formal application for an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Applicant to pay the Respondent’s reasonable legal costs of responding to the application. For the avoidance of doubt and for the reasons set out below, the Tribunal would not have granted any such application even if it had been made.

Background

3. The Applicant is the current landlord of the Property. The Respondent is the leaseholder of the Property by virtue of a lease made on 9th November 2005 for a term of 999 years from 1st January 2005 and made between (1) Isherwood Developments Ltd and (2) Smithy Court (Much Hoole) Residents Company Limited and (3) Sally-Anne Atkinson (“the Lease”). The Respondent was registered as the proprietor of the Lease at the Land Registry on 22nd September 2014.
4. The Property is a two bedroomed flat within a converted block of flats on Smithy Lane, Preston, PR4 4HJ.
5. It is common ground between the parties that the relevant clauses of the Lease provide as follows:-

3. The Lessee hereby covenants with the Lessor as follows:

[...]

(17) To observe and perform all and singular the obligations stipulations and provisions contained in the Second Schedule hereto [...]

THE SECOND SCHEDULE hereinbefore referred to
RESTRICTIONS AND STIPULATIONS

1. To use the Demised Premises as a private residence for the occupation by the Lessee and his family and not to underlet the same.
6. The Tribunal also observes that the Lease includes the following further covenant on the part of the Respondent:-

(10) (a) Not in any circumstances whatsoever to assign underlet or part with or share possession or grant any licence of any part or parts only of the Demised Premises
7. The Applicant commenced proceedings in the County Court for unpaid service charges. During the course of that litigation, the Respondent asserted in his defence that he had not received certain demands for payment because he did not reside at the Property, which had been sub-let. In response, the Applicant's agent corresponded with the Respondent to make the point that this was a breach of the covenants in the Lease. Nonetheless, he would not formally confirm that his actions constituted a breach of the Lease covenants.
8. The Applicant's application was submitted to the Tribunal on 9th February 2021.
9. On 15th March 2021, the Tribunal issued directions to the parties for the filing and serving of the Applicant's case bundle within 21 days, and the Respondent's case bundle within 21 days thereafter. The Applicant was given permission to file and serve a short reply within 7 days after that. The Tribunal notified the parties that it considered that the application was suitable for determination on the papers provided by the parties and without a hearing. The parties were invited to request a hearing within 21 days of receipt of the directions. The Respondent stated at paragraph 47 of his Witness Statement that "I do not believe that a paper determination is sufficient in such serious circumstances. As such, I ask that this matter be determined at a Hearing." No other or further request for a hearing was made. In any event, given the contents of the Respondent's case bundle which is discussed below, any hearing of the matter would have been entirely redundant and could have led to the Tribunal considering whether the Respondent should pay the Applicant's costs of attending.
10. The Applicant submitted a case bundle including the Witness Statement of Christopher O'Dell (Director of the Applicant) dated 16th March 2022, within a bundle comprising 123 pages which the Tribunal has read.

11. On 21st April 2021 and after obtaining an extension of time, the Respondent's solicitors submitted a case bundle comprising 141 pages which the Tribunal has read. This included the Witness Statement of the Respondent dated 20th April 2021.
12. The Applicant did not file any further documents in response.
13. The members of the Tribunal considered the parties' written submissions and documents filed in support, by way of a virtual meeting held on 1st September 2022 and conducted over Microsoft Teams.

Grounds of the application

14. The Applicant's grounds of application were set out in its case bundle. In summary, these were that the covenants in the Lease referred to above prohibited sub-letting and also required that only the Respondent and his family could live in the Property, and that these requirements had been broken by the Respondent.
15. In response, the Respondent submitted that the Applicant and/or its agents) was aware of the alleged breaches and that the Property was already occupied by a sitting tenant when he acquired it as a buy-to-let investment. The Respondent averred that in spite of this, the Applicant and/or its agents had affirmed the Lease by demanding rent and that the Applicant had thus waived its rights of forfeiture.

Issues

16. The only issue which the Tribunal had to decide was whether a breach of a covenant or condition in the Lease had occurred.

Relevant Law

17. The relevant provisions of the Commonhold and Leasehold Reform Act 2002 read as follows:-

(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.

Evidence

18. The parties relied on the aforementioned witness evidence which was included in their respective case bundles.
19. The parties did not raise any material factual issues of dispute in relation to any matters which were relevant to the Tribunal's deliberations.

Determination

20. The Respondent's Witness Statement and written legal submissions amount to a comprehensive admission of the Applicant's stated case, which even goes so far as to provide additional material of which the Applicant was unaware and was itself unable to particularise. The Respondent's case is entirely directed at the issue of whether the Applicant is entitled to forfeit the Lease. However, in that sense, his evidence and submissions are entirely misdirected, because that is not what the Tribunal has been asked to decide. The Tribunal has only been asked to decide whether a breach has occurred, and for the purposes of this determination it is irrelevant whether the Applicant was aware of the breach when demanding rent. The consequences which may or may not flow from that aspect of the dispute, including whether the Lease has been affirmed and/or any waiver of forfeiture made, is a matter for the County Court, and this Tribunal makes no finding in that regard.
21. The Tribunal accordingly determines, on the Respondent's own admission contained in his Witness Statement, that in breach of Clause 3(17) of the Lease, and paragraph 1 of the Second Schedule thereto, the Property was sub-let and was subject to exclusive occupation by sub-tenants during various periods between 22nd September 2014 (when the Respondent was registered as leaseholder with a sitting tenant) and 20th April 2021 (being the date of the Respondent's Witness Statement).

Name:
Tribunal Judge L. F. McLean
Tribunal Member J. Faulkner

Date: 1st September 2022

Rights of appeal

1. 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.
2. 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.
3. 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.
4. 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.

5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).